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Affidavit of Barbara L. Lyons
EXHIBIT 1

**United States District Court
District of Columbia**

Wisconsin Right to Life, Inc. <i>Plaintiff,</i> v. Federal Election Commission, <i>Defendant.</i>	Civil Action No. 04-1260 (DBS, RWR, LFO) THREE-JUDGE COURT
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Affidavit of Barbara L. Lyons

I, Barbara L. Lyons, declare as follows:

1. I am the long-time Executive Director of Wisconsin Right to Life, Inc. (“WRTL”).
2. I am familiar with the facts about WRTL’s activities and its finances.
3. As of August 6, 2004, WRTL has \$13,766.90 in its federal political committee (WRTL-PAC) account. This money was raised subject to the source, amount, and disclosure requirements of the Federal Election Campaign Act (“FECA”), so that it may be used for “contributions” and “independent expenditures.” 2 U.S.C. § 431(8) and (17) (definitions).
4. Under FECA, no other WRTL funds may be used for making contributions and independent expenditures than those in WRTL-PAC.
5. If WRTL-PAC funds are used for the electioneering communications at issue in the present case, those funds will not be available for the independent expenditures and contributions that WRTL intends to make, and WRTL will be deprived of the lawful use of the funds

for the purposes for which they were raised and of the opportunity for First Amendment expression represented by the independent expenditures and contributions.

6. WRTL plans to raise such additional funds as it can manage for WRTL-PAC, but such fundraising is unpredictable and WRTL intends to use all such funds for independent expenditures and/or contributions in connection with immediately upcoming federal elections.

7. Historically, WRTL has used all or nearly all of the funds in WRTL-PAC for independent expenditures (primarily) and contributions, so that there are no excess funds available for electioneering communications. For example, according to FEC records, in the 2001-2002 cycle WRTL-PAC raised \$12,830 in receipts and disbursed \$11,821. *See* <http://herndon1.sdrdc.com/cgi-bin/cancomsrs/?_02+C00173278> (visited on Aug. 6, 2004). In the 1999-2000 cycle, WRTL-PAC had \$155,322 in receipts and \$153,529 in disbursements. *See* <http://herndon1.sdrdc.com/cgi-bin/cancomsrs/?_00+C00173278> (visited on Aug. 6, 2004).

8. PAC funds are difficult to raise, due to many factors, including (without limitation) contribution limits on the amount an individual may contribute annually to a PAC (\$5,000 per year, 2 U.S.C. § 441a(a)(1)(C)); contribution limits on the amount an individual may contribute in an election cycle to all PACs (\$37,500, 2 U.S.C. § 441a(a)(3)(B)); the fact that some individuals don't want to contribute to a fund labeled "political"; the fact that some individuals don't want to have their identities, addresses, occupation, and employer revealed on public forms because they have contributed in excess of \$200; the fact that only WRTL executive or administrative personnel and their families and WRTL "members" (as defined

by FEC regulations) may be solicited for PAC funds; the fact that as in all fundraising response rates are a small percentage of requests made so that multiple requests must be made, usually by multiple means to be effective; and the fact that fundraising for any significant amount of funds is itself an expensive enterprise.

9. PAC funds are also difficult to raise because any expansion of the “member” base is a multi-step process. A person must be solicited for membership and respond in a prescribed manner before the individual may be solicited as a member for a contribution to a PAC. The solicitation to membership and for a contribution to the PAC cannot be made in the same communication. As with all solicitation efforts, multiple efforts are required because returns on solicitations are a small portion of the total solicitations made.

10. WRTL’s plan for the current election cycle was to raise approximately \$71,000 in total (approximately \$14,000 of which has been raised) to use primarily for independent expenditures. Consequently, there are no funds available to pay for the current grass-roots lobbying ads, and if WRTL were forced to use WRTL-PAC funds for grass-roots lobbying, it would be irreparably harmed by being deprived of the use of that money for independent expenditures.

11. Because of the difficulties in acquiring both members and PAC funds, WRTL will not be able to raise the funds it needs for the ads at issue in this case as PAC funds.

12. WRTL plans to spend an estimated \$100,000 on grass-roots lobbying communications that will be electioneering communications if it obtains a preliminary injunction allowing it to do so. If fundraising is successful for the project, the expenditure level would be higher.

13. Based on past PAC fundraising experience, it would take approximately six months to raise an estimated \$100,000, because multiple requests would have to be made using direct mail, telemarketing, and direct contacts. But it is not feasible to do this fundraising campaign on top of fundraising already being done for the PAC to be used for independent expenditures and contributions. And because many of the members are also contributors to WRTL, these donors cannot be repeatedly asked for donations without jeopardizing the raising of ongoing operating funds for WRTL itself.

14. The approximately \$14,000 in funds currently in the WRTL-PAC account would not be sufficient for the planned advertising expenditures, even if WRTL did not plan to use the \$14,000 for independent expenditures and contributions.

15. WRTL will not have enough funds in the WRTL-PAC account from fundraising to pay for the planned advertising, even if WRTL did not plan to use the raised funds for independent expenditures and contributions.

16. If it were available for use for the ads at issue in this case, the current \$14,000 in the WRTL-PAC account would only pay for some limited radio advertising. The cost for television air time for running an ad one time averages approximately \$1,000, not including planning and production costs, which are substantially more than that.

17. Consequently, PAC funds are not available to mitigate the irreparable harm that WRTL will suffer if a preliminary injunction is not issued to permit WRTL to run the proposed ads with general funds.

18. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 8, 2004.

/s/ Barbara L. Lyons
Barbara L. Lyons, Executive Director
Wisconsin Right to Life, Inc.

Certificate of Service

This is to certify that on August 9, 2004, I caused a copy of the foregoing to be served by e-mail in PDF format and first-class mail upon the following person:

Colleen T. Sealander
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20436
csealander@fec.gov

/s/ Michael S. Nadel

M. Miller Baker, D.C. Bar # 444736
Michael S. Nadel, D.C. Bar # 470144
MCDERMOTT WILL & EMERY LLP
600 Thirteenth Street, NW
Washington, D.C. 20005-3096
202/756-8000 telephone
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Second Affidavit of Barbara L. Lyons
EXHIBIT 2

**United States District Court
District of Columbia**

Wisconsin Right to Life, Inc. <i>Plaintiff,</i> v. Federal Election Commission, <i>Defendant,</i> <i>and</i> Sen. John McCain et al., <i>Intervenor-Defendants.</i>	Civil Action No. 04-1260 (DBS, RWR, LFO) THREE-JUDGE COURT
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Second Affidavit of Barbara L. Lyons

I, Barbara L. Lyons, declare as follows:

1. I have served for nineteen years as the Executive Director of Wisconsin Right to Life, Inc. (“WRTL”), in which capacity I have overseen all aspects of WRTL’s work). Before that I served for a decade as WRTL’s Legislative Director. Before that I served as the President of WRTL’s Milwaukee chapter from 1975-1977.

2. I have personal knowledge of the facts about WRTL’s activities, including those set out herein, and if called upon to testify I would competently testify as to the matters stated herein.

3. Attached hereto as Exhibit A is a document entitled “Filibuster Ad: 60 Seconds” (hereinafter “Filibuster Ad”), which is a true and accurate transcript of a communication that WRTL paid to broadcast on radio in Wisconsin in January 2006.

4. This Filibuster Ad would have qualified as an “electioneering communication”

under the elements of the definition of that term in the Federal Election Campaign Act if it had been run during the 30- and 60-day prohibition periods described in that definition. Only because the Filibuster Ad was not run during such a prohibition period was WRTL lawfully able to broadcast this grassroots lobbying communication.

5. Attached hereto as Exhibit B is a WRTL News Release entitled “Yesterday’s U.S. Senate Vote Shows Grassroots Lobbying Is Alive and Well: *Senator Kohl Got the Message!*,” which is a true and accurate transcript of a communication that WRTL sent by email to constituents and news media contacts on January 31, 2006.

6. The communication accurately reflects WRTL’s opinion, and my own based on my many years of experience in dealing with legislative matters, that as stated in the news release WRTL’s broadcast ads alerted the Wisconsin public to the judicial nominee filibusters and that “Senator Herb Kohl got the message from his constituents and voted to end the filibuster of Judge Alito,” as recorded at 152 Cong. Rec. S308 (Jan. 30, 2006).

7. It is WRTL’s belief, and my own based on my many years of experience in dealing with legislative matters, that WRTL’s grassroots lobbying ads concerning judicial filibusters also affected Sen. Kohl’s vote for cloture, which ended the filibuster of Brett M. Kavanaugh, as recorded at 152 Cong. Rec. S5191 (May 25, 2006).

8. Grassroots lobbying is intended to influence public officials to vote or act in a way preferred by the communicator in three situations: (1) when the official is undecided, in order to steer him or her in the preferred direction, (2) when the official is opposed to the preferred position, in order to encourage a change of mind, and (3) when the official supports the preferred position, in order to encourage the official to maintain that position and to provide the official the ability to cite constituent support for the position.

9. During the national debate in the spring of 2005 over the so-called “nuclear option,” a.k.a. the “constitutional option,” in which the Republican senators indicated an intent to change the U.S. Senate rules to preclude judicial nominee filibusters, the central question was whether Senate Majority Leader Frist could get fifty *Republican* senators to support the rule change because it was certain that no Democrat senators would support it. Since Wisconsin had no Republican senators, there was no senator to lobby in Wisconsin.

10. I affirm under the penalties for perjury under the laws of the United States of America that the foregoing statements are true and correct.

Executed on June 20, 2006.

/s/Barbara L. Lyons

Barbara L. Lyons, Executive Director
Wisconsin Right to Life, Inc.

*Exhibit A from Second Affidavit of
Barbara L. Lyons*
EXHIBIT 3

January 27, 2006

Filibuster Radio Ad: 60 Seconds

Some Senators are at it again. Threatening to filibuster qualified judicial nominees. This time, the stakes are even higher. They want to use the filibuster to block a vote on the nomination of Judge Samuel Alito for the U.S. Supreme Court.

Judge Alito has received the highest qualification rating for judicial nominees and deserves a simple “yes” or “no” vote to prevent gridlock in our judicial system.

Contact Senators Feingold and Kohl at 202-224-3121 and tell them to oppose the filibuster of Judge Samuel Alito for the U.S. Supreme Court. That’s 202-224-3121.

Paid for by Wisconsin Right to Life, which is responsible for the content of this advertising and not authorized by any candidate or candidate’s committee.

Exhibit A

Transcript of Deposition of Barbara L. Lyons
EXHIBIT 4

BROWN & JONES REPORTING, INC.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WISCONSIN RIGHT TO LIFE, INC.,

Plaintiff,

-VS-

FEDERAL ELECTION COMMISSION,

Defendant,

and

Case No. 04-1260
(DBS, RWR, RJL)

SEN. JOHN McCain, et al.,

Intervening
Defendants.

Examination of BARBARA LYONS, taken at the instance of the Defendant, under and pursuant to Rules 26 and 30(b)(6) of the Federal Rules of Civil Procedure, before JANE M. JONES, a Certified Realtime Reporter, Registered Merit Reporter and Notary Public in and for the State of Wisconsin, at Brown & Jones Reporting, Inc., 312 East Wisconsin Avenue, Milwaukee, Wisconsin, on May 18, 2006, commencing at 7:58 a.m. and concluding at 3:54 p.m.

08:01 1 deposi ti on?

08:01 2 A I read the documents.

08:01 3 Q And by the documents, you mean --

08:01 4 A This document and the other orders that came, in
08:01 5 terms of the case.

08:01 6 Q And did you review prior pleadings in the case?

08:02 7 A No.

08:02 8 Q And did you discuss this with anyone?

08:02 9 A With my attorney, yes.

08:02 10 Q I just want to ask you a couple of questions about
08:02 11 your background. Can you please state your job?

08:02 12 A Executive Director, Wisconsin Right to Life.

08:02 13 Q How long have you held that position?

08:02 14 A 19 years.

08:02 15 Q And can you describe your duties in that position,
08:02 16 and also, if they've varied over time?

08:02 17 A Sure. My duties are to essentially oversee all
08:02 18 aspects of our work from lobbying to
08:02 19 administrative to chapter development to
08:02 20 fund-raising to political action, so I oversee all
08:02 21 of the work of our organization.

08:02 22 Q If you've been there for 19 years, you started in
08:02 23 the '80s, is that correct, the late '80s?

08:02 24 A 1987, yes. Go ahead.

08:03 25 Q No, go ahead.

08:03 1 A I've been with the organization longer. I've just
08:03 2 been Executive Director for 19 years.

08:03 3 Q I see, so you've been Executive Director since
08:03 4 1987, is that correct?

08:03 5 A Yes.

08:03 6 Q And prior to that, did you hold other positions?

08:03 7 A I was Legislative Director.

08:03 8 Q For how long did you serve in that capacity?

08:03 9 A Ten years.

10 Q So since 1977?

08:03 11 A Correct.

08:03 12 Q And were you with the organization prior to 1977?

13 A I was.

08:03 14 Q In what capacity?

08:03 15 A I was the president of the Milwaukee chapter.

08:03 16 Q Since when?

08:03 17 A 1975.

08:03 18 Q And before that?

08:03 19 A That's it.

08:03 20 Q Okay. That's a long time. Have you made any bids
08:03 21 for government office?

08:03 22 A No.

08:03 23 Q Have you worked on any electoral campaigns?

08:03 24 A No.

08:03 25 Q Either paid or as a volunteer?

