REPEALING THE LIMITATION ON PARTY COORDINATED EXPENDITURES ON BEHALF OF CANDIDATES IN GENERAL ELECTIONS

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WEDNESDAY, APRIL 18, 2007

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

The Committee met, pursuant to notice, at 10:32 a.m., in Room SR-301, Russell Senate Office Building, Hon. Dianne Feinstein, Chairman of the Committee, presiding.

Present: Senators Feinstein, Bennett, Stevens, and Lott.

Staff Present: Howard Gantman, Staff Director; Jennifer Griffith; Veronica Gillespie, Elections Counsel; Adam Ambrogi, Counsel; Matthew McGowan, Professional Staff; Sue Wright, Chief Clerk; Mary Jones, Republican Staff Director; Matthew Petersen, Republican Chief Counsel; Shaun Parkin, Republican Deputy Staff Director; Michael Merrell, Republican Counsel; Trish Kent, Republican Professional Staff; and Rachel Creviston, Republican Professional Staff.

OPENING STATEMENT OF CHAIRMAN FEINSTEIN

Chairman Feinstein. Good morning, everyone. Please pardon the late start of this Committee hearing. We had two cloture votes on the floor, and so it takes the time for one vote to be concluded before the next one begins, so I apologize for our delay.

This hearing has been scheduled at the request of the Ranking Member, Senator Bennett, and he will very shortly address us about his interest and concerns in this matter. The topic is whether to repeal the current limits on coordinated expenditures that political parties can spend on behalf of candidates in general elections for Federal office.

While I agreed to the hearing, I am concerned that a repeal of the party coordinated expenditure limits could create a huge new loophole by which party committees could be used to evade the limits on what an individual or PAC can contribute to a Federal candidate.

In his prepared testimony, Mr. Wertheimer provides a clear explanation on how a repeal of the limits could allow a donor to essentially give far more money directly to a campaign for a particular candidate than can now be given under current law governing contribution limits. Individuals can now give $28,500 to a national party committee each year, and PACs can contribute $15,000 per year. However, the maximum that can be given by an individual to a candidate is $2,300 per election cycle and $5,000 per election by a PAC.

Without the limits, many of us fear that the parties could essentially directly channel these higher amounts into the candidate's campaign for use of any legal purpose, including negative ads against challengers. It could also allow a party to essentially move its own operation into a State and take over a flagging campaign.

Before we open up a major new loophole, I think we need to look long and hard at the ramifications of taking such an action. As Mr. Elias says in his prepared testimony,

removing these limits would be a shotgun blast that would effectively be a major rewriting of the campaign finance law. Mr. Elias urges the Committee to look at alternatives to a repeal of the limits.

If the primary concern is paid negative advertisements by independent committees set up by the national political parties, as was done in Tennessee by the RNC in an attack on Representative Harold Ford, then Congress could require political parties to provide an audio and/or video "Stand by Your Ad" in the same fashion that candidates now must do. Mr. Elias has offered several other options to an outright appeal. These alternatives may provide real accountability to party activities on behalf of their candidates, without permitting unlimited hard-money funding by party committees.

Another alternative that I would not be opposed to examining is the level of the actual coordinated expenditure limitations. As an example, for Senate candidates it currently ranges from $81,000 in a State like Rhode Island to $143,000 in Utah, my Ranking Member's home State, to $2.2 million in California. These limits may double the amount the national parties can make if the State party committees authorize their national counterpart to make party coordinated expenditures on their behalf--a common practice. This means the limit could go to $4.4 million in California. This may be too low, but we should take great care in how any changes would be made.

With the upcoming 2008 presidential and congressional elections expected to break all current fundraising and spending records, we need to proceed really carefully before opening the floodgates much further. Even Mr. Malbin of the Campaign Finance Institute, a witness on behalf of the appeal, has said he has concerns about specific legislation.

I notice that my yellow light is on, and we are all going to try to limit ourselves to 5 minutes, including the witnesses, so I will begin that challenge and yield the microphone to my distinguished Ranking Member, Senator Bennett.

OPENING STATEMENT OF SENATOR BENNETT

Senator Bennett. Thank you very much, Madam Chairman, and thank you for your willingness to hold the hearing. I think it is a legitimate part of the discussion with respect to campaign finance controls.

I sense an underlying theme in most of this debate, and it is a basic distrust of the parties. Anything that weakens the parties some witnesses are in favor of. I happen to believe that things that strengthen the parties as significant players in the political process is a good thing.

I remember a book that described voter turn-off--that is, people refusing to vote--and did an analysis among voters as to why they were not voting as much as they used to in the past, and there were two answers: number one was the media and its constant negative portrayal of politics and politicians, and the other was the weakening of the party apparatus. A party exists to get people to the polls, and efforts to weaken a party's ability to do that in the name of dealing with the appearance of corruption seemed to have had the perverse effect of holding down voter turnout.

Now, the current limit on party expenditures

coordinated with candidates leads to less transparency and accountability, more negative advertising, and, therefore, more voter confusion. I am not alone in that view. As I quoted in the meeting where I requested this hearing, the Washington Post, nor normally known as a Republican mouthpiece, calls this aspect of the law that I am seeking to change "a particularly ridiculous aspect of campaign finance law" because it forces parties to set up quasi-independent groups within the parties to run the ads. And then the Post goes on to say, "There is no good reason to force the political parties to engage in this charade of setting up independent groups. There is every reason to set up a system that requires those who underwrite ads to take responsibility for them." And that is what we are seeking to do.

The policy rationale underlying the party coordinated expenditure limit is profoundly flawed, as I have indicated, and we will hear from Michael Malbin, who has said, "There simply is no logical corruption rationale for limiting party spending for candidates, as long as the contributions into the party are fully controlled." And then Thomas Mann, who will appear, refers to these limits as "awkward and inefficient requirements." And Michael Toner, who was a Commissioner at the FEC, says, "The coordinated expenditure limits do not prevent corruption or the appearance of corruption and serve no rational purpose."

Now, as I say, I think parties play an essential mediating role in our political system, and the health of the democracy is linked to the health of the parties. Repealing the limits would only affect the manner in which parties spend the money and not the amount. We were told prior to the passage of McCain-Feingold that it would get big money out of politics. The first election fought under the terms of McCain-Feingold was the 2004 election, and I do not think anyone could insist that in the 2004 election we saw the big money out of politics. All we saw was that it flowed in different directions, and many of the directions in which it flowed were directions where there was no transparency or accountability. If the money had stayed within the framework of the party system, we would know who gave it; we would know who was responsible for it; and we would have an accountability trail.

Senator McCain included the exact language that is in the bill introduced by Senator Corker and me in an amendment that he introduced during last year's lobbying reform debate, and no one can accuse Senator McCain of being soft on these particular issues.

There is a broad consensus in favor of this policy, and it is difficult for me to see what the controversy is, unless, as I say, there is a conviction that somehow parties are evil and we must do what we can to hamper or handicap parties and drive the money someplace outside of parties just because we do not like parties. Well, I do, and for that reason I support Senator Corker's bill.

Again, I thank you, Madam Chairman, for your courtesy in scheduling this hearing so that we can have an airing of these issues.

Chairman Feinstein. I thank you, Senator.

Senator Stevens, do you wish to make an opening

statement?

