

***Exhibit 6 from Deposition of Douglas L. Bailey***  
**EXHIBIT 10**

# Radio Script

Client: Wisconsin Right to Life  
Title: "Wedding" :60  
Job#: WRL-8136  
Date: July 15, 2004

Case 1:04-cv-01260-RJL-RWR Document 76-5 Filed 06/23/2006 Page 2 of 97

## AUDIO

*We hear church bells up and under...*

## TALENT

PASTOR: And who gives this woman to be married to this man?

BRIDE'S FATHER (rambling): Well, as father of the bride, I certainly could. But instead, I'd like to share a few tips on how to properly install drywall. Now you put the drywall up...

VO: Sometimes it's just not fair to delay an important decision.

But in Washington it's happening. A group of Senators is using the filibuster delay tactic to block federal judicial nominees from a simple "yes" or "no" vote. So qualified candidates don't get a chance to serve.

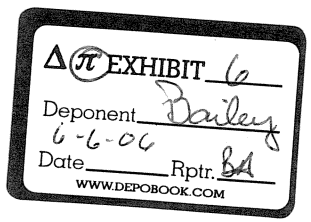
Yes, it's politics at work, causing gridlock and backing up some of our courts to a state of emergency.

BRIDE'S FATHER (rambling): Then you get your joint compound and your joint tape and put the tape up over...

Contact Senators Feingold and Kohl and tell them to oppose the filibuster.

Visit: BeFair.org. That's BeFair.org

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Exhibit

A

***Exhibit 7 from Deposition of Douglas L. Bailey***  
**EXHIBIT 11**

# Radio Script

Client: Wisconsin Right to Life

Title: "Loan" :60

Job#: WRL 8136

Date: July 14, 2004

Case 1:04-cv-01260-RJL-RWR Document 76-5 Filed 06/23/2006 Page 4 of 97

## AUDIO

## TALENT

LOAN OFFICER: Welcome Mr. and Mrs. Shulman. We've reviewed your loan application, along with your credit report, the appraisal on the house, the inspections, and, well...

COUPLE: Yes, yes... we're listening.

OFFICER: Well, it all reminds me of a time I went fishing with my father. We were on the Wolf River in Waupaca...

VO: Sometimes it's just not fair to delay an important decision.

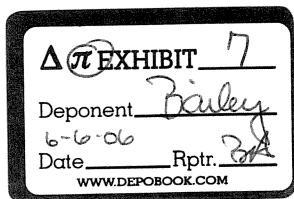
But in Washington it's happening. A group of Senators is using the filibuster delay tactic to block federal judicial nominees from a simple "yes" or "no" vote. So qualified candidates aren't getting a chance to serve.

It's politics at work, causing gridlock and backing up some of our courts to a state of emergency.

Contact Senators Feingold and Kohl and tell them to oppose the filibuster.

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Exhibit

**B**

***Exhibit 8 from Deposition of Douglas L. Bailey***  
**EXHIBIT 12**

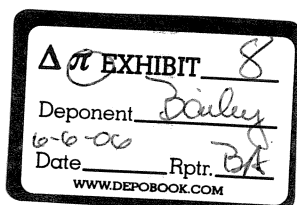
## Citizens for Reform “Yellowtail ad”

“Who is Bill Yellowtail? He preaches family values but took a swing at his wife. And Yellowtail’s response. He only slapped her.

But ‘her nose was not broken.’ He talks law and order . . . but is  
Case 1:04-cv-01260-RJL-RWR Document 76-5 Filed 06/23/2006 Page 6 of 97

himself a convicted felon. And though he talks about protecting children, Yellowtail failed to make his own child support payments—then voted against child support enforcement. Call Bill Yellowtail. Tell him to support family values.”

*McConnell* at 193 n. 78.



***Declaration of Charles H. Franklin, III***  
**EXHIBIT 13**

Expert Report of Professor Charles H. Franklin  
Wisconsin Right to Life v. FEC  
Case 1:04-cv-01260-RJL-RWR Document 76-5 Filed 06/23/2006 Page 8 of 97

Charles H. Franklin  
Professor, Department of Political Science  
*University of Wisconsin, Madison*

June 2, 2006

## 1 Introduction

In this report I review the circumstances of the 2004 Wisconsin campaign for the United States Senate and discuss the empirical evidence for the effects of advertising in elections.