08:05 1 BY MS. GILLERS:

08:05 2 Q Can you please review that? It's the amended
08:05 3 complaint from September 1st, 2004. I'm most
08:06 4 interested in confirming that you verify the
08:06 5 complaint in September of 2004. Can I direct your
08:07 6 attention to Page 15, where you have your
08:07 7 verification?

08:07 8 A Um-hum.

08:08 9 Q Can you confirm that you, in fact, verified this?

08:08 10 A Yes, I did.

08:08 11 MS. GILLERS: I'd like to mark the
08:08 12 August 9th Lyons affidavit, please.

08:08 13 (Exhibit No. 3 was marked.)

08:08 14 BY MS. GILLERS:

08:08 15 Q Can you review that and specifically direct your
08:08 16 attention to the second to the last page, Page 5,
08:08 17 where you signed this affidavit?

08:08 18 A Yes, I did.

08:09 19 Q Thank you.

08:09 20 MS. GILLERS: Would you please mark
08:09 21 this? This is the May 4, 2006 Wisconsin Right to
08:09 22 Life's Interrogatory Responses.

08:10 23 (Exhibit No. 4 was marked.)

08:10 24 BY MS. GILLERS:

08:10 25 Q Can I direct your attention, once again, to your

08:10 1 verification, after Page 10?

08:10 2 A Yes.

08:10 3 Q You can confirm that you verified this?

08:10 4 A Yes.

08:10 5 Q Can you turn to the documents at the back? This

08:10 6 is the ones responding to Interrogatory 2. The

08:10 7 second page behind that, where it says, "Executive

08:10 8 Director," on top. Can you review this sheet and

08:11 9 then confirm that that's an accurate description

08:11 10 of your duties as Executive Director?

08:11 11 A It is, with one exception. This job description

08:11 12 is dated 2000. We no longer have an entity called

08:11 13 Life-Tel, Incorporated. That was closed down at

08:11 14 the end of 2005, so otherwise --

08:11 15 Q Is there anything else that is no longer accurate?

08:11 16 A No. That's it.

08:11 17 Q And so if you look at the first paragraph, it

08:11 18 includes Wisconsin Right to Life PACs, as part of

08:11 19 your responsibilities in overall management, is

08:11 20 that correct?

08:11 21 A That's correct.

08:11 22 Q And that's an accurate description of your

08:11 23 responsibilities?

08:11 24 A Yes.

08:11 25 Q And does the PAC Legislative Director report to

08:16 1 A Yes.

08:16 2 Q Now, I've been saying the full name Wisconsin
08:16 3 Right to Life until this point. Can I use WRTL as
08:16 4 shorthand for the remainder of this deposition?

08:16 5 A Fine.

08:16 6 Q What is WRTL?

08:16 7 A Wisconsin Right to Life is a non-profit
08:16 8 organization. It's certified as 501 C4.

08:16 9 Q And what are its purposes?

08:16 10 A Its purposes are to educate the general public
08:16 11 about the issues incorporated in our mission and
08:16 12 to attempt to impact public policy in terms of
08:16 13 furthering our mission.

08:16 14 Q What activities does WRTL undertake to achieve its
08:17 15 purposes?

08:17 16 A We have extensive educational programs which
08:17 17 include a variety of means in which we disseminate
08:17 18 educational information. We have a legislative
08:17 19 program wherein we work on legislation at the
08:17 20 state level and follow the directives of the
08:17 21 National Right to Life Committee for federal
08:17 22 legislation, and we have two political action
08:17 23 committees.

08:17 24 Q Can you just elaborate more on what you mean by
08:17 25 follow the National Right to Life Committee

08:21 1 Q Did they generally conform to what you've
08:21 2 generally described?
08:21 3 A Right.
08:21 4 Q Do you recall, if at the time, you modified that
08:21 5 questionnaire, at all?
08:21 6 A I don't recall if I did or not.
08:21 7 Q Do you recall if the issue of judicial
08:21 8 filibustering was on that questionnaire?
08:21 9 A I don't recall.
08:21 10 Q WRTL has a world wide website -- I want to make
08:21 11 sure I'm getting the address -- www.wrtl.org, is
08:21 12 that correct?
08:21 13 A That's correct.
08:21 14 Q And the statements on that site are statements of
08:22 15 WRTL, is that correct?
08:22 16 A Yes.
08:22 17 Q What is Life-Tel, Inc.? You mentioned that
08:22 18 initially, earlier in our conversation.
08:22 19 A Life-Tel, Inc. was a for-profit subsidiary of
08:22 20 Wisconsin Right to Life that engaged in
08:22 21 telemarketing activities.
08:22 22 Q And did you manage that? Did WRTL manage
08:22 23 Life-Tel?
08:22 24 A Yes.
08:22 25 Q And my understanding is, as you mentioned earlier,

08:22 1 it's no longer operative?

08:22 2 A Correct.

08:22 3 Q Is it no longer affiliated with WRTL, or is it
08:22 4 completely defunct?

08:22 5 A Completely defunct.

08:22 6 Q And when did that happen?

08:22 7 A Approximately October of 2005.

08:22 8 Q Do you recall when filibusters first became an
08:22 9 issue for WRTL?

08:22 10 A My best recollection is that it would have been
08:23 11 around 2003, when the filibusters were in process,
08:23 12 at the national level, and certainly, we were well
08:23 13 aware of the filibusters, in 2004.

08:23 14 Q Do you recall when in 2003, you first would have
08:23 15 become aware of it?

08:23 16 A Not specifically, no.

08:23 17 Q Was it in the beginning of 2003 or in the end of
08:23 18 2003?

08:23 19 A I don't recall.

08:23 20 Q It could have been anywhere from January to
08:23 21 December?

08:23 22 A It could have been anywhere.

08:23 23 Q Do you remember how you came to hear about it?

08:23 24 A Probably in two ways. Through news reports and
08:23 25 through communications from the National Right to

08:23 1 Life Committee.

08:23 2 Q So filibusters was an issue for the National Right
08:23 3 to Life Committee, somewhere around 2003?

08:23 4 A Yes.

08:23 5 Q And do you know what -- do you recall what WRTL's
08:24 6 position on filibusters was, initially?

08:24 7 A We were obviously opposed to them.

08:24 8 Q And for what reasons?

08:24 9 A Well, judicial candidates are of importance to
08:24 10 Wisconsin Right to Life, and we saw that many of
08:24 11 President Bush's judicial nominees were being
08:24 12 filibustered, and we felt that that should not
08:24 13 occur, that there should be an up or down vote on
08:24 14 these individuals, particularly when there
08:24 15 appeared to be a majority support for them.

08:24 16 Q Was that also the National Right to Life's
08:24 17 position on the issue?

08:24 18 A I can't say that specifically. I was not involved
08:24 19 in their discussions.

08:24 20 Q But in any communications that you would have
08:24 21 heard from them about the issue, did they have a
08:24 22 position on it because you had mentioned that you
08:24 23 had heard about it in two ways, from news reports
08:24 24 and from them?

08:24 25 A Yes. They were concerned about them, yes.

08:24 1 Q And they were also opposed to them?

08:24 2 A I would assume. Again, I was not a part of
08:25 3 developing a position at the National Right to
08:25 4 Life Committee.

08:25 5 Q When did you first hear of the idea of the 2004
08:25 6 ads that are the subject of this lawsuit?

08:25 7 A The idea of it?

08:25 8 Q When was it first suggested?

08:25 9 MR. BOPP: Excuse me.

08:25 10 (Discussion off the record.)

08:25 11 MS. GILLERS: Can you just note that
08:25 12 counsel is conferring with the witness, please.

08:25 13 THE WITNESS: The spring of 2004.

08:25 14 BY MS. GILLERS:

08:25 15 Q The spring of 2004 is when you first heard about
08:25 16 the notion of the ads?

08:25 17 A Yes.

08:25 18 Q And do you recall who you would have first heard
08:25 19 of this idea from?

08:25 20 A No.

08:25 21 Q But you do remember that it was, you said, the
08:26 22 spring of 2004?

08:26 23 A Yes.

08:26 24 Q Do you recall which month in the spring, like
08:26 25 March or April?

08:27 1 A No.

08:27 2 Q So the idea was internal to Wisconsin Right to
08:27 3 Life?

08:27 4 A Yes.

08:27 5 Q And was there sort of a discussion that took place
08:27 6 perhaps among board members for running the
08:27 7 advertisements?

08:27 8 A The discussion started at the -- it was at the
08:27 9 staff level that the discussion was initiated.

08:27 10 Q I'm sorry. Can you just distinguish what you mean
08:27 11 by -- you're using staff differently than Board of
08:27 12 Directors, is that correct?

08:27 13 A Yes.

08:27 14 Q And what do you mean by staff?

08:27 15 A Just our internal office staff.

08:27 16 Q And who might that include?

08:28 17 A It might include several people on our staff.

08:28 18 Q Such as?

08:28 19 A Our supervisors. I don't specifically remember
08:28 20 when exactly discussions started and who was
08:28 21 involved.

08:28 22 Q And these initial conversations that you can't
08:28 23 remember so well, can you remember what the
08:28 24 reasons would have been for running the
08:28 25 advertisements?

08:28 1 A We were concerned about the filibusters, and we
08:28 2 wanted to impact that in some way.

08:28 3 Q At some point, these discussions must have taken
08:28 4 sort of more planning form. Do you remember sort
08:28 5 of the first planning meeting when you actually
08:28 6 discussed the details of running these
08:28 7 advertisements?

08:28 8 A It was sometime in the spring of 2004.

08:28 9 Q And was the idea ever put to a vote by the Board
08:28 10 of Directors?

08:28 11 A Yes.

08:28 12 Q And did that happen at a meeting, in person?

08:29 13 A Yes.

08:29 14 Q And do you remember when that meeting was?

08:29 15 A It was either May or June of 2004, but I don't
08:29 16 specifically remember when.

08:29 17 Q And do you remember who would have been present at
08:29 18 that meeting?

08:29 19 A Not specifically.

08:29 20 Q Would it have been exclusively members of the
08:29 21 Board of Directors?

08:29 22 A Most likely, yes.

08:29 23 Q Would there have been any outside people present?

08:29 24 A Present physically?

08:29 25 Q In any way? Telephonically or --

08:29 1 A Yes, there was a telephone conference.

08:29 2 Q And do you remember who participated in the
08:29 3 telephone conference?

08:29 4 A James Bopp.

08:29 5 Q And was there anyone else who participated?

08:29 6 A Not that I can recall.

08:29 7 Q And at that time, was there a discussion of what
08:29 8 the purpose of the ads would be?

08:29 9 A Yes.

08:29 10 Q And what was that discussion?

08:29 11 A It was very basic. We wanted to do a grass-roots
08:30 12 lobbying campaign to ask people to contact
08:30 13 Senators Kohl and Feingold to urge them to oppose
08:30 14 the filibusters.

08:30 15 Q And was there any other purpose that was
08:30 16 discussed?

08:30 17 A No.

08:30 18 MS. GILLERS: Can you please mark this?
08:30 19 It's a June 14th e-mail.

08:30 20 (Exhibit No. 5 was marked.)

08:30 21 BY MS. GILLERS:

08:30 22 Q Do you recognize this?

08:30 23 A Yes.

08:31 24 Q Can you tell us what it is?

08:31 25 A It's a communication that I sent to the Board of

08:31 1 Directors talking about a proposed project which
08:31 2 would be a grass-roots lobbying project,
08:31 3 attempting to inform the public about the
08:31 4 filibusters and asking that Senators Kohl and
08:31 5 Feingold be contacted to oppose the filibusters.

08:31 6 Q And you authored this e-mail?

08:31 7 A I did, yes.

08:31 8 Q Was this the first written document that would
08:31 9 have discussed the plan to run the three
08:31 10 advertisements?

08:31 11 A I don't recall.

08:31 12 Q Can I direct your attention to the last paragraph?

08:31 13 A Yes.

08:31 14 Q Now, it states that "Mr. Bopp is available to
08:31 15 speak to the board via conference call at its June
08:31 16 21st meeting," correct?

08:31 17 A Correct.

08:31 18 Q Now, you earlier said that the first meeting of
08:31 19 the Board of Directors would have been in May or
08:31 20 June, 2004 and that Mr. Bopp participated
08:32 21 telephonically?

08:32 22 A Correct.

08:32 23 Q Would this be the meeting you referred to, or is
08:32 24 this a different meeting?

08:32 25 A This would be the meeting.

08:33 1 that would have been?

08:33 2 A I don't recall.

08:33 3 Q And would it have been just you and he
08:33 4 participating in that conversation, or would there
08:33 5 have been someone else?

08:33 6 A It would most likely have been just Mr. Bopp and
08:33 7 myself.

08:33 8 Q And at that June 21st meeting, is that when you
08:33 9 decided when you were going to be running the ads?

08:33 10 A I don't recall that it was that specific, in terms
08:34 11 of like dates.

08:34 12 Q Do you recall at what point you would have
08:34 13 discussed specific dates to run the ads?

08:34 14 A Sometime in spring, into June.

08:34 15 Q You would have discussed the timing of running the
08:34 16 ads before the June 21st meeting?

08:34 17 A I don't recall.

08:34 18 Q But it's possible?

08:34 19 A It's possible, but I don't recall, specifically.

08:34 20 Q And when did you -- once you had decided,
08:34 21 and I understand you don't remember when that was,
08:34 22 but what were the proposed dates for running the
08:34 23 ads?