OPENING STATEMENT OF SENATOR STEVENS

Senator Stevens. Well, just a comment, Madam Chairman. I think this problem of coordination with a candidate is more acute in the smaller States because we have smaller amounts of money that can be coordinated with a candidate. And what has happened, if a party gets into the position that it wants to be involved in an election, we will enter into the debate, so to speak, in terms of being an independent entity, but really is not. But oftentimes the candidate himself or herself does not quite agree with the party in some of the advertising they bring into the State. And I think the bill that is before us now will give the candidate control over what is said in an election in his or her State.

I think this is paramount to return that control to the candidate. The money is sort of incidental, really, because I do not argue at the amount under the law that can be allocated to a candidate. I think lifting the limit will mean that the candidate--I hope we are sure that we make it certain the candidate must be responsible for any advertising that occurs in his or her State on his or her behalf. Currently they do not have the ability to coordinate and, therefore, they do not have the control.

Chairman Feinstein. I would very much like to respond to that, Senator. I thank you for your comments. I will not at this time.

I would like to begin the first panel, if I could, and if you come forward, I will lay out the ground rules and introduce you both. We would ask that you confine your statement to 5 minutes. The light is in front of you.

The first witness is John Samples. He serves as Director of the Center for Representative Government at the Cato Institute. He is a well-respected and recognized advocate and expert on campaign finance deregulation, individual liberties, and free markets. He is well versed in the public policy and legal issues that this Committee must be mindful of as we consider the subject of our hearing for this morning.

I will also introduce Marc Elias at this time. Mr. Elias is a partner in the law firm of Perkins Coie. He practices in the areas of campaign finance law, ethics, and white-collar criminal defense matters. He represents elected officials in Congress, candidates, PACs, parties, and others in the regulated communities. He is the only practitioner appearing before the Committee, and he brings a history of practical advice from the ground level up which is directly related to the subject of our hearing today.

Dr. John Samples, if we could begin with you, please.

STATEMENT OF JOHN SAMPLES, DIRECTOR, CENTER FOR REPRESENTATIVE GOVERNMENT, CATO INSTITUTE, WASHINGTON, D.C.

Mr. Samples. Thank you, Madam Chairwoman. Madam Chairwoman, Ranking Member Bennett, and members of the Committee, I would like to thank you for the opportunity to testify today on the Campaign Accountability Act of 2007. I have written a book on campaign finance called "The Fallacy of Campaign Finance Reform" that bears on some of these

issues, and it treats--broader issues is what basically I would like to talk about in my time today.

I think we first should briefly consider the history of this particular part of Federal campaign finance law that we are discussing deregulating. It turns up in the 1971 law, the Federal Election Campaign Act of that year, and it really is very clearly a spending limit. That law itself in 1971 was filled with spending limits. It was intended as a spending limit. It has survived in a somewhat anomalous fashion.

As you know, in Buckley v. Valeo, spending limits were declared unconstitutional under the First Amendment. But as Justice Kennedy later said, we did not have occasion--that is, the Supreme Court did not have occasion in Buckley to consider the limit we are looking at here in this legislation. And as a result, essentially what we have is what began life as a spending limit and, therefore, should be unconstitutional, has come down to us over time, and is, in fact, enforceable on Federal political activity. Buckley also made independent spending constitutionally protected.

The Colorado cases we know about, they put party spending--independent party spending was blessed, and the coordinated spending we have here and the regulation itself was brought under the Constitution as a contribution limit and, therefore, as a prevention of corruption. That together with some FEC rulemaking that followed McCain-Feingold meant that we are where we are today, which is that we have a party contribution limit that gives powerful incentives to the parties to spend money independently.

To me, the most striking element about all of this is that if you look in 2004 and 2006, you realize that the parties are spending about 4 to 6 times independent of their candidates what they spend in coordination with their candidates. I want to suggest briefly in a minute that that is an anomaly, not just in general but for democracy.

I want to talk briefly about three themes. One, indeed, that is at stake here, I think, in this contribution limit is that parties have long been thought of as agents of corruption by some elements of American political culture, that they stand for narrow, not broader public interest, and, therefore, they corrupt. That is essentially what was said by Justice Souter in Colorado II. That bypass argument strikes me as odd because, in fact, people are giving money under a prophylactic, which is the contribution limits to the parties. The real problem, though, is parties play a profoundly positive role in American politics, and they have the effect of presenting general platforms, of bringing together broad sets of particular interests, and making--connecting, really, voters, groups, and interests to elections. And they do also voters the favor of making a platform available, standing for things that give information to voters.

Another point I would make that is made in my testimony is I think it is profoundly important that we not move on this because of the presence of negative advertising. First of all, we should not ever pass legislation that has anything to do with regulating the content of speech. That is by the nature of the case unconstitutional under the First Amendment. And, second, we ought to realize that

negative--that is, critical--advertising in a campaign is a socially good thing. It provides information to voters. It mobilizes voters. The scholarly literature speaks now with one voice on this.

It is true also, though, that sometimes people engage and go over the top. What you need there is accountability and responsibility for ads, and these party coordination limits work profoundly against that because they make it harder for voters to connect candidates, parties, and the messages they are presented with. Again, keep in mind that there is a lot of difficulty for voters getting information.

Finally, I think this limit itself is a result of a profound animus to spending in campaigns. We ought to realize that, again, the scholarly literature shows that more spending is good. It leads to more voters. It helps information-poor voters more than information-rich voters. In general, it is free speech, and we should keep in mind the relative. We are talking about spending that really has risen over the years, in general, for campaigns, but we have become wealthier over that time also. And, in general, I think we should--I would support this kind of deregulation, and I think it would help our democracy.

[The prepared statement of Mr. Samples follows:]

Chairman Feinstein. Thank you very much.

Before I turn to Mr. Elias, I note the presence of the former Chairman of this Committee, Senator Lott. Would you like to make an opening statement?

Senator Lott. No, not right now, Madam Chairman. But thank you very much for having the hearing.

Chairman Feinstein. Thank you very much, and welcome.

Mr. Elias?

STATEMENT OF MARC ELIAS, ESQ., PERKINS COIE LLP, WASHINGTON, D.C.

Mr. Elias. Thank you, Madam Chairman and members of the Committee. I appreciate the opportunity to address you today on a matter that is of great importance and significant to the regulated community. And I do want to begin by pointing out a couple of things. One is that I am the only person testifying today who is a practitioner. I represent elected Members of the House and Senate, I represent candidates for the House and Senate, I represent party committees, and I represent PACs. I represent some outside groups that are none of the above, so I see the--if much of what you are going to talking about today and hear about today is at 30,000 feet, I operate at 30 feet. I see on the ground what the effects of these laws are and what the effects of the law changes would be.

I do want to begin with a cautionary note that, despite my representation of others, my testimony today is solely that of my own, and the opinions I express today are only my own and not those of any of my clients.

I have two concerns with the removal of the 441a(d) limits as being proposed. The first is that I think that the problem that is trying to be addressed is overstated. The second concern I have is that the removal of 441a(d) limits will not be a rifle shot but, rather, will be a shotgun blast. 441a(d) limits tie to a number of other provisions and policies that are contained in the act, and

if you remove that provision, you are going to dramatically change and alter the landscape in which campaigns operate and in which parties operate. And as someone who is also a fan of strong parties, I say this with conviction: that if you simply tomorrow remove all the limits on party spending, you will not simply free the parties to be stronger; you will make some parties stronger, you will make some parties weaker.