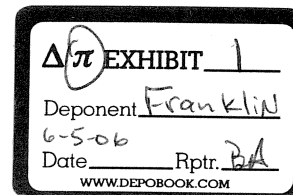
I have not appeared as an expert witness in the last four years. I am being paid \$225 per hour for my work on this report.

## 2 The 2004 Wisconsin Senate Campaign

In 2004 Wisconsin Senator Russell Feingold sought reelection to a third term in the United States Senate. Senator Feingold was initially elected in 1992 when he defeated two term incumbent Robert Kasten with 52.6% of the vote to Kasten's 46.0%. The race was the 10th closest U.S. Senate race of 1992.

In 1998 Feingold faced a two term member of the U.S. House of Representatives, Congressman Mark Neumann of the 1st congressional district. This extremely competitive race ended with Feingold winning by the third narrowest margin in the country, 50.5% for Feingold to 48.4% for Neumann, a margin of less than 38,000 votes.

Both candidates put substantial campaign emphasis on protecting social security, wasteful government spending and balancing the budget. Neumann had established himself as one of the most serious "deficit hawks" in the House, even breaking with his party's leadership at times



ified endorsement of Darrow on March 5, 2004.<sup>15</sup> In a press release announcing their endorsements, Wisconsin Right to Life PAC also made clear their opposition to Feingold:

“Russ Feingold is so extreme in his anti-life position and the U.S. Senate is so important to the future of unborn babies that the defeat of Feingold must be uppermost in the minds of Wisconsin’s right to life community in the 2004 elections” said Pfaff.<sup>16</sup>

In the September 14, 2004 primary Tim Michels won 42.43% followed by Darrow with 30.05%, Welch with 23.09% and Lorge with 4.35%.

The potentially strong Michels campaign failed to catch fire with voters. Despite an attractive and articulate candidate and very high quality ads, Michels could not close the gap with Feingold in the polls. While immediately after the primary he pulled to a 51-45 margin among likely voters in an ABC News poll, he was not able to sustain this performance. Perhaps the worst blow to his campaign came when the National Republican Senatorial Committee reduced its commitment to the Michels campaign in early October.<sup>17</sup> On October 13 the NRSC announced it was canceling a \$1.2 million ad campaign in support of Michels.<sup>18</sup> This was a severe setback not only because it substantially cut pro-Michel’s advertising but because it left the campaign to explain how things could still be going well if the NRSC had decided to pull out of the race. While the NRSC did eventually commit some resources to the Wisconsin race, it came too late for Michels to recover.

The final outcome was 55.3% for Feingold to 44.1% for Michels. Even so, this was not a large margin for a third term incumbent. The race was the 10th closest Senate race in 2004.

### **3 The Politics of Judicial Nominations**

The issue of judicial nominations became an issue in Senate politics almost from the moment Republicans reclaimed the majority in January

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<sup>15</sup>FEC opp. preliminary injunction exhibits 4, 5 and 6.

<sup>16</sup>WRTL news release quoting Bonnie Pfaff Wisconsin Right to Life Pac Chair. FEC opp. preliminary injunction exhibit 4.

<sup>17</sup>Hotline 10/5/2004; Frommer-AP 10/4/2004

<sup>18</sup>Hotline 10/14/2004; Milwaukee Journal Sentinel 10/13/2004.

2003. Democrats, now out of the majority, could no longer block nominations by simply not bringing them to a vote, as they had done during most of the previous two years.

The Senate custom of unlimited debate provided a mechanism for Democrats to continue to block those judicial nominations which they most strongly opposed. A cloture vote requires 60 votes to cut off debate so as long as Democrats remained united, they could block President Bush's nominations.

This in itself would not have created a substantial political issue. In the late Clinton administration it was routine for the Republican controlled Senate to fail to bring nominations to the floor for a vote. What changed in 2003 was that conservatives, and especially pro-life groups, saw the transformation of the judiciary as key to achieving their policy goals in general and to overturning *Roe v. Wade* in particular. This connection of the most divisive and emotional social issue to the confirmation of judges gave the issue a political influence and importance well beyond the normal politics of judicial nominations.

Between March 2003 and June of 2004 Senate Democrats had blocked confirmation votes 16 times. The Senate Republican leadership attempted to break the impasse several times, including a 40 hour marathon session in November 2003. Despite intense pressure the Democrats remained sufficiently united to continue to block a number of nominees (though many more were confirmed with little controversy.)

The Republican leadership made another attempt at ending the deadlock in July 2004, holding four votes on stalled nominations between July 20 and 22, ending with the 20th failed attempt.