08:34 24 A The proposed dates had to take into consideration
08:34 25 the creation of the ads and the timing of that, so

08:34 1 it was -- my best recollection, it was fluid
08:34 2 because you had to have the product.
08:34 3 Q But presumably -- I'm sorry. Was there sort of
08:35 4 any time before which you wanted to get the ad
08:35 5 started? Was it tied to any other external timing
08:35 6 issue?
08:35 7 A We knew that there were going to be votes on the
08:35 8 filibuster in the fall of 2004, so we wanted the
08:35 9 ads to be airing before the filibuster votes would
08:35 10 take place.
08:35 11 Q By the fall, what month do you mean?
08:35 12 A We don't control the Congress's schedule.
08:35 13 Q Sure.
08:35 14 A There was information it would be around
08:35 15 September. That's the best information we had.
08:35 16 Q So you wanted the ads to run before September?
08:35 17 A Correct, yes.
08:35 18 Q And it was important for the ads to run before the
08:35 19 filibuster votes came up before Congress?
08:35 20 A Yes.
08:35 21 Q And was it also the goal to have them running
08:35 22 while the filibuster was put to a vote to
08:35 23 Congress?
08:35 24 A Yes.
08:35 25 Q And were you also aware that there were two

08:36 1 elections coming up, also, in the fall?

08:36 2 A Yes.

08:36 3 Q And were you aware that your goal of running the
08:36 4 ads to coincide with the filibuster would also
08:36 5 mean that they would come up close to the
08:36 6 elections that were coming up?

08:36 7 A Yes.

08:36 8 Q And you were aware that the primary election was
08:36 9 scheduled for September 14th?

08:36 10 A Yes.

08:36 11 Q And that the general election was scheduled for
08:36 12 November 2nd?

08:36 13 A Yes.

08:36 14 Q And you were aware that Senator Feingold was up
08:36 15 for re-election in that campaign?

08:36 16 A Yes.

08:36 17 Q Was there any discussion of the impact that the
08:36 18 ads would have on Senator Feingold's campaign?

08:36 19 A No.

08:36 20 Q That issue never came up?

08:37 21 A No.

08:37 22 Q To the best of your recollection?

08:37 23 A This was a grass-roots lobbying campaign.

08:37 24 Q Was defeating Feingold consistent with WRTL's
08:37 25 other goals?

08:38 1 general goals, separate from the grass lobbying
08:38 2 roots campaign?

08:38 3 A Separate from the grass-roots lobbying campaign,
08:38 4 yes.

08:38 5 Q Now, did you think at the time that running these
08:38 6 ads about the filibuster campaign would have had
08:38 7 any effect on Senator Feingold's campaign?

08:38 8 A No.

08:38 9 Q And what was the basis for your belief?

08:38 10 A The ads were grass-roots lobbying campaigns. They
08:38 11 did not speak about elections.

08:38 12 Q And did you have any access to any campaign
08:38 13 research that might have discussed the impact that
08:38 14 grass-roots lobbying campaigns might have had on
08:39 15 an election that was happening at the same time?

08:39 16 A No.

08:39 17 Q What was the cost, the anticipated cost of running
08:39 18 these ads?

08:39 19 A I believe we submitted documents to that effect,
08:39 20 and that would be what specifically was in the
08:39 21 ballpark of what we had anticipated.

08:39 22 Q Do you recall?

08:39 23 A Not offhand, no.

08:39 24 Q You don't recall what the --

08:39 25 A Not specifically.

09:14 1 Q Now, at what point would WRTL have discussed where
09:15 2 to broadcast the advertisements?

09:15 3 A That was part of our discussion with Hanon
09:15 4 McKendry.

09:15 5 Q And that did not come up at the Board of
09:15 6 Directors' meeting?

09:15 7 A No.

09:15 8 Q And was there any discussion --

09:15 9 A I'd say -- the answer is no.

09:15 10 Q Did you want to qualify that answer?

09:15 11 A Specifics like that are not discussed at board
09:15 12 meetings.

09:15 13 Q Now, in your discussions with Hanon McKendry or
09:15 14 any other discussions you might have had about
09:15 15 where to broadcast the ads, did the idea of
09:15 16 running them in the newspaper ever arise?

09:15 17 A I really don't recall.

09:15 18 Q Who would have suggested running them on TV and
09:15 19 radio?

09:15 20 A We would most likely collectively come to that
09:15 21 decision as the most effective means of reaching
09:15 22 the most people.

09:16 23 Q By collectively, you mean within WRTL or in
09:16 24 conjunction with Hanon McKendry?

09:16 25 A Both.

09:28 1 Q And what is meant by action alerts?

09:28 2 A Action alerts are communications to the general
09:28 3 public, alerting them to an issue before the
09:28 4 Congress and asking them to take action.

09:28 5 Q So does that take the form of a newsletter or an
09:28 6 e-mail or some other form?

09:29 7 A It could.

09:29 8 Q So action alert doesn't necessarily refer to the
09:29 9 venue? It just refers to the content, is that
09:29 10 correct?

09:29 11 A It's a concept.

09:29 12 Q Okay, and in this case, what venues would the
09:29 13 action alerts have taken?

09:29 14 A We did some e-mails.

09:29 15 Q To your subscribers?

09:29 16 A Yes.

09:29 17 Q Anything else?

09:29 18 A We did some recorded automated phone messages, as
09:29 19 I recall.

09:29 20 Q What was the content of those messages?

09:29 21 A That there was a filibuster, a filibuster
09:29 22 occurring in Congress and people should contact
09:29 23 Senators Kohl and Feingold.

09:29 24 Q What is meant by general distribution of
09:30 25 information?

09:30 1 A Generally, that would refer to just information
09:30 2 pieces explaining what was happening.
09:30 3 Q And where would those have appeared?
09:30 4 A I don't remember, specifically.
09:30 5 Q Generally?
09:30 6 A I don't remember. I don't recall.
09:30 7 Q Newspapers?
09:30 8 A I don't think it was newspapers. I know we didn't
09:30 9 do any newspaper advertising, so it would not be
09:30 10 newspapers.
09:30 11 Q When was the decision made as to what exactly the
09:30 12 ads would say?
09:30 13 A A specific date? I don't recall a specific date.
09:30 14 Q Do you recall a month?
09:30 15 A It would have been after this date here.
09:30 16 Q And by this date here, you mean after June 14th?
09:31 17 A Yes.
09:31 18 Q Was the decision made at a meeting?
09:31 19 A Yes.
09:31 20 Q And who would have been the participants in the
09:31 21 meeting?
09:31 22 A Hanon McKendry.
09:31 23 Q And yourself?
09:31 24 A Yes.
09:31 25 Q And any other WRTL members or directors?

09:32 1 Q Did you communicate with any political party,
09:32 2 political committee or political candidate
09:32 3 regarding the ads?

09:32 4 A No.

09:32 5 Q When did you first see drafts of the ads?

09:32 6 A I don't recall.

09:32 7 Q About how many times in this process of Hanon
09:32 8 McKendry sending out drafts -- how many drafts do
09:32 9 you think they sent out?

09:32 10 A I don't recall, specifically.

09:32 11 Q Was it more than one?

09:32 12 A Yes.

09:32 13 Q Less than ten?

09:32 14 A That would be a good ballpark figure, between one
09:32 15 and ten.

09:33 16 Q When was the text of the ads finalized?

09:33 17 A I don't recall.

09:33 18 Q When did they begin airing?

09:33 19 A Are you talking about the radio ads or the
09:33 20 television ads?

09:33 21 Q Both.

09:33 22 A The radio ads began airing July 26 and the
09:33 23 television ads began airing August 2nd.

09:33 24 Q How long before the airing of the ads in each case
09:33 25 would the ads have been finalized?

09:36 1 Senator Kohl. Wisconsin Right to Life will not be
09:36 2 able to mention Senator Feingold's name because he
09:36 3 is on the September 14th primary ballot," is that
09:36 4 correct?

09:36 5 A Um-hum. Yes.

09:36 6 Q Was there ever any consideration of just
09:36 7 mentioning Senator Kohl and not mentioning Senator
09:36 8 Feingold in the ads?

09:36 9 A No.

09:37 10 Q Were there any drafts that only included Senator
09:37 11 Kohl's name and not Senator Feingold's?

09:37 12 A I don't recall.

09:37 13 Q Is it possible that there were?

09:37 14 A I really don't believe there were, but I don't
09:37 15 recall exactly for sure.

09:37 16 Q And why was there no discussion of just including
09:37 17 Senator Kohl's name and not Senator Feingold's?

09:37 18 A This was a grass-roots lobbying campaign and both
09:37 19 Senators Kohl and Feingold were going to be voting
09:37 20 on judicial nominees and potential filibusters.

09:37 21 Q Right, but in this paragraph, you acknowledge that
09:37 22 after August 15th, you wouldn't be able legally to
09:37 23 mention Senator Feingold's name, so was there any
09:37 24 discussion of continuing the campaign about
09:37 25 filibusters, but just not mentioning Senator

09:37 1 Feingold?

09:37 2 A No.

09:37 3 Q Wouldn't that have eliminated the problem of
09:37 4 running the ads?

09:37 5 A This was a grass-roots lobbying campaign.

09:37 6 Q Could you please answer if it would have
09:37 7 eliminated the problem?

09:37 8 MR. BOPP: I object. You're
09:37 9 interrupting her answer. You may complete your
09:38 10 answer.

09:38 11 THE WITNESS: This was a grass-roots
09:38 12 lobbying campaign directed at both senators, who
09:38 13 both had the ability to impact on this issue.

09:38 14 BY MS. GILLERS:

09:38 15 Q Would it have eliminated the problem, just to
09:38 16 include Senator Kohl's name?

09:38 17 A What problem?

09:38 18 Q The problem that you refer to here of not being
09:38 19 able to mention Senator Feingold's name?

09:38 20 A In a legal context, yes. In a grass-roots
09:38 21 lobbying context, it would not have promoted the
09:38 22 objective of our grass-roots lobbying campaign.

09:38 23 Q But in a legal sense, it would have eliminated the
09:38 24 problem?

09:38 25 A In a legal sense, yes.

09:38 1 Q And again, the issue never came up? It was never
09:38 2 discussed?

09:38 3 A No.

09:38 4 Q Hanon McKendry never suggested just eliminating
09:38 5 Senator Feingold's name?

09:38 6 A I don't recall if they did.

09:38 7 Q Is it possible they did?

09:38 8 MR. BOPP: I object to the possible.

09:38 9 You know, it's possible the building will fall
09:38 10 over.

09:38 11 THE WITNESS: Anything is possible.

09:39 12 I don't recall a specific conversation in which
09:39 13 that was discussed.

09:39 14 BY MS. GILLERS:

09:39 15 Q I call your attention back to Exhibit 4.

09:39 16 A Yes.

09:39 17 Q If you'll turn, this is the response to
09:39 18 Interrogatory 3, which is towards the end of the
09:39 19 packet.

09:40 20 A Okay. Yes.

09:40 21 Q Do you recognize this?

09:40 22 A Yes, I do.

09:40 23 Q What is it?

09:40 24 A These are the organizations, agencies with whom we
09:40 25 consulted on the campaign.

09:43 1 A No.

09:43 2 Q And Straightline, what was their role?

09:43 3 I understand they were a subcontractor of Hanon

09:43 4 McKendry.

09:43 5 A It was a public relations firm that helped create

09:43 6 news releases and press conference documents, that

09:43 7 type of thing.

09:43 8 Q And we saw their proposal, the \$13,300 figure?

09:43 9 A Um-hum.

09:43 10 Q Was there anything besides perhaps what was

09:43 11 described in that document that they did?

09:43 12 A No.

09:43 13 Q Fusionary Media, another subcontractor of Hanon

09:43 14 McKendry. What was their role?

09:43 15 A They built our website.

09:43 16 Q You hadn't had a website before this time?

09:44 17 A They constructed a website that was specific to

09:44 18 this campaign.

09:44 19 Q Was there a link on your general www.wrtl.org that

09:44 20 linked you to this campaign, this website?

09:44 21 A Yes.

09:44 22 Q Was there also a separate web address for that

09:44 23 website?

09:44 24 A Yes.

09:44 25 Q What was it?

09:44 1 A BeFair dot -- I can't remember if it was org or
09:44 2 com. BeFair.org. I can't remember if it was org
09:44 3 or com. I think it was com.

09:44 4 Q Apparently, in the August 4th e-mail -- I'd like
09:44 5 to turn your attention back to that.

09:44 6 A Oh. It's org. Sorry.

09:44 7 Q There we go. What was the purpose of that
09:44 8 website?

09:44 9 A The purpose of the website was to give a full
09:44 10 explanation of what was occurring in Congress and
09:44 11 to give people information about where they could
09:44 12 go, how they could send a grass-roots lobbying
09:45 13 communication to Senators Kohl and Feingold.

09:45 14 Q And did that deal exclusively with the filibuster
09:45 15 issue?

09:45 16 A Yes.

09:45 17 Q Was there any other issue that was on that
09:45 18 website?

09:45 19 A It did -- at some point, I believe, text was added
09:45 20 that talked about the McCain-Feingold law.

09:45 21 Q By which you mean --

09:45 22 A BCRA.

09:45 23 Q And do you remember how much text was devoted to
09:45 24 that?

09:45 25 A I don't recall.

09:56 1 A I really don't recall.

09:56 2 Q Was it just the two of you and no one in a room?

09:57 3 A There was media there. I don't recall the
09:57 4 specific media.

09:57 5 Q But there were people there?