Why do I say that? Well, first, right now the way in which the campaign finance laws are set up is that there are certain advantages that are given to State parties, uniquely to State parties, so that the Utah Republican Party has the right to use volunteers to disseminate campaign materials and to do so in coordination with candidates and to not have that count as a contribution or against the 441a(d) limit. It is oftentimes referred to as "exempt party activity." It is a right that is uniquely given to State parties.

If you remove the 441a(d) limits, you will essentially undo that right of State parties. True enough, State parties will still be able to do it, but so will national parties. So the Republican National Party will be able to go into Utah and do volunteer exempt activity. The Utah Republican Party will no longer have a unique function in elections in that State.

You may decide at the end of the day that that is a good consequence. You may decide at the end of the day that that is a bad consequence. But it is a consequence, and it is one that the Committee ought to consider before moving forward.

Another example, the millionaire's amendment. One of the ultimate sanctions, so to speak, for a millionaire candidate spending their own funds is the removal of the 441a(d) limits. I can tell you, as someone who has advised candidates who are themselves millionaires and those who have run against millionaires, self-funders, that the removal of the 441a(d) limits is the ultimate consequence. It is, frankly, what gives the most teeth to the million's amendment in its current form.

The removal of the 441a(d) limits would undo that. It would remove a significant provision to what makes the millionaire's amendment currently have the effect that it does. Again, that may be a good consequence. It may be a bad consequence. That is a judgment for this Committee to make and for the Congress to make, but it is one that I would urge you to consider as you move forward.

The second item that I wanted to address briefly is what I think is the genesis of this. There has been a lot discussed and there will be a lot of discussion of the Colorado Republican cases. The law is settled, as far as I am concerned. Right, wrong, or otherwise, the Supreme Court has ruled that 441a(d) is constitutional, so that I view as behind us. The question now is not whether Congress can or cannot regulate party spending, but whether it should or it should not.

The most recent impetus for the removal of 441a(d) limits seems to be the Tennessee Senate election. Let me make two observations about the Republican National Committee ads aired in Tennessee.

Number one, I dealt with those ads up front and

directly at the time. There was nothing that prohibited the Republican National Committee or Senator Corker's campaign from issuing a release calling on the television stations to pull down the ad. There was nothing. And I will tell you as someone who deals with a lot of television stations' licensees, the television stations would have pulled down the ad. If they had gotten a letter, a press release, what have you, that said, "This ad is wrong; it is scurrilous, and it should not air," the ad would have been taken down.

I do not want to go over my time. The second observation I want to make about Tennessee is a misnomer that has crept into the lexicon, and it is one that, Senator Bennett, you cited from the Washington Post. The independent expenditures made by the Republican National Committee are not done by some separate committee. They are done by the Republican National Committee itself. The Republican National Committee sets up internal firewalls to ensure that those ads are independent of the campaign, but they are done by the Republican National Committee. The add that ran in Tennessee that has caused this controversy had as its disclaimer that the Republican National Committee is responsible for the content of this advertising. So there is accountability. It may not rest with all of the people at the Republican National Committee, but it rested with the Republican National Committee, as they do in all instances.

I apologize, Chairman Feinstein, for going over the time.

[The prepared statement of Mr. Elias follows:]

Chairman Feinstein. That is quite all right. Thank you both very much for your testimony.

Mr. Elias, I listened with great interest to what you had to say about that it is so easy to get an ad removed. I do not believe it is. I think you can call a television station and say this ad is wrong, et cetera, et cetera, it is scurrilous, et cetera, et cetera, and there is no fairness doctrine, and the ad remains. And I know that to be the case in California.

Mr. Elias. Let me clarify. You are correct. It is relatively difficult to take down an ad when you are the opponent of the--in other words, a group is running an ad against you, it is very difficult to take down an ad.

If the Republican National Committee's Chairman issues a press release to a television station saying, "We want you to pull down our ad," it is relatively easier.

Chairman Feinstein. Oh, that might be, yes, but also I was interested in Senator Stevens' comments and Senator Bennett's comments that the political party's job is to get people to the polls. That is really sublimated to the desire to win, and the desire to win carries with it a certain kind of imprimatur, in my view, of accuracy. And it is very difficult. The loophole, as I see this, is in marginal States where you have a red State and a blue is the nominee or you have a blue State and a red is the nominee; that the party can come in full force in a general election and essentially just by money win the election.

I was wondering if you would comment on that, and Dr. Samples as well.

Mr. Elias. I think your observation is correct that the repeal of 441a(d) limits would have their greatest consequences in small States or congressional districts where you have--where the party holding that seat is in the minority of the electorate because it will be relatively easy--right now one of the impediments to mounting competitive challenges in that circumstance is the ability of the party to recruit a candidate and raise sufficient Federal funds to make the seat competitive. That impediment will be removed if 441a(d) limits are repealed because parties will be able to essentially come in and take over the entire campaign.

Remember, 441a(d) is not just about ads. It is about polling budgets. It is about staff salaries. It is about rent. It is about cell phones. You can use 441a(d) to pay any expense of a campaign, so it is not just about advertising.

Chairman Feinstein. Dr. Samples, would you like to respond?

Mr. Samples. Sure. While recognizing your undoubted greater expertise on this than mine, Senator, I would say that generally from the scholarship I doubt that the--there is not of evidence about buying elections by parties, individuals, or otherwise.

The second thing I would say is a national party in that role, given the way the Government is now, and the fact that the parties are very coherent and very involved in running the Government and Congress is not necessarily a bad thing because you would have--national parties after all are making national policy.

Chairman Feinstein. Could you give any other--well, let me read the question this way. Let's assume that the Senate will not move forward to rewrite campaign finance laws, contrary to the Supreme Court's findings in Buckley and Colorado II. Would each of you describe your views on reasonable alternatives that Congress could explore to provide accountability to party activities on behalf of their candidates?

Mr. Samples. Do you want to go first?

Mr. Elias. Sure. I think there are any number of solutions. You mentioned a few of them in your opening statement. You could require "Stand by Your Ad" requirements for party ads.

Chairman Feinstein. I am sorry?

Mr. Elias. You mentioned a number of them. You could require a "Stand by Your Ad" statement that currently is required in candidate ads. You could require those in party ads.

One of the things that perhaps could come out of this hearing is an effort on the part of a number of the people testifying today to go to the Federal Election Commission and simply have them, by regulation, allow greater coordination of party ads that are allowed of outside group ads. There is nothing that says that either by FEC regulation or by statute would not allow greater coordination without allowing complete control. 441a(d) allows complete control. We had, prior to McCain-Feingold, a standard in place with regard to many party advertisements which allowed coordination and cooperation but not control. So that would be another way to address it.

You could treat certain types of ads differently than other kinds of ads. You could treat negative ads under one standard and positive ads under a different standard.

Chairman Feinstein. Thank you.

Mr. Samples. I think it would be very difficult to give the candidate any control over independent spending. I think generally my fallback position is always going to be a nongovernmental one, and I do think that it would then be up to candidates to disavow ads. The problem with that is that you are going--the situation would be very complicated, and I think, again, from the voter's point of view it would be confusing and would tend against accountability in the system.