Confirmation of judges became an electoral issue as well as a matter of Senate procedure. While the issue did not dominate the fall elections, it did arise fairly often in Republican candidates' statements that they would vote to confirm President Bush's judges. Sen. Orrin Hatch (R-Utah) wrote: "The obstruction of judicial nominations generally, and these filibusters specifically, figured significantly in 2004 Senate races across the country, particularly the race in South Dakota."<sup>19</sup>

The stalemate was not broken until May 23, 2005 when a bipartisan coalition of fourteen senators agreed to vote for cloture on most of the President's most controversial judges in exchange for no changes to the filibuster rule and the ability to continue to block nominees that De-

<sup>19</sup>The Hill, <http://www.hillnews.com/thehill/export/TheHill/Comment/OpEd/021005.html>, accessed 6/2/2006.

*Transcript of Deposition of*  
*Charles H. Franklin, III*  
**EXHIBIT 14**

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 CHARLES H. FRANKLIN, III, PH.D.

14 Monday, June 5, 2006

15 Washington, D.C.

16 10:15 a.m.

17

18

19

20 Job No.: 1-80004

21 Pages: 1 through 107

22 Reported by: Bess A. Avery, RMR

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

2 CHARLES H. FRANKLIN, III, PH.D.,

3 being first duly sworn, testified as follows:

4 EXAMINATION BY COUNSEL FOR THE PLAINTIFF

5 BY MR. BOPP:

6 Q State your full name, please.

7 A Charles Hicks Franklin, III.

8 Q And with whom are you employed?

9 A The University of Wisconsin.

10 Q And in what capacity?

11 A I'm a professor of political science.

12 Q This deposition is being taken by  
13 agreement, and thank you for agreeing to come to  
14 D.C. and accommodating all the lawyers here. And  
15 you've been designated as an expert witness in  
16 Wisconsin Right to Life versus Federal Election  
17 Commission. Are you aware of that?

18 A Yes.

19 Q Now, the designation specifies that your  
20 anticipated subject matter testimony is as follows:

21 It is currently anticipated that Professor  
22 Franklin's testimony will generally address the

1 following subjects: 1, the impact of the broadcast  
2 advertisements identifying candidates on campaigns  
3 for elective office; 2, the alleged need to identify  
4 office holders and grassroots lobbying advertising;  
5 3, an overview of the 2004 Wisconsin Senate  
6 campaigns including the role of the judicial  
7 filibuster issue; 4, the likely impact of Wisconsin  
8 Right to Life's proposed advertisements had they  
9 been run in the 2004 Wisconsin pre-election  
10 environment; 5, the effect that aggressors' lobbying  
11 exception like the one Wisconsin Right to Life seeks  
12 would likely have in future electoral contests; and  
13 6, any other relevant matters relating to  
14 advertising and election.

15 Then the final statement in the notice is  
16 defendants reserve the right to alter the subjects  
17 of Professor Franklin's testimony relevant to the  
18 matters raised in this case.

19 Now, at this point in time are those six  
20 subjects that have been -- that were specified, are  
21 those -- is that the extent of the subject matter of  
22 your expert testimony you expect to give? And if

1                   225. What is the -- do you know how many  
2 hours you've spent so far on this project?

3           A     I haven't totalled it up yet.

4           Q     Approximately?

5           A     It's somewhere in the order of a hundred  
6 hours.

7                   (Plaintiff's Deposition Exhibit Number 1  
8                   was marked for identification.)

9 BY MR. BOPP:

10           Q     Let me show you what's been marked as  
11 Plaintiff's Exhibit 1 and ask you if you can  
12 identify that?

13           A     This is the report I submitted to the FEC.

14           Q     Is this your final report?

15           A     Yes, it is.

16           Q     And do you anticipate preparing any  
17 further reports?

18           A     I do not.

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 (Witness reviews document.)

2 A Yes. This appears to be the packet of  
3 what I called unlabelled information that was sent  
4 to me by the FEC.

5 BY MR. BOPP:

6 Q Okay. Now, included in this are newspaper  
7 articles, and you cite newspaper articles in your  
8 report. Correct?

9 A That's correct.

10 Q Is it customary and appropriate for  
11 experts in your field to rely upon newspaper reports  
12 of items?

13 A Yes.

14 Q Why is that?

15 A Because in talking about political  
16 matters, the public discussion of those things are  
17 the things that most citizens and most non-insiders  
18 are exposed to.