09:57 6 A Yes.

09:57 7 MS. GILLERS: I'd like to mark these
09:57 8 scripts, please.

09:57 9 (Exhibit No. 14 was marked.)

09:57 10 BY MS. GILLERS:

09:57 11 Q Do you recognize these documents?

09:57 12 A Yes.

09:58 13 Q What are they?

09:58 14 A These are the scripts of the radio and television
09:58 15 ads that were conceived by Hanon McKendry.

09:58 16 Q Are these essentially the same as those attached
09:58 17 to the amended complaint?

09:58 18 A What document is that?

09:58 19 Q That's Exhibit 2.

09:59 20 A Essentially, the same, yes. On that one. Yes,
09:59 21 they're essentially the same.

09:59 22 Q Turning to the complaint, Exhibit A, which is the
09:59 23 radio script for the wedding.

09:59 24 A Yes.

09:59 25 Q This is the radio script for a radio ad, correct?

09:59 1 A Yes.

09:59 2 Q What steps were taken to produce this ad?

09:59 3 A It was conceived by Hanon McKendry, suggestions
10:00 4 were made to tweak a word here or there, and then
10:00 5 they were produced.

10:00 6 Q And what steps were taken to air the ad?

10:00 7 A A media buyer was subcontracted from Hanon
10:00 8 McKendry, who then placed the buy.

10:00 9 Q Did this ad actually air?

10:00 10 A Yes.

10:00 11 Q When did it air?

10:00 12 A Between July 26th and August 14th.

10:00 13 Q Where did it air?

10:00 14 A In the markets that are in the documents. I don't
10:00 15 remember, specifically.

10:00 16 Q And by the documents, you mean the radio and
10:00 17 media --

10:00 18 A Exhibit 9.

10:01 19 Q There were two radio ads that were run, correct?

10:01 20 A Yes.

10:01 21 Q Does this document distinguish between them and
10:01 22 show which ad ran where?

10:01 23 A No.

10:01 24 Q Are there any documents that do?

10:01 25 A I don't have them.

10:01 1 Q Do you know which one ran where, as between the
10:01 2 two of them?

10:01 3 A My best answer is that both ads aired in both
10:01 4 markets, alternating, in the three markets.

10:01 5 Q The three markets being Milwaukee, Eau Claire and
10:01 6 Green Bay?

10:01 7 A Correct.

10:02 8 Q Turn to Exhibit B, please, in the complaint.

10:02 9 A Okay.

10:02 10 Q This is a radio script for a radio ad, correct?

10:02 11 A Correct.

10:02 12 Q What steps were taken to produce this ad?

10:02 13 A Hanon McKendry produced the script. There was
10:02 14 some tweaking of words and it was placed -- it was
10:02 15 produced, and then it was put on the air.

10:02 16 Q And the tweaking of words, again, refers to the
10:02 17 drafting process which involved you and Foley &
10:02 18 Lardner, correct?

10:02 19 A And Hanon McKendry.

10:02 20 Q They initially drafted it and sent it to you and
10:02 21 Foley & Lardner?

10:02 22 A Yes.

10:02 23 Q And what were the steps taken to air this ad?

10:02 24 A Hanon McKendry contracted with the media buyer,
10:02 25 who placed the ad buy.

10:02 1 Q And I assume you can't distinguish from this media
10:03 2 plan which ran where?
10:03 3 A No.
10:03 4 Q Can you turn to Exhibit C, please?
10:03 5 A Um-hum.
10:03 6 Q That's a TV script for a TV ad, is that correct?
10:03 7 A Yes, it is.
10:03 8 Q What steps were taken to produce this ad?
10:03 9 A Hanon McKendry came up with a script. It was
10:03 10 reviewed, it was tweaked, the ad was produced, and
10:03 11 a media buyer was -- a subcontracted media buyer
10:03 12 placed the ad.
10:03 13 Q And did this ad appear?
10:03 14 A Yes.
10:03 15 Q Do you know when and where?
10:03 16 A It appeared in the media markets that are
10:03 17 identified in this exhibit.
10:03 18 Q Was there any different process in developing and
10:03 19 airing these three ads that we discussed?
10:03 20 A No.
10:03 21 Q Did that process happen simultaneously?
10:03 22 A Yes.
10:03 23 Q So you got drafts for the three ads at the same
10:04 24 time?
10:04 25 A I don't recall a specific date in which I received

10:19 1 A People sign up to want to receive e-mails.

10:19 2 Q Any other ways?

10:19 3 A No. That's pretty much it.

10:19 4 Q Can you think of any other ways that WRTL uses the
10:19 5 Internet to communicate with the public?

10:19 6 A Our website and our e-mails.

10:19 7 Q Your website has a Legislative Information Center,
10:19 8 right?

10:19 9 A Correct.

10:19 10 Q Please describe what that does.

10:19 11 A In the Legislative Information Center, we publish
10:19 12 information about specific pieces of legislation,
10:19 13 kind of describe what's going on. I do believe we
10:19 14 have voting records of state legislators on
10:19 15 specific bills that have come before the -- come
10:20 16 before the legislature, and we also have a service
10:20 17 whereby you can send an e-mail to your elected
10:20 18 representative through our Legislative Information
10:20 19 Center.

10:20 20 Q Is that state or federal?

10:20 21 A Yes.

10:20 22 Q And have you had information on federal issues and
10:20 23 office holders there, as well?

10:20 24 A I don't think we have the voting records for
10:20 25 federal office holders, but we have had

10:20 1 communications to federal legislators. We have
10:20 2 used the Legislative Information Center for that
10:20 3 purpose.

10:20 4 Q Could you describe how a person would go about
10:20 5 using that center to communicate with federal
10:20 6 officials about one of those issues?

10:20 7 A What we would do would be -- a general activity
10:21 8 would be to send out an e-mail about a federal
10:21 9 issue and tell them for more information, go to
10:21 10 the website and go to the Legislative Information
10:21 11 Center and that will instruct you, assist you in
10:21 12 sending an e-mail to your elected representative.

10:21 13 Q So the recipient of the e-mail then could go to
10:21 14 your website, go to the center, and there would be
10:21 15 instructions there about what?

10:21 16 A On how to send an e-mail to Congressman Green, for
10:21 17 example.

10:21 18 Q So they would learn about the issue, and the
10:21 19 website would guide them in sending an e-mail?

10:21 20 A That's correct.

10:21 21 Q Have WRTL representatives such as you appeared on
10:21 22 any radio or television shows during your tenure?

10:21 23 A Yes.

10:21 24 Q Please describe those appearances, generally.

10:21 25 A We have literally thousands of requests for

10:22 1 interviews. Mostly radio, but some television,
10:22 2 some newspaper.

10:22 3 Q And who are those requests to? I assume you?

10:22 4 A The interviews are generally done by myself or
10:22 5 Susan Armacost.

10:22 6 Q Anyone else?

10:22 7 A Not generally, no.

10:22 8 Q And please describe, briefly, which television and
10:22 9 radio shows you and Susan Armacost have appeared
10:22 10 on in the last few years?

10:22 11 A Thousands.

10:22 12 Q Thousands. National radio and television?

10:22 13 A There's been some national, yes.

10:22 14 Q Can you think of an example?

10:22 15 A Recently, I was on NPR, earlier this year, and I
10:22 16 believe it was CBS. I can't remember. I think it
10:22 17 was CBS. I did CBS. I did something for Fox,
10:22 18 I believe, also.

10:22 19 Q And how about locally?

10:22 20 A Again, thousands. It would be just -- we do maybe
10:23 21 three or four interview requests a day.

10:23 22 Q And have you communicated in those ways on the TV
10:23 23 and radio shows about the filibuster issue?

10:23 24 A Yes.

10:23 25 Q Please describe that communication, briefly.

10:27 1 media. Our state organization generally does not
10:27 2 run advertisements in the print media.

10:27 3 Q Please describe what the local chapters do in that
10:27 4 media?

10:27 5 A The local chapters are affiliates. They, many
10:27 6 times, will take print ads and put them in their
10:27 7 newspapers as a way of raising awareness.

10:27 8 Q Awareness of --

10:27 9 A Many different topics.

10:28 10 Q Have they communicated about the filibuster issue
10:28 11 starting in 2004?

10:28 12 A I don't recall any ads, newspaper ads about the
10:28 13 filibuster in 2004.

10:28 14 Q And since 2004?

10:28 15 A I don't recall any.

10:28 16 MR. SUMMERS: I'd like to mark another
10:28 17 exhibit.

10:28 18 (Exhibit No. 16 was marked.)

10:28 19 BY MR. SUMMERS:

10:28 20 Q This is a set of, I believe, ten Wisconsin Right
10:28 21 to Life communications dating from March 2004
10:28 22 through March 2005. Please review it quickly, and
10:29 23 I'm going to ask you to confirm that that's really
10:29 24 what it is?

10:29 25 A Yes. These are communications. Um-hum.

02: 03 1 BY MR. SUMMERS:

02: 03 2 Q When was the last time WRTL ran a broadcast ad on
02: 03 3 a filibuster issue?

02: 03 4 A In either February of 2006 -- -- we did one
02: 03 5 earlier this year.

02: 03 6 Q Please describe that ad for me.

02: 03 7 A That ad was looking at the potential that the
02: 03 8 State Supreme Court justice -- pardon me -- U.S.
02: 03 9 Supreme Court justice nominee Samuel Alito might
02: 03 10 be filibustered.

02: 04 11 Q Did it mention any office holders?

02: 04 12 A Yes.

02: 04 13 Q Which office holders?

02: 04 14 A It asked people to contact Senators Kohl and
02: 04 15 Feingold.

02: 04 16 Q And how many times did that air?

02: 04 17 A It ran for a short period of time because there
02: 04 18 was a very short window.

02: 04 19 Q And it was on the radio?

02: 04 20 A It was a radio ad, yes.

02: 04 21 Q But not on TV?

02: 04 22 A No.

02: 04 23 Q Any other ads that you can think of in broadcast
02: 04 24 media that mention the filibuster issue, since
02: 04 25 August 2004?

02:07 1 features our television, our media campaign, our
02:07 2 educational media campaign.
02:07 3 Q Anything else?
02:07 4 A No. Those are our main publications.
02:07 5 Q What's the name of the news magazine?
02:07 6 A It's the "Veritas Society Insider."
02:07 7 Q I see. How often is that published?
02:07 8 A Twice a year.
02:07 9 Q And that was true in 2004?
02:07 10 A Yes.
02:07 11 Q How widely distributed was that in 2004?
02:07 12 A It maybe goes to 2,000 people each issue.
02:07 13 Q I see, and how does that differ from "Life Without
02:08 14 Limits," in its content?
02:08 15 A It strictly focuses on our educational television
02:08 16 media campaign.
02:08 17 Q Can you describe that briefly, what that is?
02:08 18 A We do ongoing television and radio, mostly
02:08 19 television. Sometimes radio, but we do ongoing
02:08 20 television advertising to promote our issue.
02:08 21 Q And what specifically does that advertising talk
02:08 22 about?
02:08 23 A It generally talks about abortion, and it frames
02:08 24 the issue within different contents. It might
02:08 25 talk about a woman that's pregnant and what she

02: 24 1 that were attached in the complaint. More cleanup
02: 25 2 questions, really. Does Wisconsin Right to Life
02: 25 3 still have audio and video versions of the three
02: 25 4 ads?

02: 25 5 A Yes.

02: 25 6 Q Of all three?

02: 25 7 A Yes.

02: 25 8 Q We've discussed a lot of different types of media
02: 25 9 that you've used to communicate. Would it be as
02: 25 10 effective to use all of the other non-broadcast
02: 25 11 types of media to get your message across on the
02: 25 12 filibuster issue, without using the broadcast ads?

02: 25 13 A No.

02: 25 14 Q Why not?

02: 25 15 A We are a television-oriented organization, and we
02: 25 16 are -- we do place ourselves in that mode because
02: 25 17 we know from survey and research that television
02: 25 18 is the place where most people get their
02: 25 19 information. That's the most highly-rated source
02: 25 20 of information for people to get information.

02: 26 21 Q What about radio?

02: 26 22 A Radio is not as highly rated.

02: 26 23 Q Why do you use radio?

02: 26 24 A Supplementary to television.

02: 26 25 Q You mentioned survey and research on television.

02:26 1 Please describe what you're relying on there.

02:26 2 A Just general industry surveys. Very generic. You
02:26 3 can find them just about anywhere.

02:26 4 Q And did that research come from the consultants
02:26 5 that were discussed this morning who are involved
02:26 6 in the creation and placement of the three ads?

02:26 7 A Not only from them. From other sources, too.

02:26 8 Q Is it something that goes back many years, many
02:27 9 years of Wisconsin Right to Life experience?

02:27 10 A Yes.

02:27 11 Q Is there any particular survey or research that
02:27 12 Wisconsin Right to Life relied on in 2004, in
02:27 13 deciding to do the TV and radio ads, rather than
02:27 14 all of this other media, without the broadcast
02:27 15 ads?

02:27 16 A We do broadcast ads in large numbers. We do a lot
02:27 17 of broadcast advertising. Let me rephrase that.
02:27 18 We do a lot of broadcast advertising, much of it
02:27 19 prior to 2004, because we recognize that's the
02:27 20 most effective way to reach the most people.

02:27 21 Q So there was no particular thing in 2004. It was
02:27 22 more of a long-standing practice that Wisconsin
02:27 23 Right to Life has?

02:27 24 A Yes.