Chairman Feinstein. Thank you. My time is up.

Senator Bennett?

Senator Bennett. Thank you, Madam Chairman.

Mr. Elias, you say you are the only practitioner. You may be the only practitioner among the witnesses, but you are not the only practitioner in the room. I have run campaigns for other candidates and then had the experience of being a candidate myself, and I am a little skeptical of your statement that it is relatively easy for a party or candidate to get a controversial ad off the air. In light of the FEC's coordination rules, which are very specific, I think a party or a candidate would be putting itself or him- or herself in grave danger of an FEC complaint if they did what you just suggested. And I would like to put in the record, Madam Chairman, a letter from the Chief Counsel of the RNC, Thomas Josefiak, who takes a different position

than you do. He is a counsel, and he makes it clear in this letter that if he had a client who was going to try to do what you were suggesting, he would say to the client, "You are running a real risk of getting an FEC complaint, and I would advise you not to do it."

So I would ask you--you have given us a list of clients that you represent in general terms--if such a client were in a campaign and his party had financed an independent organization that was running an ad that he did not like, and he came to you as a lawyer--and this is a go-to-jail question. If he came to you as a lawyer and said, "Can I get on the air and denounce that ad with certainty that I will not be accused of trying to influence that outside group with that denunciation?" would you tell him, "Absolutely, go on the air, and you will be completely clear with the FEC"?

Mr. Elias. A few things. Number one, I have the greatest respect for Mr. Josefiak. He is the counsel to the Republican National Committee, and he is a friend, and he is a very good lawyer.

The FEC's regulations are actually quite clear on this. I have not seen the letter that Mr. Josefiak produced. The FEC's regulations are quite clear, though, that statements made in public are not subject to the coordination--

Senator Bennett. You have not answered my question.

Mr. Elias. I would tell a client that they could publicly denounce and publicly call for an ad to be pulled down, yes.

Senator Bennett. And that that would not in any way--

Mr. Elias. I do not believe that that would expose them to a meritorious FEC complaint.

Senator Bennett. That is why we have different lawyers. This lawyer comes to a different conclusion.

I was interested in your comment that, well, maybe we could deal with this by having a different standard for negative ads than other kinds of ads. How in the world do you determine what is a negative ad and another kind of ad? I have never run a negative ad in my life from my point of view. My opponent was convinced that an ad that I ran that simply listed facts, all of which could be looked up and documented, was a terribly negative ad. Isn't that in the eye of the beholder?

Mr. Elias. I think it is an interesting question, and I only suggest it because Congress in McCain-Feingold actually put in place different "Stand by Your Ad" requirements for advertisements that make reference to your opponent within--I think it is 90 days--it is 60 days of the general election. So Congress has already essentially made--and if you look at the legislative history of it, that was to address exactly this issue. They wanted to have a heightened disclaimer and "Stand by Your Ad" requirement for what they perceived to be negative ads that come at the end of campaigns.

Senator Bennett. So if I name my opponent, it is de facto a negative ad.

Mr. Elias. I think it is fair to say that if the Republican Party runs an ad in Tennessee that mentioned Harold Ford, Jr., it is likely to be a negative reference.

Senator Bennett. You said "de facto," not "likely."

Mr. Elias. I think that Congress made that judgment in

McCain-Feingold, and it was upheld by the Supreme Court. I think I can make that judgment here.

Senator Bennett. Well, I do not have the time to go down that line.

One other comment. You talk about the enormous amounts of money. Again, back to my own experience, after I won the primary, which I was not supposed to win--the first polls showed my opponent at 56 percent and me at 3, and there was a 4-point margin of error. People asked him, "Okay, what happened?" And he said, "Well, I was just following the conventional wisdom, which was that whoever spends the most money in the last 30 days wins." He outspent me three to one. His ads were bad ads. They were not negative ads. They just were not very well done.

I think we have got to give the voters a little bit of credit here that they have the ability to make some decisions instead of assuming that Congress can regulate everything by controlling money.

Chairman Feinstein. Thank you, Senator.

Senator Stevens?

Senator Stevens. Well, Mr. Elias, I have to disagree, to. I have been a candidate now 11 times. I lost a couple races. And I have got to tell you, I think the primary consideration ought to be that the candidate has control over any ads that affect his election. This provision allows the National Committee to come in and change the concepts of the election.

You say it could be brought down. I say, "Don't give them the right to ever put it up without my consent." And I think that ought to be the paradigm for the election.

Now, I have been chairman of the campaign committee. I have managed other people's campaigns. I have been involved in presidential campaign. I don't know why we should allow anyone to change the concepts of the campaign through independent expenditures, and this amendment will change that. I do believe it should.

As I said at the beginning, I am not concerned about the money. I am concerned about control. I think the candidate ought to have control. He does not have control. Your telling him that he can go down to the station and take it down does not take away the damage to his campaign. And I would urge you to reconsider because if these campaigns are going to be run with a candidate being responsible, then the candidate must have control.

Mr. Elias. Senator, I am not sure that you and I are at fundamentally at loggerheads on this. My testimony today is to urge the Committee to consider all the ramifications of changes. I tried to make clear that there are a number of ways you could address this. You could address--and I am not going to comment on the constitutionality of one approach or another. But you could address issues of whether candidates should or should not be notified or aware of or have involvement in or control over, whatever terminology you want to us, of party ads, and you can do that without repealing all of 441a(d). There are any number of ways you could do this short of just saying, you know what, we are going to take a provision out that not only gives accountability for ads, but also means that the party can now pay for the salaries of the campaign in an unlimited

amount, can pay for the rent of the campaign in an unlimited amount, can pay for the polling of the campaign in an unlimited amount, can pay for the cell phones of a campaign in an unlimited amount.

There are ways to deal--if your concern has to do with advertising, then there are ways to shape the law to address advertising. Removing the 441a(d) limits, though, addresses--allows parties to spend unlimited amounts on anything involving candidates.

Senator Stevens. Well, I would just counter by telling you that if the party can hire people to go door to door in my State and give the party's message that I do not know about, they will affect my campaign. If the party can start paying people to do things totally independent of me, I think it is wrong. I think the party ought to be able to give me as much money as they want to give me, but I think I ought to be responsible totally and answerable to the public, the voters, for what happens to that money. And I think that is what the bill before us does. It restores what we used to have, and that is, total control of the candidate over the elections. We do not have that now. We have the State party and we have the national party, both being able to make independent expenditures without any consideration at all of the candidate and what that candidate wants to do with the campaign, the pace of it.

In addition, a last comment, if the party comes in--either one of them comes in with a big buy in a television station, they are going to be given preference over the advertising. If the candidate is limited, he is going to have the last choice, really, of the time on television and radio. I do believe that we ought to concentrate on finding a way to make the candidate responsible and to give him control or her control over the total campaign and total responsibility ought to be with the candidate, should not be able to say, "Well, I did not these people out there in another city were saying something because no one ever told me about it."

Believe me, in my campaign I know who is doing what and where they are and what they are going to say, or they are not working with me. Now, that ought to be the answer for candidates, period.