19 Q In your report you appear to credit the  
20 truthfulness of reports that are, you cite from  
21 newspaper articles. Is that customary and  
22 appropriate within your area of specialty?

1 A Yes, within limits.

2 Q And what are those limits?

3 A Reports of the dates at which things  
4 happened, at least a press conference being held,  
5 for example, and in general statements that were  
6 made in public forums that are quoted, I think,  
7 would be routinely accepted. Matters of more  
8 opinion or interpretation, I think, in my field  
9 would be viewed as just that, so an editorial would  
10 not be given credit, credence as a factual  
11 statement.

12 Q But a news report would?

13 A Again, within these limits.

14 Q Okay. Now, going back to the advertising  
15 that you consulted of the two groups for and against  
16 the filibuster issue that we referred to previously,  
17 the \$5 million and 3.5 approximately, and you  
18 mentioned you looked at those, the text of some or  
19 whatever of the ads. What period of time is it your  
20 recollection that those, that advertisement was  
21 being run?

22 A I believe they started in late March and

1           A     With the understanding that I can't quote  
2     it directly.

3           Q     Right.

4           A     My summary would be on the pro-filibuster  
5     side was the argument that the Democrats should have  
6     the right to block judges they considered too  
7     radical, too extreme, and also connected with that,  
8     that the minority in Congress should have some  
9     ability to prevent a majority from always having its  
10    way.

11                    On the antifilibuster side, the argument  
12    primarily was simple fairness requires an up or down  
13    vote and that by blocking the President's highly  
14    qualified nominees, the Democrats were standing in  
15    the way of judicial positions that needed to be  
16    filled and that simple fairness demanded be filled.

17           Q     Were these ads designed to affect or  
18    influence the vote in the Senate on the filibuster  
19    issue in your opinion?

20           A     Some of them clearly were, some may have  
21    been more aimed at public opinion generally, but I  
22    think it would be fair to say that at least a

1 significant number of them were aimed at that.

2 Q And those that were directed or aimed at  
3 influencing the vote, what characteristics did they  
4 have that made you conclude that they were directed  
5 at that purpose?

6 A They mentioned a specific senator by name,  
7 pointed to his role or her role in the debate. At  
8 least according to National Journal, they were also  
9 at broadcasts primarily in the States where those  
10 senators were from.

11 Q What were the characteristics of the ads  
12 that you viewed their purpose to be to affect the  
13 general issue?

14 MR. DEELEY: Objection, mischaracterized  
15 the testimony.

16 BY MR. BOPP:

17 Q Would you characterize it if I've  
18 rephrased it in a way that's inaccurate. The second  
19 group that you identified.

20 A There were ads that said the nominees  
21 deserve an up or down vote. I'm sorry, I don't  
22 recall whether they also said this is hurting the

1 them. The second group affecting the general issue.

2 A The ones that did not --

3 Q Okay. What would you like to call those,  
4 the second group? You can say B.

5 A Shall we call them the ads that did not  
6 mention an office holder?

7 Q Okay.

8 A And now I'm going to have to ask you to  
9 repeat the question.

10 Q Sure. With respect to the ads that did  
11 not mention an office holder, would you  
12 characterize, correct me if I'm wrong at any time,  
13 were to influence the issue generally, is that sort  
14 of advertising helpful in, when you are trying to  
15 influence votes in Congress?

16 A It can be.

17 Q When can it be and when wouldn't it be?

18 A Those advertisements should be expected to  
19 raise the salience of the issue among the public and  
20 possibly to change or shift public opinion on that  
21 issue. And so to that extent, simply raising public  
22 concern and awareness of an issue could have the

1 effect of also influencing those who pay attention  
2 to public opinion, so, yes, in that sense they  
3 could.

4 Q In what respect would they not be helpful  
5 in attempting to influence votes in Congress?

6 MR. DEELEY: Objection, assumes facts not  
7 in evidence.

8 BY MR. BOPP:

9 Q You said they can be. So I assume that  
10 there's some aspect of this.

11 A To the extent that they do not directly  
12 identify or point to an elected official and ask  
13 that citizens contact that official, it would be  
14 reasonable to assume that they have less direct  
15 lobbying or effect by contacting than if they simply  
16 discussed the issue and take a position on the  
17 issue.

18 Q Now, some would characterize this, the  
19 activity you've just described between these two  
20 groups advertising on the filibuster issue, as  
21 grassroots lobbying efforts. Are you familiar with  
22 that phrase?