02:27 25 MR. SUMMERS: Okay. I'd like to mark an

02: 27 1
02: 28 2
02: 28 3
02: 28 4
02: 28 5
02: 28 6
02: 28 7
02: 29 8
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02: 29 10
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exhi bi t.

(Exhi bi t No. 18 was marked.)

BY MR. SUMMERS:

Q Please examine this. What's been marked as Exhibit 18 appears to be material about television and radio, with the heading, "nonbox" at the top. That's N-O-N-B-O-X. Do you recognize these materials?

A Yes.

Q What are these?

A These are materials provided by our current advertising agency, Nonbox.

Q The name of the agency is Nonbox?

A Correct.

Q Where is Nonbox located?

A Milwaukee.

Q Did WRTL use Nonbox in 2004?

A No.

Q When was the first time that you did use Nonbox?

A For what purpose?

Q For any purpose?

A It probably goes back to about 1998.

Q So have you used them off and on, since 1998?

A Yes.

Q When are these materials from?

02: 29 1 A These were just sent to me.

02: 29 2 Q In 2006?

02: 29 3 A Correct.

02: 29 4 Q So you did not have these in 2004?

02: 29 5 A No.

02: 30 6 Q I believe you indicated earlier that WRTL did not
02: 30 7 consider omitting Senator Feingold's name from the
02: 30 8 three ads attached to the complaint, is that
02: 30 9 right?

02: 30 10 A That's correct.

02: 30 11 Q Would it be as effective to omit his name and
02: 30 12 simply send listeners to the Senate switchboard in
02: 30 13 the broadcast ads?

02: 30 14 A No.

02: 30 15 Q Why not?

02: 30 16 A Who are they calling when they call the
02: 30 17 switchboard? If you don't identify who the person
02: 30 18 is calling, they're much less likely to do it
02: 30 19 because they're left with that information gap.

02: 30 20 Q So if you said, we feel this way about the
02: 30 21 filibuster issue, it's important that you tell
02: 30 22 your senators how you feel about it, here's the
02: 31 23 number for the senate switchboard, please call and
02: 31 24 ask for your senators, that would not be as
02: 31 25 effective?

02:31 1 A Well, it's -- it first of all -- yes, it would not
02:31 2 be as effective.

02:31 3 Q And what's the basis for that?

02:31 4 A Because you're not telling them who has the
02:31 5 ability to impact the issue about which they're
02:31 6 calling.

02:31 7 Q Did you consult with anyone about that view in
02:31 8 2004, in making decisions about these ads?

02:31 9 A We know that as a general rule. We have done
02:31 10 grass-roots lobbying for over 30 years, and kind
02:31 11 of the standard -- the gold standard in
02:31 12 grass-roots lobbying is that you tell the person
02:31 13 what the information is, who they can contact to
02:31 14 do something about it, specifically, and how you
02:31 15 reach them.

02:32 16 Q So in 2004, you really did not consider simply
02:32 17 sending listeners to the senate switchboard in the
02:32 18 way I described?

02:32 19 A No.

02:32 20 Q And that was a result of your Wisconsin Right to
02:32 21 Life's experience doing this sort of advocacy
02:32 22 work?

02:32 23 A That's right.

02:32 24 Q But not a particular study or advice that happened
02:32 25 in 2004?

02: 32 1

A No.

02: 32 2

Q Would it be as effective to omit the name of

02: 32 3

Senator Feingold and simply send listeners to the

02: 32 4

BeFair.org website for more information as the

02: 32 5

three ads actually did?

02: 32 6

A It is effective because it gives them a point of

02: 32 7

reference which tells them how to contact an

02: 32 8

individual.

02: 32 9

Q Even if it omits the name of the Senator?

02: 32 10

A Not if it omits the name, no.

02: 33 11

Q And is the basis for that view the same as what we

02: 33 12

just described, as far as the senate switchboard?

02: 33 13

A Yes. If you tell them specifically who to

02: 33 14

contact, yes.

02: 33 15

Q It's the experience of the organization?

02: 33 16

A Yes.

02: 33 17

Q Also, cleaning up another issue, I believe you

02: 33 18

mentioned before, National Right to Life. Could

02: 33 19

you explain briefly the affiliation of National

02: 33 20

Right to Life and Wisconsin Right to Life?

02: 33 21

A National Right to Life is our parent organization.

02: 33 22

We elect an individual from Wisconsin who sits on

02: 33 23

the Board of Directors of National Right to Life.

02: 33 24

Q So on that board is one individual from each of

02: 33 25

the 50 states?

03:35 1 election cycle to raise money for the PAC,
03:35 2 different from what it had done in 2002 or 2000
03:35 3 cycles?

03:35 4 A No.

03:35 5 Q The same basic methods?

03:35 6 A Yes.

03:35 7 Q Did WRTL's PAC make any effort to raise funds
03:35 8 specifically to run the three ads attached to the
03:35 9 complaint?

03:35 10 A No.

03:35 11 Q Does WRTL have copies of any of the solicitations
03:35 12 the PAC used in 2004?

03:35 13 A It's possible.

03:35 14 Q All right. I'd like you to take a look at your
03:36 15 affidavit, which has been marked as Exhibit 3.

03:36 16 A You really like that exhibit, don't you? It's
03:36 17 getting buried in the pile.

03:36 18 Q Okay. Please look at Paragraph 10. Okay. In
03:36 19 Paragraph 10 of your affidavit, you state that the
03:36 20 PAC intended to raise about \$71,000 in the
03:36 21 2003-2004 cycle, correct?

03:37 22 A Yes.

03:37 23 Q Okay. Now, in looking at the two year-end PAC
03:37 24 reports that we marked earlier, the ones that
03:37 25 applied to 2003 and 2004, if you add the total

03:39 1 A It's become more difficult every election cycle to
03:39 2 raise PAC funds.

03:39 3 Q Why is that?

03:39 4 A My impression is that it's several things. It's
03:39 5 first that people don't like to give money to
03:39 6 PACs. They would rather give to issues. The
03:39 7 second is that the limitations are very strict,
03:39 8 and so a donor's limits force them to divide their
03:39 9 funds between -- their PAC funds between too many
03:39 10 different entities/candidates, and generally, they
03:40 11 don't have enough left over for an organization
03:40 12 like ours. I would say those are probably the two
03:40 13 main things.

03:40 14 Q Are you aware of anything that's different in the
03:40 15 2004 cycle, from say, 2002 or 2000, along those
03:40 16 lines?

03:40 17 A It was just harder to raise money.

03:40 18 Q But no particular thing, other than what you
03:40 19 described?

03:40 20 A Just what I described.

03:40 21 Q If you look at the 2004 year-end report, which
03:40 22 I think would be Exhibit 21, the same page,
03:40 23 I believe it reflects that PAC ended the year 2004
03:40 24 with a little over \$12,800 cash in hand, is that
03:40 25 correct?

03: 42 1 Q No one would. Susan Armacost would not know?

03: 42 2 A No.

03: 42 3 Q Now, Paragraph 8 of your affidavit, Exhibit 3,
03: 42 4 says that some people don't want to give to a fund
03: 42 5 that's labeled, quote, political, unquote,
03: 42 6 correct?

03: 42 7 A Yes.

03: 42 8 Q Did any donor or potential donor to the PAC
03: 42 9 express that to you, in 2004?

03: 43 10 A I don't remember if it was specifically 2004, but
03: 43 11 donors have stated that.

03: 43 12 Q Can you give me an example, without naming the
03: 43 13 donor, of an occasion and what the donor said?

03: 43 14 A You would call a donor and you'd ask for a gift
03: 43 15 for the Political Action Committee, and they would
03: 43 16 say that sometimes they didn't like the candidate
03: 43 17 that it might be used for. Sometimes they would
03: 43 18 state that because they were someone with name
03: 43 19 recognition in the community, they did not want to
03: 43 20 appear on the contribution list that would be
03: 43 21 publicized. Those are typical responses you get.

03: 43 22 Q Can you think of any others?

03: 43 23 A They've reached their contribution limits.

03: 43 24 Q Under the federal election rules?

03: 43 25 A Correct.

03: 43 1 Q Any others that you can think of?

03: 44 2 A No. Those are pretty much it.

03: 44 3 Q Now, I want to focus just for a minute on the word

03: 44 4 "political." Would you agree that much of what

03: 44 5 Wisconsin Right to Life does, in general, could be

03: 44 6 considered political, in a sense?

03: 44 7 A There are some that interpret it that way.

03: 44 8 Q How would you describe your activities as

03: 44 9 Wisconsin Right to Life, not the PAC, but the

03: 44 10 group, the 501 C4?

03: 44 11 A Well, the 501 C4 is more focused on legislative

03: 44 12 matters, chapter development.

03: 45 13 Q Would you agree that legislative activities have a

03: 45 14 political component?

03: 45 15 A Not in the strict sense, no.

03: 45 16 Q Well, how do you understand political, in the

03: 45 17 strict sense?

03: 45 18 A In the strict sense, political refers to express

03: 45 19 advocacy.

03: 45 20 Q So when you think political, you're thinking of

03: 45 21 explicitly partisan activity, rather than general

03: 45 22 government-related advocacy?

03: 45 23 A Yes.

03: 45 24 Q Do you think some people use the word "political"

03: 45 25 to describe the whole process of government -- the

03:46 1 Q Was it more than 5,000?

03:47 2 A Probably, yes.

03:47 3 Q More than 10,000?

03:47 4 A Probably, yes.

03:47 5 Q I have to keep going. More than 20,000?

03:47 6 A Then I don't know.

03:47 7 Q Did WRTL do anything in 2004 to increase the

03:47 8 number of those members?

03:47 9 A Yes.

03:47 10 Q What did it do?

03:47 11 A Prospecting.

03:47 12 Q Please describe that, generally?

03:47 13 A Usually rental or purchase of lists of individuals

03:47 14 that had the potential of becoming members and

03:47 15 then usually through telemarketing, calling them,

03:47 16 asking them to become members.

03:47 17 Q Anything else?

03:47 18 A It's possible we did some direct mail, but I don't

03:47 19 recall, specifically.

03:47 20 Q Were those things that the PAC did in prior

03:48 21 cycles, as well, to raise -- to increase the

03:48 22 number of members?

03:48 23 A Those were not PAC projects. Those were Wisconsin

03:48 24 Right to Life projects.

03:48 25 Q My mistake. Were those things that Wisconsin

03: 48 1 Right to Life did in prior election cycles to
03: 48 2 increase the number of members for PAC purposes?

03: 48 3 A Yes.

03: 48 4 Q So did Wisconsin Right to Life do anything
03: 48 5 different in 2004, from what it had done in prior
03: 48 6 years?

03: 48 7 A No.

03: 48 8 Q Did Wisconsin Right to Life consider making any
03: 48 9 additional efforts to increase the number of
03: 48 10 members beyond the normal, in 2004, to increase
03: 48 11 the number of members?

03: 48 12 A The answer is yes, but we're limited by lists that
03: 48 13 are available to us.

03: 48 14 Q What did you consider doing that you didn't end up
03: 49 15 doing to increase the number of members?

03: 49 16 A Finding more lists.

03: 49 17 Q And what's the limit on that?

03: 49 18 A We can't find any more lists that are suitable to
03: 49 19 our purposes.

03: 49 20 Q Is that because you believe they don't exist or
03: 49 21 that they cost more money to find, or some other
03: 49 22 reason?

03: 49 23 A It's both.

03: 49 24 Q It's both?

03: 49 25 A Um-hum.

*Exhibit 18 from Deposition of
Barbara L. Lyons*
EXHIBIT 5

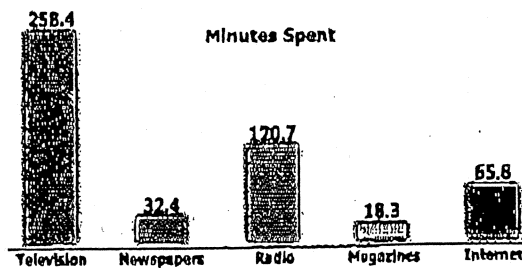


Why Television?

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- TV's mass appeal gives it the unparalleled ability to reach more people each day than any other medium
 - It's accessible to virtually anyone –98.2% of U.S. Households have a TV in their home
 - 75.2% of U.S. Households have two or more TV sets
 - 69.8% of U.S. Households subscribe to Cable (wired only)

- Television ranks #1 in overall media usage
 - Still the biggest game in town despite increased media fragmentation and increased competition for people's time
 - Chart below shows total minutes spent by day by media vehicle (per TVB website)



- American households watch 7-½ hours of television a day
- Provides mass reach and targeted reach
 - Mass overall reach via traditional Broadcast networks
 - Strategic targeting and frequency via Cable networks
- Seasonal TV usage trends with increased viewing in the winter months and lower viewing during the summer
- Majority of television viewing activity takes place in households



• It's fun –with TV, advertisers can increase the impact of their marketing communication efforts by combining pictures, music, color, and movement

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- Viewers get to see visual components of the brand/product
- Messages can be heard even when out-of-view of the TV set
-
- TV builds brand awareness
 - TV advertising makes the most vivid impression in customer's mind
- Ability to showcase marketing communication efforts in highly visible marketing arena
 - TV advertising tells your customers that your business is substantial and stable.
 - Measurable results
 -
- When it comes to advertising, the public perceives TV ads as the most influential (82%), exciting (80%), persuasive (67%), and authoritative (49%)
 - 57% of Adults cite TV as the place where they are most likely to learn about products or brands that they might try or buy
 - The continual increase in TV advertisers validates this statistic

Network TV		
	# Adv.	# Brands
1970	427	2,348
1992	740	3,349
% Growth	73%	43%

Spot TV	
# Adv.	# Brands

1970	1,782	9,209
1992	2,019	11,086
% Growth	13%	20%

Sources: Television Advertising Bureau, Nielsen Media Research



Why Radio?