Mr. Elias. Right now, Senator--and this is one of the examples I used in my prepared testimony. Right now State parties are, in fact, allowed to engage in the kind of grass-roots activity that you are talking about in full coordination with candidates, and that is an exception to 441a(d). And the reason why that is a powerful allowance is because national parties cannot do that. The RNC cannot send workers into your State to go door to door, unless they do it independently, but the Alaska Republican--

Senator Stevens. They can independently now and they do do it.

Mr. Elias. They can independently now, but the Alaska Republican Party can uniquely coordinate that activity with you and can hand out your literature and can hand out your bumper stickers and can hand out your leaflets in coordination with you. What is going to happen if you remove the 441a(d) limits is a lot--the State party will lose its preferential place in that system, and now it will

be on the same parity with the Republican National Committee.

Senator Stevens. As long as I control them both, I am happy to have them there.

Mr. Elias. That is a policy decision, and like I say, it is one that I just urge the Committee to consider.

Senator Stevens. Thank you.

Chairman Feinstein. Thank you very much.

Senator Stevens. I regret to say I have been called to a classified session. I would like to stay. I am very interested.

Chairman Feinstein. Thank you for being here. I appreciate it very much.

I would like to thank both of you for your testimony and hope you can stay and listen to the second panel.

I would like to proceed and introduce the second panel, if that is agreeable with you, at this time. While the panelists are being seated, I will begin with a group introduction.

The first person testifying will be Fred Wertheimer. He serves as President and CEO of Democracy 21. Now, Democracy 21 is a campaign finance think tank and reform organization. He is recognized as one of the leading experts on campaign finance reform issues, including money in politics, ethics, and public financing systems, for over 30 years.

Thomas Mann serves as the W. Averell Harriman Chair and Senior Fellow in Governance Studies at the Brookings Institution. He also is an expert on campaign finance, elections, and Congress. We welcome him again for another round of testifying in the Rules Committee.

Gary Kalman serves as the democracy advocate at U.S. PIRG, the federation of State public interest research groups. He specializes in campaign finance reform and ethics issues and tracks money in politics, including funding used for coordinated expenditure purposes.

Michael Malbin serves as the Executive Director of the Campaign Finance Institute. He is a leading scholar in the field of money in politics and campaign finance reform issues. The it is well regarded for its detailed data tracking of campaign financial activity over each election cycle.

So, Mr. Wertheimer, you are up.

STATEMENT OF FRED WERTHEIMER, PRESIDENT, DEMOCRACY 21, WASHINGTON, D.C.

Mr. Wertheimer. Thank you. Chairman Feinstein, Senator Bennett, thank you very much for the opportunity to testify today.

We oppose the repeal of these limits. We believe they serve an important purpose. This issue is not about how much money a party can spend. That is unlimited, as we know. It is about, in our view, and in the Supreme Court's view in Colorado II, the extent to which parties can be used to circumvent the limits on what an individual can give to a candidate.

This was set forth in the opinion in Colorado II, which described the mechanism of evasion that could occur, and I will quote from that: "Despite years of enforcement of the

challenge limits, substantial evidence demonstrates how candidates, donors, and parties test the limits of the current law, and it shows beyond serious doubt how contribution limits would be eroded if inducement to circumvent were enhanced by declaring parties' coordinated spending wide open." And this comes down to a question of the extent to which an individual who is currently limited in its contribution to individuals, but has a far greater limit in contributions to a party, can through the party, in effect, make direct contributions to the candidate that bypass the candidate limits.

There are a couple of questions that have come up here that I would like to comment on. In terms of the Tennessee situation and the ability of a candidate or party to call for the withdrawal of an ad, that, as Mr. Elias pointed out, can be addressed in different ways than simply repealing the limit. It can be addressed, for example, by a very limited change in the definition of "coordination" that makes clear that a party or candidate can call on a party's independent expenditure unit not to go forward with an ad or to withdraw an ad.

I happen to agree with Mr. Elias that that is legal today, but to the extent there are different views about that, that could be clarified.

The second point I would make is the 441a(d) limits are part of an integrated statutory approach to the financing of campaigns by candidates, and any changes in those limits, such as a repeal, need to be considered in the context of the whole system. We do not think they should be dealt with in isolation or in a vacuum.

The last point I would make on this is, in our view, there are a number of issues facing the Congress and the country when it comes to campaign finance that are more important than this question, and for us they include fixing the presidential public financing system, extending public financing to congressional races, requiring 527 groups to comply with the law when they are trying to influence Federal elections, looking at issues of free TV time and low-cost TV time, which are not in the jurisdiction of this Committee.

We think that when Congress comes to approach this kind of question, it should be doing it in a comprehensive way. We do not believe that applies to legislation like the electronic disclosure provision that this Committee reported out, which is a separate issue. We do not think it applies to legislation dealing with 527 groups. We think when you are looking at the question of legislation regulating candidates, you ought to look at all of it and not just this question.

Thank you.

[The prepared statement of Mr. Wertheimer follows:]

Chairman Feinstein. Thank you, Mr. Wertheimer.

Dr. Mann, would you proceed, please?

STATEMENT OF THOMAS E. MANN, SENIOR FELLOW GOVERNANCE STUDIES, THE BROOKINGS INSTITUTION, WASHINGTON, D.C.

Mr. Mann. Thank you very much. Madam Chairman,

Senator Bennett, delighted to be back with you 2 months later. I was also so pleased at how expeditiously your Committee moved on the electronic filing of campaign finance reports for the Senate, although a little discouraged that it hit a bump yesterday, and I hope, Senator Bennett, that that was just temporary and that that measure will move forward very quickly.

Senator Bennett. Don't assume that I had anything to do with it.

Mr. Mann. I don't. I am just looking for help.

[Laughter.]

Senator Bennett. A lot of folks did assume that previously.

Mr. Mann. Right.

I support the proposal to remove limits on party coordinated spending, and in doing so I find myself at odds with Fred Wertheimer, whom I have often worked together with, including on the McCain-Feingold legislation, and together with John Samples, with whom I disagree on almost everything having to do with campaign finance regulation.

I honestly believe, however, this is a change that would restore in many respects political parties to a healthy relationship with their candidates and do no harm, have no disproportionate impact on one party or the other, allow no more circumvention of individual contribution limits to candidates than is now permitted under our current system, give no greater advantage to large donors. In effect, I am really disagreeing profoundly with Mr. Elias that I do not see this as being a shotgun blast, of having enormous fallout and consequences. And I know Republicans have generally supportive of this and Democrats opposed, but I think it reflects a legacy of past history under past rules and practices, and that if you really examine it, it would not hold up. The arguments against it I believe are weak.

Here is the reality. There is no limit on what parties can spend now. There is just a limit on the legal form that spending can take. Years ago, when a number of us proposed banning party soft money and regulating electioneering communications, in trade for that first change we suggested lifting the limits on party coordinated spending. Congress did not do that in BCRA in 2002, and there has been a perfectly predictable consequence. The amount of party independent spending in presidential elections moved from under $4 million to over $265 million, and in the midterm elections bracketing BCRA from $4 million, roughly, to $224 million.

The reality is that is how parties campaign now, but it introduces diminished efficiency and accountability. In fact, most political scientists believe the whole idea of parties operating independent of their candidates is preposterous. It is a perversion of what political parties are all about.