1 categories.

2 Q Let's explore that for a minute. You are  
3 familiar with the phrase "issue advertising"?

4 A Yes.

5 Q Now, how would you define that?

6 A This is where the vagueness comes in, of  
7 course. An issue advertisement, in the broad sense  
8 that I use the term, and intended in the report as  
9 well, is any advertising by a group, usually not a  
10 candidate or a political party, but which discusses  
11 an issue, usually takes a position on the issue, and  
12 may or may not imply something or say something  
13 about candidates or office holders' positions on  
14 that issue.

15 So when I use the term "issue  
16 advertising," I mean it in that relatively broad  
17 sense. And it's in that sense that these things  
18 that we could also call grassroots lobbying are, in  
19 my broader terminology, equally well thought of as  
20 issue ads.

21 Q Would it also be true that the phrase as  
22 you define it of "issue advocacy" is broader than

1 what you understand grassroots lobbying to be?

2 A To the extent that a grassroots lobbying  
3 only implies a connection to a particular office  
4 holder, then I think that would be a definitional  
5 distinction between the two.

6 Q Is it fair to say that grassroots lobbying  
7 is, based on your definitions, a subcategory of  
8 issue advocacy -- or issue ads?

9 A Yes, in the sense that I'm using it here  
10 and in the report, I think of them as closely linked  
11 and that grassroots lobbying, again, for the most  
12 part, would be a subcategory of issue ads.

13 Q When you are researching the filibuster  
14 issue and you found these two campaigns being  
15 conducted by these groups on the filibuster issue  
16 that we've just been talking about, are you familiar  
17 with other groups doing grassroots lobbying on  
18 issues about upcoming votes in Congress?

19 A Yes.

20 Q And when you say you are familiar, what do  
21 you mean by that?

22 A I mean that I'm aware that such things

1 happen. I have not done a scholarly investigation  
2 of such things myself, so I don't have detailed  
3 expert knowledge of specific campaigns of that sort.

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

6 BY MR. BOPP:

7 Q Let me show you what's been marked as  
8 Exhibit 4. And would you review that document  
9 which, I believe, defines various terms associated  
10 with lobbying and other forms of advocacy.

11 (Witness reviews document.)

12 MR. DEELEY: I object to the document to  
13 the extent it's, a margin is cut off.

14 A Okay.

15 BY MR. BOPP:

16 Q Now, I'll refer you to page 2 of the  
17 exhibit at the bottom, and there's the heading:  
18 Grassroots Lobbying. And then it says: Key  
19 indicators of grassroots lobbying. And there's  
20 three bullets points: Relates to specific  
21 legislation, reflects a point of view on the  
22 legislation's merits, encourage general public to

1 Q Now, are you -- is grassroots lobbying, at  
2 least on occasion, tied to upcoming votes in  
3 Congress?

4 A Yes.

5 Q Now, are you familiar with the fact that  
6 Congress is often in session in the fall of election  
7 years including within 60 days of an election?

8 A Yes.

9 Q And are you familiar with grassroots  
10 lobbying campaigns having been conducted during that  
11 period of time to influence an upcoming vote in  
12 Congress?

13 A I'm not specifically familiar with that.

14 Q Would you be surprised or would that be  
15 incompatible with your experience that such  
16 campaigns would be conducted in that time period?

17 A In the past, before these issues before us  
18 came up, it certainly is plausible that it would  
19 have happened, and I simply don't know of specific  
20 cases.

21

22 (Plaintiff's Deposition Exhibit Number 5

1 to take action through the identification of this  
2 legislator, but that's my reading of the words here.

3 BY MR. BOPP:

4 Q Do you agree with that statement, not from  
5 a legal standpoint but from an ad design standpoint?

6 MR. O'NEIL: Same objections.

7 A I really don't know.

8 BY MR. BOPP:

9 Q Do you agree with that statement as it  
10 relates to how grassroots lobbying is conducted?

11 MR. DEELEY: Same objections.

12 A To the extent that this communication  
13 that, identifies the position of a legislator, then  
14 I would say that that is likely to encourage  
15 recipients of that communication to become more  
16 aware of the issue and to link it to the legislator  
17 more. That, I think I would say.

18 Q Would you agree that organizations that  
19 want to influence government policy often engage in  
20 grass-roots lobbying?