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- **Nearly everyone listens to the radio**
 - **Radio reaches 95% of all adults each week**
 - **76% of all adults listen to the radio every day**
- **Precision Targeting --both demographically and geographically**
 - **There are different radio formats available to match unique personal preferences and distinct individual lifestyles**
 - **Advertisers can partner with stations/programs whose listeners most closely fit their customer profile**
 - **Creative flexibility enables advertisers to customize their marketing initiative to tailor message to varying age segments or ethnic groups to maximize communication impact**
 - **Metro/Suburban station availability allows for localized communication efforts**
 - **Drive local retail traffic**
 - **Strengthen communication levels in a specific trading area**
 - **Generate grass-root appeal**
- **Radio provides message Recency**
 - **Radio's mobility enables advertisers to reach on-the-go customers wherever they are, 24-7**
 - **Adults listen to the radio at home, at work, and in their cars**
 - **87% of Adults 18+ listen to the Radio while driving to work**
 - **86% of Adults 18+ listen to the Radio while driving to shop**
 - **Radio is the #1 medium closest to the point-of-purchase, reaching 63% of Adults 25-54 within one hour of making their largest purchase of the day**



- **Extend campaign reach and substantially increase message frequency**

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Improve awareness during TV flights and maintain awareness between TV flights

- **Maximize investment and minimize waste as a result of strategic demographic and geographic targeting**
 - **Reach light TV viewers**
 - **Radio delivers stable, consistent listening patterns throughout the year (i.e., no summer slump)**
 - **Radio's Primetime is during the day, while TV's Prime is at night**
- **Boost TV recall with *Imagery Transfer****
 - **Radio works without a picture because it relies on the imagination of the mind**
 - **Tests show that Radio, when combined with Television, boosts message recall compared to dual television exposures**
 - **75% of people who have been repeatedly exposed to a television commercial will mentally replay the video upon hearing the sound track (SRI, 1993)**
 - **Stimulate product trial and awareness by incorporating promotional extensions**
 - **Generate buzz with local DJ endorsements (on-air and in-program integration)**
 - **Create "live" promotions that interact with station listeners**
 - **Promotional enhancements generally negotiated at no additional cost to client**

*Source: *Imagery Transfer Study* copyright Statistical Research Inc. 1993 (*Imagery Transfer: the transferring of the imagery from one sensory modality to another....or, applied to television and radio advertising, the process by which radio listeners recall images from television using only the hearing process.*)

Declaration of Douglas L. Bailey
EXHIBIT 6

public policy advisory

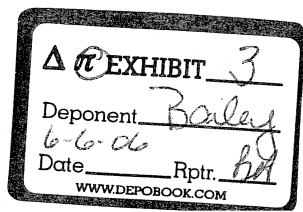
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WISCONSIN RIGHT TO LIFE, INC.,)	
)	
Plaintiff,)	No. 1:04cv01260 (DBS, RWR, RJL)
)	(Three-Judge Court)
v.)	
Case 1:04-cv-01260-RJL-RWR Document 76-2)	Filed 06/23/2006 Page 73 of 115
FEDERAL ELECTION COMMISSION,)	DECLARATION
)	
Defendant,)	
)	
and)	
)	
SEN. JOHN McCAIN <i>et al.</i> ,)	
)	
Intervening Defendants.)	

Declaration of Douglas L. Bailey

1. My name is Douglas L. Bailey. In 1968, I founded Bailey, Deardourff & Associates, which was among the first national political consulting firms working for Republican candidates for Governor, Congress, Senate, and President. Our clients included Gerald Ford's Presidential Campaign, and over fifty successful campaigns for Governor or the United States Senate in 17 states. We also did political ads for political parties and issue groups. A copy of my curriculum vitae is attached to this declaration.

2. As campaign consultant, my job was to plan the campaign and then create broadcast advertisements that would shape its outcome. In 2000, John Deardourff and I were each among the first eight recipients of the American University – Campaign Management Institute's "Outstanding Contribution to Campaign Consulting" Award



given to the consultants who have best represented the ideals of the profession and shown concern for the consequences of campaigns on public attitudes about our democratic process.

3. I also have extensive experience consulting on various citizens' initiatives and other grassroots issue campaigns. For example, I have advised, among others, Handgun Control, Inc., Floridians Against Casinos, and League of Conservation Voters.

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4. In 1987 I co-founded The Hotline, a bipartisan daily briefing that covers the media coverage of campaigns, candidates, and specific political issues raised in over 2,500 media sources nationally, including television, radio, and newspapers across the country. Its audience includes the White House, Congress, both political parties, the political consultancy industry, numerous special interest groups, and a wide variety of national media outlets. The Hotline was sold to the National Journal in 1996. I have continued as a Senior Advisor at The Hotline to this day.

5. From 2001 through the 2004 election, I was the president of Freedom's Answer, a non-partisan voter turnout program co-founded with Mike McCurry, former Press Secretary to President Clinton. Our purpose in founding Freedom's Answer was to counteract declining voter turnout, particularly among young people. In 2002, the program helped create the largest voter turnout ever in a non-presidential year (both nationally and in 27 different states). In 2004, it contributed to an astounding increase of 17 million voters above the 2000 presidential turnout.

6. I have not served as an expert witness in the last four years, although I submitted a fact witness declaration in McConnell v. FEC. I am receiving no

specifically urge voters to contact Senators Feingold and Kohl and tell them to oppose the filibuster.

17. The logical and unavoidable implication of the ads is that Senator Feingold (the only Senator mentioned who was up for reelection) supports the filibuster, and thinks that “politics” are more important than saving courts from a “state of emergency.” ~~On 2/20/06, RWR filed Document 76-2. Filed 06/23/2006. Page 75 of 115~~ ~~Case 1:04-cv-01260-RWR Document 76-2 Filed 06/23/2006 Page 75 of 115~~ ~~to serve in the federal judiciary. Indeed,~~ there would be no reason to tell voters to contact Feingold and Kohl urging them to oppose the filibuster if they were already opposed to it.

18. The fact that the proposed ads deal with both a candidate (Feingold) and a non-candidate (Kohl) equally and did not single out the candidate is of no practical consequence in terms of the implicit message communicated to voters, *i.e.*, express your displeasure and disregard by complaining to Kohl and by voting against Feingold.

19. In assessing the effect of the three WRTL ads, it is relevant to consider the context of WRTL’s explicit advocacy against Senator Feingold. WRTL, Senator Feingold’s Republican opponents, and the Wisconsin Republican Party had criticized Feingold for his support of the judicial filibusters and had made it a significant campaign issue. Specifically, WRTL had released press statements critical of Senators Feingold and Kohl on July 14, and July 21, 2004. In its July 14 press release, WRTL noted that it had “grave concerns” that Senators Feingold and Kohl had “voted 16 out of 16 times to filibuster judicial candidates.” The same press release also noted that Miguel Estrada had to withdraw his nomination after two years of having it filibustered. In its July 21 press release, WRTL stated that “the Senate, with the assistance of Senators Kohl and Feingold, has voted to continue its unprecedented filibuster of judicial nominees.”

Transcript of Deposition of Douglas L. Bailey
EXHIBIT 7

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF COLUMBIA

3 -----)

4 WISCONSIN RIGHT TO LIFE, INC.,)

5 Plaintiff,)

6 v.) No.:1:04cv01260

7 FEDERAL ELECTION COMMISSION,)

8 Defendant.)

9 and)

10 SEN. JOHN McCAIN, et al.,)

11 Intervening Defendants.)

12 -----)

13 Deposition of DOUGLAS L. BAILEY

14 Tuesday, June 6, 2006

15 Washington, D.C.

16 10:00 a.m.

17

18

19

20 Job No.: 1-80005

21 Pages: 1 through 61

22 Reported by: Bess A. Avery, RMR

1 organized as a 527 while we ask the question.

2 Q Right. I understand.

3 So the group would nominate candidates and
4 place them on the ballot for president and vice
5 president in 2008. That's the goal?

6 A Yes, sir.

7 Q And then would the group conduct a
8 campaign around those nominees?

9 A No, the nominees would conduct their
10 campaign.

11 Q All right. Who first contacted you about
12 being an expert witness in this case?

13 A Way back when, the answer is Fred
14 Werthheimer.

15 Q Thinking you are saying way back when,
16 perhaps you are referring to the McConnell
17 litigation?

18 A Yes.

19 Q Let's bring it forward a little bit. With
20 respect to the Wisconsin Right to Life versus FEC
21 litigation, you understand you are designated as an
22 expert in that case?

1 A I do understand that I've made a
2 declaration in that case, yeah, that's right. And
3 your question is?

4 Q Who first contacted you about being an
5 expert in Wisconsin Right to Life versus FEC?

6 A Fred Werthheimer was the person who called
7 me and asked would I have an interest in continuing
8 the -- I don't know that he used the term
9 "dialogue," I would -- in this case and I said sure.

10 Q And when was that?

11 A I'm not going to be good in time, dates.
12 So I, I can't answer that.

13 Q Okay. Was it this year, 2006?

14 A It seems to me, it seems to me that it was
15 last year, but I don't really remember. I honestly
16 don't remember.

17 Q Now, after that conversation, who else
18 have you talked to about being an expert in this
19 case and about this case?

20 A I've talked to, with Shane here and I've
21 talked with some folks at the FEC.

22 Q Have you discussed with them the substance

1 not going to try to quote them because my memory is
2 not that good, but the issue essentially is whether
3 that type of ad, which some would call an issue ad
4 and others would call a campaign ad, was appropriate
5 in the midst of a campaign.

6 Q You used two terms, "issue ad" and
7 "campaign ad." Would you tell me how you -- what
8 you understand those to describe and how you
9 distinguish between the two.

10 A What I said was that some people call it
11 an issue ad and some people call it a campaign ad.
12 My view is that anything that is run in the midst of
13 the campaign that is likely to have political impact
14 is a campaign ad. I don't mean that as a legal
15 term, I just mean as a practical term. I think it
16 is possible for a campaign ad by my definitions,
17 campaign ad and an issue ad to be the same thing.
18 It's possible to talk about issues in a campaign and
19 try to have some impact on issues in the midst of a
20 campaign. I won't try to define how other people
21 see an issue ad.

22 Q Right.

1 A But my sense is an issue ad is something
2 that is hopefully going to have an impact on issues.
3 My point is, issue ads and campaign ads can be the
4 same thing. I mean, an issue ad run in a campaign
5 is a campaign ad.

6 Q Okay. Again, let me paraphrase you and
7 tell me if I'm right or not. I think what you said
8 was if you run an ad about a political issue, that
9 it will have an effect, that it will have an effect
10 on an election and should be considered to be a
11 campaign ad. Is that what you are saying?

12 MR. HAJJAR: Objection, mischaracterizes
13 the witness's testimony.

14 BY MR. BOPP:

15 Q Go right ahead.

16 MR. HAJJAR: You can answer.

17 A I don't understand the process here, when
18 they object I'm -- I know I'm supposed to be quiet
19 but --

20 BY MR. BOPP:

21 Q Right, during their --

22 THE WITNESS: Is there somebody who rules

1 THE WITNESS: And could I hear the
2 objection, please.

3 (The record was read aloud as follows:
4 "Objection, mischaracterizes the witness's
5 testimony.")

6 A Let me state it in my own words.

7 BY MR. BOPP:

8 Q Please, that's what I asked you to do.

9 A Anything -- I'm not talking in legal terms
10 now.

11 Q Mm-hmm.

12 A Anything that happens in the course of a
13 campaign is, potentially has some impact on the
14 campaign so that any ad run that relates to
15 candidates or the issues in a campaign is going to
16 have some impact on the campaign. It may have a
17 little impact. It may have a big impact, but it's
18 going to have some impact, and so in that sense any
19 ad that is run that has impact on a campaign is, in
20 my mind, a campaign ad. That's what I mean by the
21 term "campaign ad" because it's going to have some
22 impact on the campaign.

1 Q And that would include ads that mention
2 the names of candidates and ads that do not mention
3 the names of candidates?

4 A Yes, from my standpoint. Again, not a
5 legal term, it's just bound to have some impact on
6 the campaign and it's a campaign ad from my
7 perspective.

8 Q And you used the phrase prior, in a prior
9 answer, "a political issue." What did you mean by
10 "a political issue"? If the ad referred to a
11 political issue, what did you mean by that?

12 A Any issue that is related in any way to
13 the offices that are on the ballot or the candidates
14 that are on the ballot.

15 Q You've referred to your declaration that
16 you submitted in the McConnell case.

17 (Plaintiff's Deposition Exhibit Number 1
18 was marked for identification.)

19 BY MR. BOPP:

20 Q Let me show you what's been marked as
21 Exhibit 1. Now, to explain the format, this, I got
22 this out of the joint appendix or some other

1 compilation of evidence that was submitted as part
2 of the briefing in the Supreme Court because I could
3 not locate your declaration that you signed, but
4 would you examine this and tell me whether or not
5 this is the text of the declaration that you
6 submitted in the McConnell case?

7 MR. STANSBURY: Just so the record is
8 clear, and I think you alluded to this, but the
9 declaration that Mr. Bailey has is not signed.