Now, I think you can make this change without compromising any of the advantages attached to the present system. I believe that the argument that this allows the individual contribution limits to be undermined is not true because everything that could be done under this new system, that is, lifting the limits on coordinated spending, can now

be done under the present system. The fact is parties tally contributions that members or other candidates help arrange through the parties and kind of give them credit even for independent spending. So it exists now. Everything that could be done in the future is possible under the present system, but it would be so much more honest, efficient, and accountable.

I think party independent spending is awful, and I think the only way to deal with it is to give parties the incentive to spend their money in a coordinated fashion with their candidates. Thank you.

[The prepared statement of Mr. Mann follows:]

Chairman Feinstein. Thank you.

Gary Kalman?

STATEMENT OF GARY KALMAN, DEMOCRACY ADVOCATE, U.S. PIRG, WASHINGTON, D.C.

Mr. Kalman. Chairman Feinstein, Senator Bennett, I want to thank you for inviting me on behalf of U.S. PIRG to testify today. I want to take a little bit of time first to step back from the immediate proposal and sort of put some of this in context.

When this proposal actually came up in the House last year--it was part of a bill introduced by Representative Pence--we strongly opposed it then, and we strongly oppose it now for the same reasons. We do differ with my colleague, Mr. Mann, in that we do think this does present some serious challenges to the scheme in which the campaign finance rules currently exist. We do think that it would open loopholes and allow very large contributions to re-enter the system in ways that we think will have detrimental effects.

When I say I want to step back, following the most recent election, I think Congress came back and did some very positive things. They responded to some of the frustration that was expressed during the election with measures like S. 1, which included, among other provisions, increased disclosure of campaign fundraising activities and new limitations on those seeking privileged access through the purchase of gifts and travel. Congress has stepped up oversight of private contractors in matters ranging from the Iraq war to ongoing assistance to those who lost homes and businesses to Hurricane Katrina, and this Committee, as was noted, recently marked up an important disclosure bill to require Senate campaign finance reports to be filed electronically.

The proposal before the Committee today to eliminate the coordination restrictions as written into 441a(d) we believe seems antithetical to those steps that were taken.

I also want to respond to some comments made earlier that this is not about an attack on parties. I think U.S. PIRG and many reform groups see that the parties play a very valuable role. And given the experience in the last election, I think it is a little hard to say--or it seems a misplaced concern to worry about the impact and viability of political parties. By all measures the parties are enjoying a resurgence, with an influx of new members, small donors, and increased resources. These are the signs of a healthy

political foundation. Candidates are not marginalized from their parties. In fact, under the current rules parties can coordinate their spending with Senate candidates in varying degrees, as was mentioned, ranging from $81,000 in some of the smaller States up to $2.2 million in California.

Right now, I guess the point that I want to leave the Committee with is that individuals right now can give directly to candidates. They can also give to candidates, leadership PACs, and other PACS, national party committees, State and local party committees. Parties can also give directly to candidates.

Collectively, a single individual could direct virtually unlimited sums of money to a particular candidate if not for two important restrictions: the first restriction is the aggregate limit on political contributions, this year a little bit more than $108,000 for the election cycle; and the second is the coordination rules for parties and candidates.

Given the high-profile scandals and the growing concern over money in politics among members of the public, now does not seem the right time to roll back these rules. The question before the Committee today is whether to amplify those voices and the potential access of the few by creating a new legal loophole to circumvent the campaign contribution limits. These limits have been debate extensively, approved by Congress and affirmed by the courts, as was mentioned before as a legitimate defense against corruption and the appearance of corruption. With heightened awareness and concern among the American people regarding the role of money in politics, this proposed change seems ill-timed and destructive to the overall framework around which the Congress has built campaign finance rules over the last 30 years.

With that, thank you.

[The prepared statement of Mr. Kalman follows:]

Chairman Feinstein. Thank you, Mr. Kalman.

Our last witness is Michael Malbin. Mr. Malbin?

STATEMENT OF MICHAEL MALBIN, EXECUTIVE DIRECTOR, CAMPAIGN FINANCE INSTITUTE, WASHINGTON, D.C.

Mr. Malbin. Thank you. Senator Feinstein and Senator Bennett, thank you for asking me to testify. You have my full statement. I will summarize.

Three weeks ago, Senator Bennett offered today's bill as an amendment to S. 223 on electronic disclosure. I want to thank Senator Bennett publicly for agreeing to separate the two issues and becoming a cosponsor of S. 223. I also want to thank the Chair and the other Committee members for reporting that bill unanimously and thank the Chair for making an effort yesterday to try to bring up 223 under unanimous consent.

One unnamed Republican did object, so I would urge Senator Bennett as a cosponsor to try to find out who it was and what the objection might be. No one has ever stated opposition to 223 publicly, so I hope this can be resolved with dispatch.

Now, during the discussion of 223, I was asked and made clear that I have long supported the thrust of S. 1091. I

should say that I am speaking there as an individual scholar who has written about this for more than 30 years. The Campaign Finance Institute normally goes through an elaborate process with task forces and so forth before it makes recommendations, which it has not done on this issue. But I am speaking for myself.

The question this bill raises is: Why should there be any limits on party spending? Coordinated spending is a kind of contribution under the Federal Election Campaign Act. The Supreme Court has upheld only one justification for contribution limits: to restrain corruption or its appearance.

Now, I am not arguing about Congress' authority here but about the wisdom. In my view, there needs to be a clearer discussion of the difference between contributions going into a party and spending coming out. Limits on contributions going into the party are a necessary adjunct to contribution limits for candidates because of known circumvention, but party spending is different. Spending is not intrinsically corrupting once the money coming in is controlled.

Now, to put party spending into a time frame, I ask you to look at a bar chart that appears after my testimony. It is the one that looks like this.

The role of the parties has changed a great deal in 10 years. In 1994, party money directly supporting candidates came to $38 million, and that was all in the form of contributions in coordinated spending. In 1996, the Supreme Court said parties could make unlimited independent expenditures, but the parties did not do much of that because they sharply increased their soft money advertising the same year. Major soft money years were 1996 to 2002, and parties' support for candidates soared from $38 million in 1994 to $216 million in 2002. Almost all of that 2002 money was soft money.

After soft money was banned in 2002, the parties, surprisingly, were able to replace their soft money quickly with hard money. As a result, the parties were able to spend even more to help their candidates in 2006, $230 million, and the bulk, $208 million, was for independent spending. In other words, spending shifting from soft money in 2002 to independent spending in 2006.

Now, soft money had two characteristics. One was no contribution limits, and that was a problem. The other was that candidates could and did coordinate with their parties about soft money issue ads.

The question is whether candidates and parties should be able to work together again on their ads now that all contributions into the parties have been limited. Now, whether you like it or not, you cannot constitutionally limit independent party spending. I would argue that once you control a contribution in, then more accountable spending is better. Party labels are still the voters' most important information cues, so it is no help to the voters to require the parties and candidates to maintain an artificial separation.

Now, before you take this as a blanket endorsement of S. 1091, I want to raise two caveats.

First, this bill would permit unlimited coordinated

spending during the primaries, and that would give the party leaders the power to underwrite a candidate, not only in an open seat but also against an incumbent who is becoming too "independent." Given the increased partisanship in the House and Senate generally, I would question giving that kind of power to the leaders in a primary.