21 A Yes.

22 Q As a means to influence current office

1 Q Okay.

2 (Witness reviews documents.)

3 A Done.

4 BY MR. BOPP:

5 Q Good. Would you agree that Exhibits 6  
6 through 13 are newspaper articles reporting on  
7 grassroots lobbying efforts by specific  
8 organizations and their purported -- reporting on  
9 their purported success in influencing the  
10 government on what public policies they would adopt?

11 MR. DEELEY: Objection, compound and  
12 vague.

13 A I wasn't aware they were newspaper  
14 articles. And could you restate the rest of it.

15 BY MR. BOPP:

16 Q Okay. You notice the, for instance on  
17 Exhibit 6 at the bottom, findarticles is the web  
18 site.

19 MR. BOPP: Would you repeat the question  
20 for me, please.

21 (The record was read aloud as follows:

22 "QUESTION: Would you agree that Exhibits

1           6 through 13 are newspaper articles  
2           reporting on grass-roots lobbying efforts  
3           by specific organizations and their --  
4           reporting on their purported success in  
5           influencing the government on what public  
6           policies they would adopt?")

7           MR. DEELEY: I also object as outside the  
8           scope of the expert testimony.

9           A     They appear to be.

10          BY MR. BOPP:

11          Q     Let me show you what's been marked as  
12          Exhibits 14 through 16.

13                   (Plaintiff's Deposition Exhibit Numbers 14  
14          through 16 were marked for identification.)

15          MR. BOPP: Go ahead and put these up here,  
16          keep them --

17          THE WITNESS: Okay. I was just trying to  
18          keep them straight in my mind about which ones are  
19          which. So you want me to review these as well; is  
20          that correct?

21          BY MR. BOPP:

22          Q     Yes, Exhibit 14 through 16.

1 MR. DEELEY: Are you okay as far as water

2 and --

3 THE WITNESS: Yeah, I'm good.

4 MR. DEELEY: -- everything?

5 (Witness reviews documents.)

6 A There's also some truncation on the right  
7 of the Exhibit 16.

8 BY MR. BOPP:

9 Q Thank you.

10 A Okay.

11 Q And with respect to Exhibits 14, 15 and  
12 16, would you agree that these are web pages  
13 reporting on, reporting by organizations on their  
14 specific grassroots lobbying efforts?

15 MR. DEELEY: Objection -- are you done  
16 with the question?

17 MR. BOPP: Mm-hmm.

18 MR. DEELEY: Vague, compound and outside  
19 the scope of the expert testimony.

20 A They appear to be. Some of them look more  
21 like web pages than others, but I agree that they  
22 are reporting on their efforts.

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

3 BY MR. BOPP:

4           Q     I show you what's been marked as  
5 Exhibit 17.

6           A     This is also truncated on the right.  
7                   (Witness reviews document.)

8 BY MR. BOPP:

9           Q     With respect to Exhibit 17, would you  
10 agree that this exhibit purports to be a press  
11 release from Senator Charles Schumer of New York  
12 wherein he is kicking off a grassroots lobbying  
13 effort to influence governmental action,  
14 specifically the U.S. Postal Service Stamp Advisory  
15 Committee, with respect to a certain proposal?

16           MR. DEELEY: Objection, compound, vague,  
17 and the document speaks for itself and outside the  
18 scope of the expert testimony.

19           A     Yes.

20 BY MR. BOPP:

21           Q     Number 18.

22                   (Plaintiff's Deposition Exhibit Number 18

1           them you can have the question in mind,  
2           maybe that will be helpful. And my  
3           question would be: Do these exhibits, 18  
4           through 24, appear to be web pages from  
5           various organizations encouraging their  
6           supporters to engage in grassroots  
7           lobbying regarding issues that are of  
8           concern to that organization?")

9           MR. DEELEY: I renew my objections that  
10          I've previously stated.

11          A     Yes, among other things.

12          BY MR. BOPP:

13          Q     Now, if you were -- let's start with this.  
14          I understand your testimony that you have not done a  
15          research project on the involvement of organizations  
16          and grassroots lobbying?

17          A     That's correct.

18          Q     Now, if you were to conduct such a study,  
19          would articles that appear in the Journal of  
20          Politics be the types of articles that would be  
21          viewed by you as a reliable authority within your  
22          area of expertise?

1           A     I wouldn't use the word "authority," but  
2 the Journal of Politics is a very reputable  
3 professional journal, yes.