10 MR. BOPP: What do you mean? This one?
11 Exhibit 1?

12 MR. STANSBURY: Yeah, that this copy is
13 not signed.

14 A Since it isn't signed, I'm perfectly happy
15 to read it from top to bottom. To tell you the
16 truth --

17 BY MR. BOPP:

18 Q If that's necessary then, please, do.

19 A To tell you the truth, I won't remember it
20 exactly every word, but I will read it to see
21 whether I agree with what I said then and assume
22 that it is right. Let me take the time to read it.

1 (Witness reviews document.)

2 A This certainly appears to be similar. I
3 can't swear to it word-for-word, but it seems right.

4 BY MR. BOPP:

5 Q Okay. Thank you.

6 Now, do you recall that this case,
7 Wisconsin Right to Life versus Federal Election
8 Commission, was before the U.S. Supreme Court
9 previously?

10 A I am here in relation to my experience in
11 politics. I don't know this case. I don't know --
12 I'm not here as a lawyer. I don't understand the
13 legal history and I haven't spent a lot of time
14 trying to figure out the legal history.

15 Q Before you were contacted to do your
16 declaration for this case, were you involved in the
17 Wisconsin case?

18 A Not to my knowledge.

19 (Plaintiff's Deposition Exhibit Number 2
20 was marked for identification.)

21 BY MR. BOPP:

22 Q Let me show you what's been marked as

1 me, if it's necessary to correct the record on that,
2 I'm happy to do so.

3 Q Is Exhibit 2 a copy of that brief?

4 A Well, once again, I'm going to presume
5 that it is. I wouldn't know of any reason why you
6 wouldn't give me what I actually provided so I would
7 presume that it is. Without reading it, and even if
8 I read it, I wouldn't necessarily remember every
9 paragraph and word.

10 Q Who contacted you about submitting a brief
11 in the U.S. Supreme Court such as Exhibit 2?

12 A I think I've answered that question.
13 Fred Wertheimer talked to me as to whether I would
14 be willing to participate in this case, in a
15 continuation, in essence, of my participation in the
16 McConnell case, which is the way I view it.

17 Q Randall Dryer is listed as counsel, your
18 counsel. Do you know him?

19 A I know him on the phone.

20 Q Okay. You talked to him?

21 A Yes.

22 Q Okay. What did you pay him for the filing

1 A Page 2, got you.

2 Q Your declaration. At Paragraph 3 it says:

3 "I also have extensive experience consulting with
4 various citizens' initiatives and other grassroots
5 issue campaigns. For example, I've advised, among
6 others, Handgun Control, Inc., Floridians Against
7 Casinos, and League of Conservation Voters."

8 Let's start, I guess, with Handgun
9 Control. When did you represent them or consult
10 with them?

11 A I consulted with them on a pro bono basis
12 virtually from the inception of the organization --
13 now you are really testing my memory -- in the '70s.

14 Q And through what period of time?

15 A Through much of the '80s and even into the
16 early '90s and an occasional meeting since then, but
17 it wasn't a contractual arrangement, so they would
18 call me occasionally to seek guidance and thoughts
19 and so forth.

20 Q And what kind of subjects would they
21 consult with you?

22 A General strategy on the issue how to

1 communicate the issue to the public at large, how to
2 seek public support for their positions. General
3 strategic advice and occasionally in terms of some
4 advertising, advertising for the issue, to shape
5 public opinion as opposed to having impact on
6 campaigns.

7 Q Were there occasions when they were
8 involved in grassroots lobbying that you consulted
9 with them?

10 A If by grassroots lobbying you mean
11 reaching the public, to reach the public officials
12 in some way, the answer is no. In a more broad
13 sense, again, I'm not using legal definitions, I'm
14 just using my own part of the communications effort
15 of any such organization, has some grassroots
16 lobbying, my term, grassroots lobbying impact if you
17 are trying to build the membership, if you are
18 trying to build the understanding of the issue among
19 the public without necessarily causing them to take
20 any specific actions.

21 Q Well, let's use your definition of
22 grassroots lobbying, which is -- and again, I'm

1 paraphrasing, and you put it in your own words if
2 I'm inaccurate, the -- where there are public
3 communications by the group to the general public
4 with a message to, urging them to contact
5 appropriate governmental officials to take certain
6 action such as vote for a bill or vote against a
7 bill?

8 A Did you describe that as my definition?

9 Q That's what I just understood you to say
10 as your definition. If I'm not correct, would you
11 give it to me.

12 A That is not correct.

13 Q Okay.

14 A What I was saying is that in my term, you
15 could call grassroots lobbying the building of an
16 organization of supporters who subsequently might be
17 asked to contact, but the building of that
18 grassroots organization is another form of
19 grassroots lobbying. In my mind, they are sort of
20 part and parcel of the same thing in the sense that
21 if you don't build the organization, then you have
22 no organization to call on. My recommendations and

1 consulting for the group related to how do you build
2 the organization, how do you grow the members.

3 Q Well, let's come up with a word, so that
4 we'll understand each other, for this specific kinds
5 of advertising that are public communications to the
6 general public, or portions of it, and then are
7 asking them to contact governmental officials such
8 as legislators to vote for or against a particular
9 bill or to take some public action. What do you
10 want to call that, that kind of advertising?

11 A Let's call it public lobbying advertising.

12 Q Okay. Good. So your recollection is that
13 you did not consult with Handgun Control, Inc. about
14 public lobbying advertising. Is that right?

15 A That's correct, I don't remember any
16 conversations about that, although it was always
17 sort of implied that, at times, the organization was
18 going to do that. But I didn't participate in
19 developing those ads or in recommending them.

20 Q Did they engage in that sort of
21 advertising, that is, public lobbying advertising?

22 A I'm trying to think of cases. Frankly, I

1 suspect that they did, but I don't remember. There
2 were undoubtedly particular instances where there
3 were bills before the Congress where they did some
4 of that. I was not involved in it.

5 Q Now, with respect to Floridians Against
6 Casinos, what was your consulting with that group,
7 what was the nature --

8 A That's really a different kind of issue
9 altogether, where there was a ballot issue on the
10 ballot in Florida to permit casino gambling, and so
11 there was a campaign waged for or against, in our
12 case against that ballot issue. It's a different
13 kind of thing altogether. It didn't involve
14 legislature in any way.

15 Q The League of Conservation Voters, what
16 was your relationship with them or what did you
17 consult with them on?

18 A That, again, was a personal pro bono
19 relationship because a friend was the head of the
20 organization and he sought my views on a variety of
21 issues. More in the first category, more in the
22 handgun control category, where how do you broaden

1 the membership of the organization, what are the
2 issues, what's the phraseology that can expand the
3 membership. I don't remember any instance where I
4 was involved in advising them or working with them
5 on any, on any advertising for them.

6 Q Okay. Have you consulted with any group
7 specifically on public lobbying advertising or any
8 person?

9 MR. HAJJAR: Objection, compound.

10 THE WITNESS: I'm sorry.

11 MR. HAJJAR: I objected that there are
12 actually two questions to this question. If you
13 understand it, you can answer.

14 A Now I don't even remember it. I'm sorry.

15 MR. BOPP: Would you repeat it, please.

16 (The record was read aloud as follows:

17 "QUESTION: Have you consulted with any
18 group specifically on public lobbying
19 advertising or any person?")

20 A I think the answer to that is no. I'm
21 just trying to, I'm trying to recall any instance
22 when we ever did any public -- what was the phrase?

1 BY MR. BOPP:

2 Q Public lobbying advertising.

3 A Public lobbying advertising. No, by my
4 definition, I did a good deal of grassroots
5 organization-building kind of work and some
6 advertising of that sort, not public issue --

7 Q Public lobbying advertising?

8 A Public lobbying. I'm going to write it
9 down.

10 Q I had to. When is public lobbying
11 advertising customarily done?

12 A For the most part, I think it happens when
13 a bill or a matter or an issue is directly before
14 the Congress and it tends to be when votes are
15 scheduled so that the week before it varies, but
16 that's my -- it's not my experience in the sense of
17 having done it, but that's clearly when it happens.

18 Q Okay. Now, does such advertising
19 customarily mention the names of particular office
20 holders that they are being -- that the public is
21 being asked to lobby?

22 A In some instances it does. Often it does

1 not. I think increasingly it does. It's targeted
2 in particular districts or particular states.

3 Q And why would they, such advertising
4 mention the names of specific office holders?

5 A Well, if it's in advance of an issue,
6 generally it's because that office holder is either
7 undecided on the issue or it is taking on a position
8 and you want the public to weigh in with them to
9 cause them to take the other issue.

10 Q Now, turn to page 6 of your report -- your
11 declaration, I'm sorry -- Paragraph 15. You mention
12 that your work in Florida regarding Floridians
13 against gambling involved a ballot measure?

14 A Right.

15 Q Okay. And so there would be no necessity
16 or even no reason to mention candidates or office
17 holders in that context. Is that right?

18 A In that campaign, absolutely no reason at
19 all.

20 (Plaintiff's Deposition Exhibit Number 4
21 was marked for identification.)

22

1 BY MR. BOPP:

2 Q Let me show you what's been marked as
3 Exhibit 4. And let me describe the exhibit for you.
4 The lower right-hand corner there is an
5 identification -- well, these are six -- it's the
6 story books for six ads. Do you know what a story
7 book for an ad is?

8 A Storyboard.

9 Q Storyboard. See, you know better than me.
10 Storyboard for an ad, do you know what that is?

11 A Yeah.

12 Q And this has in the lower right-hand
13 corner identification of each ad that we have GIA
14 Number 1, then GIA Number 2, GIA Number 3, now, GIA
15 Number 4, as you can see, has 15 storyboards on one
16 page. And the next page is a transcription of the
17 words under each storyboard because of the
18 difficulty even though not impossibility of reading
19 the thing. So that is identified as GIA Number 4
20 script. Then we have GIA Number 5 and GIA Number 6.
21 And GIA Number 6, there are two pages. The first
22 page has nine storyboards for that ad and the second

1 page, 2 of 2, has the final five. Right?

2 A Mm-hmm.

3 Q Now, for the record, these are the ads
4 that are contained in Appendix J of the expert
5 witness report of Goldstein in the McConnell
6 litigation. So I would like for you to review this
7 exhibit, read the text under each one of these
8 storyboards so that you will get a sense of what is
9 said in these various ads as reflected in this
10 exhibit.

11 A Okay.

12 (Witness reviews document.)

13 A Okay.

14 BY MR. BOPP:

15 Q Now, I'd like to show you what's been
16 marked as Exhibit 5.

17 (Plaintiff's Deposition Exhibit Number 5
18 was marked for identification.)

19 BY MR. BOPP:

20 Q Exhibit 6.

21 (Plaintiff's Deposition Exhibit Number 6
22 was marked for identification.)

1 BY MR. BOPP:

2 Q And Exhibit 7.

3 (Plaintiff's Deposition Exhibit Number 7

4 was marked for identification.)

5 BY MR. BOPP:

6 Q And I'd like for you to review those as

7 well.

8 (Witness reviews documents.)

9 A Yes, sir.

10 BY MR. BOPP:

11 Q I want you to assume as to all of these

12 ads, there's nine ads total here, that they were to

13 be broadcast within 30 days of a primary or 60 days

14 after general election?

15 A Mm-hmm.

16 Q First, with respect to Exhibit 4, do you

17 have an opinion on whether those ads would influence

18 an election?

19 A They are all campaign ads. My definition,

20 again, of campaign ads is something inevitably going

21 to have some impact, maybe a little, maybe a lot, on

22 an election that is in process, sure.

1 Q All right. Now, I want you to compare the
2 ads in Exhibit 4 and the ads, the three ads,
3 Exhibit 5, 6 and 7, and is there any material
4 difference in the message or how the message is
5 conveyed between the ads in Exhibit 4 and the ads,
6 Exhibit 5, 6 and 7 in your opinion?

7 MR. HAJJAR: Objection, vague.

8 THE WITNESS: I'm sorry.

9 MR. HAJJAR: I objected that I thought the
10 question was vague. Once again, if you can answer
11 the question, go ahead.

12 A Yes, I think there's a difference. And my
13 answer might surprise you in the sense that I think
14 5, 6 and 7 are probably more effective campaign ads.

15 BY MR. BOPP:

16 Q In what way?

17 A Because they are not so obvious, even
18 though to anybody experienced with the business,
19 it's reasonably obvious what the intent is. The
20 point is that most of the ads in Exhibit 4 are sort
21 of sledgehammer. And Exhibits 5, 6 and 7 are a
22 little more subtle. But obviously they are campaign

1 ads.

2 BY MR. BOPP:

3 Q Now, let's turn to Exhibit, in Exhibit 4,
4 let's turn to the last ad GIA Number 6.

5 A Yes.

6 Q Are there any material differences in
7 content and specific -- yeah, any material
8 differences in content in your opinion between that
9 ad and, let's say, Exhibit 5?

10 MR. HAJJAR: I just want to note for the
11 record that page 1 of 2 on GIA Number 6 storyboards
12 themselves are very grainy and very difficult to
13 make out the images.

14 MR. BOPP: Okay. You are aware this will
15 be attached to the deposition?

16 MR. HAJJAR: Yes.

17 MR. BOPP: Okay.

18 A Let me make a general point. It may be a
19 professional occupational hazard that I'm going to
20 express, but television is called television because
21 of the vision side of it. So among other things, on
22 some of these ads you can't even see from the

1 storyboard what the pictures are. And in terms of
2 Exhibit 5 there is, in fact, no storyboard, so...