The second caveat is whether presidential candidates should be able to accept a large public grant for the general election and then also benefit from unlimited coordinated spending. In my views, candidates should have to choose one or the other and not be able to take both.

Now, with those caveats, I would be pleased to answer questions.

[The prepared statement of Mr. Malbin follows:]

Chairman Feinstein. Thank you very much.

First of all, I found this very interesting. I had not really looked at the question, Senator Bennett, until you raised it. But I must tell you, I have a great concern. I have kind of always stood on my own two feet in California, and I probably do not always agree with my party's platform. Races in California are very expensive. If I were a Midwesterner and running in a Midwest State and there are questions like choice, the death penalty, guns, Iraq, and one political party had one view and a candidate had the other, the party could come in and decimate that candidate in a primary. And I happen to think that mixing up these views within a political party is not a bad thing.

I really do not want to see political parties control individual United States Senators. So I really worry about this.

You know, I think what it points out--and, Mr. Malbin, I think your charts are very interesting. I think what it points out is the dramatic need for 527 reform. Wherever there is a loophole, both parties jump into it, and everybody else jumps into the loophole to raise money within that loophole.

So I have deep concern about--see, I think someone should be able to run as a Democrat in a red State or as a Republican in a blue State and plight their troth to the people of that State and talk about the issues that are of concern to them. And if their view differs with the controlling party's view on any major question, they ought to have the opportunity and ability to take that view and test the voter sentiment on that view.

In my analysis of this--and correct me, gentlemen, if I am wrong--you give the party unlimited financial ability to march into a State and control every aspect of an election.

Anybody want to take me on?

Mr. Mann. Senator Feinstein, right now political parties can do whatever they want as long as they do it independently of the candidate, as the Supreme Court has affirmed that in Colorado I, so that is the present-day reality.

Now, in practical terms, they do not do that because political parties exist to support their candidates and basically to create a majority in Government. That is what they are about. That is why they tend to be pragmatic, they tend to support--Democrats support more conservative

candidates in red States and more liberal candidates in blue States.

Chairman Feinstein. But you yourself said this will remove the limits, and I was just looking at your very own compilation of where the parties contributed to candidates. And, you know--

Mr. Mann. But there are no limits now as long as the parties do it independently, and so the idea is why not--to the extent they are going to be involved in a race, why not have them do it entirely in coordination, in cooperation with their candidate rather than operating independently.

There are no limits now, effectively, on--

Chairman Feinstein. Could I ask somebody else, if they have a contrary view, if you would state it?

Mr. Wertheimer. Well, not a contrary view, but I would point out a couple of things in response to an issue Senator Stevens raised about wanting complete control over his campaign, which is certainly understandable. Even if you remove these limits, it would not require a party to coordinate with a candidate. Now, as a practical matter, that would happen quite often, but there would be no requirement for any party to coordinate with a candidate.

Secondly, I would say and repeat what I have said before. Tom frames this as a change without consequence. I believe there is consequence with this change, and it would result in far more contributions from individuals with the parties' limit of $28,500 being controlled by candidates in their expenditures. You just greatly increase the contribution limit by removing these limits.

Chairman Feinstein. Thank you, Mr. Wertheimer. My time is up.

Senator?

Senator Bennett. Yes, Mr. Wertheimer, how in the world have you just increased the contributions? An individual has a fixed contribution limit now. You are not raising that.

Mr. Wertheimer. No, if that is what I was interpreted as saying, I am not saying you are raising the limit. The individual has a $2,300 limit.

Senator Bennett. That is right.

Mr. Wertheimer. But if I give $28,000 through the party and the candidate can control the spending of that limit--

Senator Bennett. Ah, but isn't that illegal now? Isn't it illegal now for somebody--

Mr. Wertheimer. Not in coordinated expenditures.

Senator Bennett. Wait a minute. Let's be sure what we are talking about here. You are saying that repealing of the coordination would serve "as a vehicle for evading the limits on contributions to candidates." So you believe that a repeal would induce donors to make a maximum contribution to the candidate and then a maximum contribution to the party committee with instructions that that be given to--

Mr. Wertheimer. That would be open.

Senator Bennett. No, it would not. That is illegal now. That would not change. The illegality of that kind--

Mr. Wertheimer. In practicality--

Senator Bennett. Pardon me?

Mr. Wertheimer. In practicality, that happens now with

the tally system through coordinated spending limits. It is not--

Senator Bennett. A specific earmark is illegal now, is it not?

Mr. Wertheimer. If the candidate controls where the money is going, but it is not illegal if the candidate tells the party it is giving the money for the benefit of that candidate and the candidate decides to use it--and the party decides to use it.

Senator Bennett. I think you misspoke. You said when a candidate tells the party that the money is given to the candidate. You mean the contributor.

Mr. Wertheimer. When the contributor tells the party that it would like the money to benefit your campaign, and the party makes, quote, its decision to do so, that is not illegal. And as a practical matter, that process is wide open. That is why the Supreme Court in Colorado said coordinated expenditures of money donated to a party are tailor-made to undermine contribution limits. It was talking about the contribution limits on what an individual can give to a candidate.

Senator Bennett. Mr. Malbin, do you want to comment on that?

Mr. Malbin. I do. It is correct that it is illegal to earmark now. It is also correct that during the soft money period now there were committees, like the Missouri Committee--

Senator Bennett. Sure, sure.

Mr. Malbin. I have heard it said and some commissioners have said--and this is not official, so I probably should just be saying it myself. But one could clarify the earmarking rules or the earmarking language, and you might want to consider that as part of this bill to address this issue. That is a question about money coming in as opposed to money spent the way money is spent. And the bill is entirely silent about that, and you might wish to add something.

Senator Bennett. Okay. Mr. Mann called this preposterous and said that this would make the system more honest and efficient. Obviously, Mr. Wertheimer and Mr. Kalman, you do not think it would make it more honest. Would it make it more efficient?

Mr. Wertheimer. It depends how you define "efficiency." In some ways it would make it more efficient in terms of candidates and parties working together. But the efficiency question in our view is overridden by our concern about potential evasion of the contribution limits.

Mr. Kalman. I guess I would just add that you could also argue that it would be very efficient to have no contribution limits and--

Senator Bennett. Yes, and I do. But that is neither here nor there.

[Laughter.]

Senator Bennett. Let me reinforce, as a practitioner who has been involved in a number of campaigns over a number of years, that what Senator Stevens is talking about--and, frankly, what the Chairman was talking about--is indeed the key to intelligent elections, and that is, the candidate must be in charge of the campaign.

Chairman Feinstein. I agree with that.

Senator Bennett. And my strongest opposition to what has been going on in the name of campaign finance reform is the layer upon layer of restrictions that make it difficult for the candidate to control his campaign. By channeling money here and there and someplace else in the name of we have got to keep it in this group, we have got to keep it in that group and so on, it becomes increasingly difficult for the candidate to say, "I have my arms around all of the sources of money that are coming into my campaign."

Now, I cannot control the 527s. We are not going to repeal the First Amendment, and George Soros can spend all the money he wants through every group he wants to run as many ads as he wants. But in terms of the money that is formally given in the name of the party and this candidate, I want to be able to control all of that. And this provision makes it that much more difficult for me to do that. For me to be in charge of what is said on my behalf or in opposition to my opponent, I want to be the one who is clearly responsible for that. And the more we have these kinds of legerdemain efforts to try to prevent the flow of money, the more difficult it becomes for a candidate to do that.