4           Q     Within your area of expertise?

5           A     Yes.

6                     (Plaintiff's Deposition Exhibit Number 28  
7                     was marked for identification.)

8 BY MR. BOPP:

9           Q     I show you what's been marked as  
10 Exhibit 28, and my question is: Would you agree  
11 that this purports to be an article from the Journal  
12 of Politics, entitled "Interest Niches and Policy  
13 Bandwagons Pattern of Interest Group Involvement in  
14 National Politics"?

15          A     Yes.

16          Q     In reviewing your resume, you appear to be  
17 identified often as an expert in polling.

18          A     Yes.

19          Q     And what is that area of expertise?

20          A     Broadly, political polling, or public  
21 opinion polling more generally, sampling  
22 questionnaire design, analysis.

1 web site visited May 31st, 2006, which lists the  
2 members of the team. It says "Meet the Team," and  
3 you are not listed as a member?

4 MR. DEELEY: Objection, compound and the  
5 document speaks for itself.

6 A That's correct.

7 BY MR. BOPP:

8 Q Would you agree that the work of the  
9 Wisconsin Advertising Project is a reliable  
10 authority that would be relied upon by those in the  
11 field?

12 MR. DEELEY: Objection, vague.

13 BY MR. BOPP:

14 Q Field of expertise?

15 A Yes.

16 Q Are you aware -- well, before I do that,  
17 let's go back to your report, Exhibit 1.

18 Is it fair to summarize your report that  
19 the discussion of public policy issues can affect an  
20 election?

21 A Yes.

22 Q Now, that is true even if particular

1 candidates or public officials are not identified in  
2 the discussion?

3 A Yes. You are using the term "discussion"  
4 in what sense?

5 Q Public communications.

6 A Yes, I agree.

7 Q And that the degree of effect on an  
8 election cannot be determined by the examination of  
9 the communication itself?

10 A By the words on the page from the script,  
11 I would agree with that.

12 Q Partially because the effect of a  
13 particular communication is influenced -- is  
14 affected by other communications in the environment.  
15 Is that true?

16 A Yes, I would agree with that.

17 Q And that as long as it's a public  
18 communication, that is, a communication to members  
19 of the public through some means, it can have an  
20 effect on the election that it's not dependent on  
21 the mode of communication?

22 A The effect would surely vary across modes

1 and exposure, repetition, but public communication  
2 of this sort certainly can have these effects.

3 Q Can have an effect on an election?

4 A (Nodding head.)

5 Q So, in other words, telemarketing, in  
6 other words, phone calls, or newspaper advertising  
7 or direct mail or web site information or radio and  
8 television advertising, or for that matter,  
9 discussions on radio talk shows or news broadcasts  
10 or, in other words, all of -- the fact that a  
11 communication could affect an election, it's not  
12 dependent by which of those modes of communication  
13 because all of them could affect -- a communication  
14 through any of those modes could affect an election.  
15 Is that right?

16 MR. DEELEY: Objection, compound and  
17 vague.

18 A I would say it's an empirical question  
19 what the effects are across different modes,  
20 intensities, and so on, but in principle, any of  
21 them could have effects. Without empirical  
22 research, it's difficult to say how much any one of

1 them would.

2 BY MR. BOPP:

3 Q And that includes communications that  
4 don't mention candidates or public office holders  
5 can have an effect on election through any of those  
6 modes of communication?

7 A A communication that deals with  
8 politically relevant issues need not mention the  
9 candidates in order to have an electorally relevant  
10 impact.

11 Q Let's turn to page 8 of your report. Now,  
12 page 8 reports on three press releases by a Senator  
13 Bob Welch. It reports on a November 18th article in  
14 the Milwaukee Journal Sentinel. It reports on a  
15 press release by Wisconsin Right to Life.

16 Am I missing anything in terms of the  
17 modes of communication that you are reporting on  
18 here?

19 A No, in this particular section those are  
20 the ones that I'm talking about.

21 Q What else did you find in your research in  
22 terms of the discussion of the filibuster issue in

1 affecting public officials. Wisconsin Right to Life  
2 is also broadly available or involved in legislative  
3 issues and their members are surely part of that. I  
4 did not do research on specific acts of mobilization  
5 by them. I'm reporting more the Wisconsin Right to  
6 Life's discussion of their grassroots organization.

7 Q Now, I assume you've been made aware as  
8 part of your preparation of your expert report that  
9 Wisconsin Right to Life used its advertising as  
10 grassroots lobbying about affecting votes in the  
11 U.S. Senate on the filibuster issue. Is that right?