3 One of the interesting things about
4 television advertising is that the pictures are
5 often even more powerful than the words, but
6 nonetheless you are here asking, I think, to focus
7 on the words.

8 BY MR. BOPP:

9 Q Yes.

10 A I think there's a difference between the
11 two ads. It's the same difference that I expressed
12 before. One is a little more subtle and, therefore,
13 probably more effective in that it does not
14 categorically state with a sledgehammer what the
15 position of the public officials are, but there
16 isn't any question that during the period of a
17 campaign, it is a campaign ad and would perhaps have
18 more impact than the other one.

19 Q Now, you referred to one difference, I
20 think.

21 A Right.

22 Q GIA Number 6 does state the position of

1 the two senators being referenced in the ad on the
2 matter, that is, it says: "Your senators, Russ
3 Feingold and Herb Kohl, voted to continue this
4 grizzly procedure." And there's no similar
5 statement in Exhibit 5, the position of senators
6 Feingold and Kohl, on the filibuster. Right?

7 A That's correct, but I'm going to add that
8 the importance of understanding what a campaign ad
9 is, my term, not a legal term, is that an ad run in
10 the midst of a campaign has an impact. Senator
11 Feingold is one of the two candidates, one of the
12 two people mentioned that's on the ballot and the
13 other one is not. Then the impact of running the ad
14 in the midst of the campaign, implying, as this ad
15 does, what their position is, has enormous -- could
16 have, could have, it might have no impact, but could
17 have substantial impact on the election itself.

18 Q When you are saying "implying their
19 position," you are referring to Exhibit 5?

20 A Yes.

21 Q Okay. Now, isn't it true that groups
22 often do public lobbying advertising -- one

1 circumstance when a group might do or individuals
2 might do public lobbying advertising is when the
3 position of the office holder is undecided?

4 A Correct.

5 Q Okay. So isn't this ad consistent also
6 with the proposition that these two senators'
7 positions might be, or one or more of them, might be
8 undecided?

9 A But it's presented by an organization
10 which is, which has already stated its opposition to
11 Senator Feingold's opposition to this, so of course
12 not.

13 Q Is that said in this ad?

14 A No, neither is the phone number. I mean,
15 this is a campaign ad, Mr. Bopp. It is obvious it
16 is a campaign ad.

17 Q But you don't mind if I ask you details
18 about it, do you?

19 A Both in terms of its timing, its content
20 and it's obvious intent.

21 Q Now, would you answer my question.

22 A Sure.

1 Q My question was isn't it also true that
2 the way, that what is said in this ad is perfectly
3 consistent with the proposition that the position of
4 one or more of the senators might have been
5 undecided?

6 A But it wasn't.

7 Q Isn't the ad, the text of the ad
8 consistent with the proposition that the position
9 might be undecided?

10 A I'm sorry, I can't -- I really can't
11 answer that question. I'm a -- my business is
12 politics. I look at an ad and I think I understand
13 the ad. This is a campaign ad.

14 Q Do you have a problem with reading the
15 text of the ad?

16 A When I read the text of the ad?

17 Q Do you have a problem with your ability to
18 read the text of the ad?

19 A No, I don't.

20 Q Do you have a problem with your ability to
21 understand what the ad says?

22 A Not in the slightest.

1 Q Okay. So I'm asking you about your own
2 testimony. Your own testimony was that public
3 lobbying advertising is done in some instances when
4 the person being lobbied, their position is
5 undecided?

6 A What has that got to do with this?

7 Q So my question is: Isn't -- there's, A,
8 nothing in the text of the ad that says vote for,
9 vote against these candidates. Right?

10 A Yes, there is.

11 Q Okay. Where is that? What words are
12 those?

13 A Those words are the entire ad. That's
14 what the ad says. That's why the ad is being run.

15 Q Is this just simply a mind-reading episode
16 by you? Are you psychic?

17 MR. HAJJAR: Objection, argumentative.

18 A No, but, you know, experience has some
19 value perhaps, both in the law and in the
20 advertising world. And when this ad is run in the
21 campaign by an organization that has already
22 criticized these senators for taking a position that

1 they've taken, then it's a campaign ad. Of course
2 it's a campaign ad. I mean, I don't understand even
3 what the argument is.

4 BY MR. BOPP:

5 Q Is Exhibit GIA Number 6 found on
6 Exhibit 4?

7 A I'm sorry.

8 Q Yeah.

9 A Yeah.

10 Q Is that a public lobbying advertising --
11 advertisement, the way you have defined it?

12 A The way I have defined it, I think clearly
13 it is.

14 Q With respect to Exhibit Number 5, is that
15 ad a public lobbying advertisement by your
16 definition, Exhibit Number 5?

17 A Yes, and, remember, please, that my
18 definition is not a legal definition. And a public
19 lobbying advertisement can be a campaign ad.

20 Q With respect to Exhibit 6?

21 A Sorry, got you.

22 Q Is that radio ad a public lobbying

1 advertisement as you have defined it?

2 A Yes, I think so.

3 Q With respect to Number 7, is that a public
4 lobbying advertisement as you have defined it?

5 A Yes, I think so. Wait a minute. Let me
6 read it. I'm answering too quickly.

7 Q Sure, please do.

8 A Yes.

9 Q Now, you've also stated that public
10 lobbying advertisements are run when a particular
11 office holder has a position on an issue or a bill,
12 and the attempt is to persuade them to change that
13 position. Is that right?

14 A Sure.

15 Q Is that kind of effort successful?

16 MR. STANSBURY: Objection, vague.

17 A It can be. Generally, frankly, it's not,
18 but it can be.

19 (Plaintiff's Deposition Exhibit Number 8
20 was marked for identification.)

21 BY MR. BOPP:

22 Q Let me show you what's been marked as

1 Exhibit 8. Would you review that, please.

2 (Witness reviews document.)

3 A Okay.

4 BY MR. BOPP:

5 Q Now, let's assume for purposes of this
6 hypothetical that Bill Yellowtail is a candidate for
7 office and that this ad with this text is to be run
8 within 30 days of a primary or 60 days of a general
9 election. Is this ad a public lobbying ad,
10 advertisement, as you have defined it?

11 A I wouldn't know how to describe this. If
12 this is an ad, this is trash, so is Bill Yellowtail
13 a member of Congress?

14 Q Let's assume for the purposes of the
15 hypothetical that, yes, Bill Yellowtail is a member
16 of Congress.

17 A Frankly, I don't see this because I don't
18 think it's tied to anything.

19 Q You don't see it as a public --

20 A I see it as trash.

21 Q Okay. Is it a public lobbying
22 advertisement as you've defined it?

1 A On the face of it, I wouldn't call it
2 that, but I don't know what it relates to. It may
3 be within the context of something that is going on
4 in the Congress right now to which these words may
5 apply, and in that sense it could be, but I don't
6 see it as that because it certainly isn't very
7 specific.

8 Q Would you view this, if broadcast, as we
9 have described, as I have posited, within 30 days of
10 a primary or 60 days of a general election as a
11 campaign ad as you have characterized or defined it?

12 A Well, of course, it's a campaign ad.

13 Q Now, I want you to --

14 A I want to remind both of us that public
15 lobbying advertising can be public lobbying
16 advertising by my definition, but if run within a
17 campaign period, it is a campaign ad. We do
18 understand that I'm not drawing a distinction
19 between the two. A public advertising, public
20 lobbying ad run in a campaign period is a campaign
21 ad.

22 Q Now, I want you to pull out Exhibit 5

1 again.

2 A Okay.

3 Q Are there any distinctions in your view
4 between the text of Exhibit 5 and the text of
5 Exhibit 8, are there any differences in the content
6 and how the candidate and issues are presented?

7 A Sure.

8 Q And what are those?

9 A Exhibit 8 is trash and Exhibit C is a
10 little more specific and very much more subtle and
11 probably more effective.

12 Q So can you -- could you specify the
13 differences in the content that leads you to those
14 conclusions?

15 A Both are, in my mind, campaign ads and the
16 Yellowtail, let's call it Exhibit 8, the Yellowtail
17 ad is so over the top that it is not likely, without
18 knowing more about the context, it's not likely to
19 be effective. People would sort of grimace and walk
20 away.

21 Exhibit 5 is not off-putting. It is
22 subtle. Implies the position of the candidates or

1 of the candidate, and is, therefore, more likely to
2 be effective communications, campaign
3 communications.

4 Q Now, isn't it true that Exhibit 5
5 references a specific legislative matter, where
6 Exhibit -- that is going to occur in the future,
7 where Exhibit 8 does not?

8 A Exhibit 8 certainly doesn't, and Exhibit 5
9 references something that has happened in the past
10 and might happen in the future. Yes, it is more
11 specific.

12 Q Now, with respect to reference to the
13 candidate involved, isn't it true that Exhibit 5
14 only references a clearly identified federal
15 candidate with a statement urging the public to
16 contact the candidate and to ask that he take a
17 particular position on a legislative matter, where
18 Exhibit 8 has many more references with respect to
19 the character and integrity of the candidate?

20 A Yeah, I think that Exhibit 5 is a more
21 effective campaign ad.

22 Q Well, but if you could answer my question

1 specifically.

2 A Part of my problem is that I don't know
3 who Bill Yellowtail is, I don't know the context of
4 this and so forth. It doesn't make a whole lot of
5 sense to me, but ask the question again, I'll try to
6 answer it.

7 MR. BOPP: Would you repeat the question,
8 please.

9 (The record was read aloud as follows:

10 "QUESTION: Now, with respect to reference
11 to the candidate involved, isn't it true
12 that Exhibit 5 only references a clearly
13 identified federal candidate with a
14 statement urging the public to contact
15 the candidate and to ask that he take a
16 particular position on a legislative
17 matter, where Exhibit 8 has many more
18 references with respect to the character
19 and integrity of the candidate?")

20 A Well, in fact, Exhibit 5 does not identify
21 either of the people mentioned as a candidate, so
22 I'm not sure I do agree with your question. But let

1 me say it in my own words. Clearly Exhibit 5 is
2 more specific, is more precise, is less flamboyant,
3 and relates to a more specific issue.

4 BY MR. BOPP:

5 Q Isn't it true that Exhibit 5 contains no
6 reference to the candidate here, Feingold,
7 character, qualifications or fitness for office,
8 where Exhibit 8 does?

9 A That's correct.

10 Q Isn't it true that Exhibit 5 contains no
11 words that promoted, supported, attacked or opposed
12 the candidate, Feingold, where Exhibit 8 does?

13 MR. HAJJAR: Objection, calls for a legal
14 conclusion.

15 A I think that's generally correct.

16 (Plaintiff's Deposition Exhibit Number 9
17 was marked for identification.)

18 BY MR. BOPP:

19 Q Let me show you what's been marked as
20 Exhibit 9. Now, would you review the text of this
21 radio ad, please.

22 (Witness reviews document.)

1 A Yes.

2 BY MR. BOPP:

3 Q Does this ad, Exhibit 9, qualify as a
4 public lobbying advertisement in accordance with
5 your definition?

6 A I think it does.

7 Q If we posit that, assume as part of the
8 hypothetical that this ad were to run, be run within
9 30 days of a primary or 60 days of a general
10 election and that in this case Senator Kohl was a
11 candidate for reelection and, therefore, we have a
12 reference to a candidate. Would this be a campaign
13 ad in accordance with your definition?

14 A Yes, I think it would.

15 Q And why is that?

16 A I think ads that raise issues in relation
17 to candidates, regardless of which side of the
18 issue, they raise issues in relation to candidates
19 are putting in the minds of voters, candidates and
20 issues which potentially has an impact on elections,
21 so it becomes a campaign ad.

22 Q Now, you mentioned in your testimony that

1 you believe that Senators Kohl and Feingold were
2 supporting the filibuster and, therefore, would be
3 opposing ending the filibuster. Is that your
4 testimony?

5 A Well, it's my understanding from the
6 Wisconsin Right to Life web site that they were
7 opposing the filibuster.

8 Q Now, after the running of Exhibit 9, there
9 was a vote on the Alito nomination where there was a
10 vote to, for cloture so that there would be no
11 filibuster. Are you aware of how Senators Feingold
12 and Kohl voted in that instance?

13 A Personally, no.

14 Q Are you aware of the fact that Senator
15 Kohl voted for cloture and against the filibuster?

16 A No.

17 Q And since that time in May, there was,
18 Kavanaugh was on the floor of the senate for
19 confirmation, Brent Kavanaugh, for the D.C. Circuit,
20 and there was a vote for cloture in order to prevent
21 a filibuster of that nomination. Do you know how
22 Senators Feingold and Kohl voted then?

1 A No.

2 Q Are you aware of the fact that Senator
3 Kohl voted for cloture and therefore against any
4 filibuster in that case?

5 A No.

6 Q Now, if each of those -- if that was true
7 that Senator Kohl voted in the way I've described in
8 the Alito nomination and the Kavanaugh nomination,
9 that would reflect a change in his position as to
10 the filibuster generally, wouldn't it?

11 A I can't answer that. I don't know that
12 that's true, but I assume it's true.

13 MR. BOPP: All right. I have no further
14 questions.

15 MR. HAJJAR: Can we take a break?

16 MR. BOPP: Please, do.

17 (Recess taken 11:34 a.m. to 11:50 a.m.)

18 MR. HAJJAR: We have no questions.

19 (Signature having not been waived, the
20 deposition of DOUGLAS L. BAILEY was concluded at
21 11:50 a.m.)

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