Chairman Feinstein. I might just add one quick thing. I think it also wastes a lot of money because both the RSCC and the DSCC do generic spots. They raise a lot of money to do those generic spots. They may work in one area and they will not work in another. And the candidate has no control over what their respective party organization does.

Senator Bennett. Could I ask, Madam Chairman, if anybody else wants to comment? I have filibustered through my minute, which is what Senators do. But if other members of the panel wanted to interact with each other, I think that would be useful.

Chairman Feinstein. Yes, please. You go right ahead.

Senator Bennett. I have said enough, but I think we ought to hear from them.

Mr. Kalman. Well, I would just say that it has been said by a number of people here that this would help the candidates have more control over their party, that the parties are, you know, able right now to come in and do things that would be counter to the message that the candidate would like to have. And I think I would side with Fred Wertheimer and Mr. Elias before that--and I think it would be upheld in the courts--there is nothing that says a candidate cannot say, "Don't spend money on my behalf." It is the spending of the party money that is considered a contribution.

So if the party is inclined to do something that is not in tune with what the candidate currently wants, even if you removed these limits, it is not forcing candidates and parties to work together. It is not saying the party has to work in coordination. And so it is unclear to me that you would get the desired effect, that this particular provision would actually serve the purpose of giving the candidate that much more control. If the party is willing or interested in doing what it is going to do, then it is going to do that. And if they are going to do something counter, the candidate still has the right to step in and say, "Don't

do that."

So I am not sure this provision actually get as far as what some might think in that regard.

Mr. Mann. I think both Senator Feinstein and Senator Bennett have pointed to the perverse incentives that exist in the present system for parties to operate independent of their candidates. And they are right about it. It has harmful side effects, and one way of trying to deal with this is to free the parties to invest the resources in a coordinated fashion that they want to do. Concern about evasion of contribution limits applies to the present system. The very evasion that could exist under this new system exists now with party independent spending. So I do not think that is a serious obstacle to moving ahead with this.

Mr. Wertheimer. First of all, I would like to respectfully disagree with your views about the ability to regulate 527 groups. They are political committees. They are spending money to influence Federal elections. They are doing exactly what other players in the Federal system are doing, and I believe they can be regulated under the Constitution. And I am very hopeful that this Congress will move on that question. As you know, Senator Lott, then-Chairman of the Rules Committee, had a bill to do that in the last Congress.

Secondly, as I said before, this is an integrated system. One way you could limit the ability for evasion would be to substantially reduce the amounts that individuals can give to parties; $28,500 per year is a lot of money, at least in some circles in this country. The lower that limit was, the less you would face of an evasion problem.

I do not agree with Tom when he says that repealing this would not exacerbate the evasion problem. I believe it would. It was create much more of an open door for this process to take place.

Mr. Malbin. And if I may weigh in, I do not think the response to say that a candidate can object to what a party has done after the party has done it really frontally faces the issue. The issue is whether a candidate who is bearing the party's label in a general election and is legally the party's candidate in a general election can and should have a presumption of working the party as a team if they choose to. And if they do not choose to, fine. If you are running as an independent, okay. If you were the maverick and won in the primary, okay. But if you are a team and you are saying elect a Democrat, elect a Republican to be part of the majority, that would be the fundamental presumption. And the last time around, $10 of every $11 that was spent to advertise for the candidates or on behalf of the candidates was done without that cooperation.

Chairman Feinstein. Mr. Malbin, can I interrupt you just for a second? I have a 12 o'clock I have to attend, so I am going to put the gavel in Senator Bennett's good hands, and I think it is a very interesting discussion. I would just like to thank all four of you. Thank you very much.

Senator Bennett. [Presiding.] I have one, too, so--

[Laughter.]

Mr. Malbin. I am happy to end on that note.

Senator Bennett. Well, I do have a comment or two. I hesitate to do this, and I hope, Mr. Kalman, you will understand that I am not trying to abuse my position here. But as I listen to you describe what a candidate can and cannot do, my immediate visceral reaction was to say, "Have you ever been a candidate?" Because when you are in the trenches and you are dealing with these realities, things look very different than they do when you are a political scientist examining it from the outside. And as I say, I hesitate to say that because it sounds like I am trying to put you down and attack your scholarly position, but I will just share with you that there is no experience quite like putting your name on a ballot.

Now, as I have said, I have run political campaigns. My father was a four-term United States Senator. I participated in all four of his campaigns. I managed the last two. And when I got into it, as a Senator I thought, "I understand this. I have been through this. I know what it is like." I consulted on presidential campaigns, was involved in other campaigns for other offices. This was not terra incognita for me. And when I became the candidate, I discovered that it was. There is nothing quite like the emotional pressures and the time pressures that come to someone who is a candidate for office, particularly a statewide office, an all-consuming sort of experience. And there is nothing more frustrating than to find yourself in a situation where other people are handling your good name and you cannot change it.

Now, maybe under the law, maybe in a theoretical situation, maybe in a clear description, yes, you could do this, you could do that. In the realities of the trenches of a political campaign, you do not want to be in the position that certain aspects of the present law put you in. And the voting public is not served, not well served by removing from the candidate the kind of authority that this bill that Senator Corker has offered would try to give him. Because if the candidate, frankly, has instincts that are bad, those instincts will come out when the candidate has the opportunity to express himself. And if the candidate is virtuous, those instincts will come out.

I have learned by direct experience that the voters are a whole lot more perceptive than a lot of the pundits give them credit for being and that campaigns, when they are controlled by the candidate, become very revealing of who the candidate is. And that is why I have gone to the degree that I have to say let's do everything we can to give the candidate control over the money. And if there are structural barriers between the candidate and the money that are put in the law in the name of making the elections better, those barriers are, to use Mr. Mann's phrase, perverse and they get in the way of letting the voters see who the candidate really is.

We have had elections in the State of Utah where a candidate lost because ads were run by his party, financed through an independent situation, that had no connection with ethics and voter culture in Utah. And I was appalled--this was a Republican who lost. I was appalled that these ads were being run in the name of the National Committee and said, "Can't we do anything to get them off?" And I was

told no.

Now, you can say I could have gone on the air and denounced the ad. Boy, that would have helped our candidate a whole lot. That really would have made the election swing the other way if I as a sitting Senator had gotten on the air and said, "The Republican National Committee is financing these ads, and I denounce them." Oh, boy, that is terrible. Let's vote for the Democrat to show our opposition to this terrible thing. The realities of the situation are different.

And with that, I have vented myself, and I appreciate your patience, and I appreciate the expertise and the hard work that went into this testimony.

I want to ask one quick question, Mr. Wertheimer. You said that this could be clarified and we could make some changes. Would you give us some suggestions as to how we could clarify this? Because you have come across as opposed to what we are trying to do, but if there any ways, if there are any changes that you would be comfortable with, we would like to know the specifics of them.

Mr. Wertheimer. Okay.

Senator Bennett. Thank you very much. The hearing is adjourned.

[Whereupon, at 12:00 p.m., the Committee was adjourned.]