12 A That's correct.

13 Q Okay.

14 A Well --

15 Q That that is their position?

16 A Actually, as I understand it, which is  
17 based on reading their releases, the documents that  
18 we have in front of us, they characterize the  
19 advertising campaign as about this issue about that.  
20 They also connected it with the issue of challenging  
21 the BCRA restrictions, and so I wouldn't say it was  
22 a single purpose as described by them in the

1 documents that I read, but it has at least the dual  
2 purposes of the grassroots lobbying as well as the  
3 opportunity to challenge the restrictions, or the  
4 regulation, I should say.

5 Q If you were aware that Wisconsin Right to  
6 Life viewed this, at least in part, this advertising  
7 campaign, as a grassroots lobbying campaign about  
8 affecting upcoming votes in Congress, why did you  
9 not research the grassroots lobbying efforts of  
10 Wisconsin Right to Life generally or specifically?

11 A I saw that as outside of the questions  
12 that I was asked to address. I was asked to address  
13 the broad role of, or the broad context of the 2004  
14 election and to situate Wisconsin Right to Life  
15 within that and within Wisconsin politics. And I  
16 did that in a general way citing the information  
17 that was available to me. I don't know how I would  
18 do a scientific study at this point retrospectively  
19 of their mobilization efforts. That seemed far  
20 beyond what could reasonably be done in a report of  
21 this nature.

22 Q Were you asked to do a research -- to

1 opine on the question -- were you asked to opine on  
2 the question of the effectiveness of grassroots  
3 lobbying in influencing votes in Congress when that  
4 lobbying campaign is directed at that, for that  
5 purpose or at that activity?

6 A I was not asked to do that.

7 Q Have you ever done that?

8 A No.

9 Q Why weren't you asked to do that?

10 MR. DEELEY: Objection, calls for  
11 speculation.

12 A I wouldn't have any way of knowing.

13 BY MR. BOPP:

14 Q Did anybody tell you why, why -- to ignore  
15 the lobbying question?

16 A No, no one told me to ignore the lobbying  
17 question. The issue didn't come up.

18 Q Why did you think it was not relevant?

19 MR. DEELEY: Objection, assumes facts not  
20 in evidence.

21 A I was asked to comment on the role of  
22 advertising and its likely effects in this case. I

1 was not asked to review the literature on grassroots  
2 lobbying, and so I did not.

3 BY MR. BOPP:

4 Q Likely effects on what?

5 A I'm sorry. Likely effects of what on  
6 what?

7 Q In your answer, you just said: I was  
8 asked to review the likely effects. And my question  
9 is, the likely effects of what on what?

10 A Okay. The effects of advertising on  
11 elections generally, the effects of what we would  
12 expect or believe based on the empirical literature,  
13 the effects of advertisements such as the Wisconsin  
14 Right to Life advertisements might be expected to  
15 have on an election.

16 Q But you are not asked and you did not  
17 decide to opine on the question of what effect these  
18 advertisements would have on their efforts to  
19 influence votes in Congress?

20 MR. DEELEY: Objection, compound.

21 A No.

22 BY MR. BOPP:



1 "QUESTION: But having a competing message  
2 will adversely affect the persuasiveness,  
3 if you will, or the effect of one message  
4 because you won't have as big an effect  
5 on voting behavior if you have competing  
6 messages, as I understand your report.  
7 Is that correct?")

8 A No.

9 BY MR. BOPP:

10 Q Okay. How would you say it then?

11 A What competing messages do is raise the  
12 salience for partisans on both sides. So what it  
13 would mean is that -- can we just call them pro and  
14 anti, for the sake of simplicity?

15 Q Mm-hmm.

16 A The people who are predisposed to the pro  
17 side can be stimulated, can become more, find the  
18 issue more salient as a result of messages from  
19 either side of the debate, okay? And so the  
20 implication is that in a high stimulus case with two  
21 sets of competing messages, partisan predisposition  
22 should be enhanced and so potential supporters of

1 the pro side are, in fact, more likely to absorb the  
2 pro message, incorporate it and become more aligned  
3 on that basis even in the presence of competing anti  
4 messages.

5 Now, the net effect is likely to be  
6 reduced. In a one-sided communication, everything  
7 is pushing you this way, and especially the less  
8 involved and less partisan people, who are really  
9 the people that move the most, if they are only  
10 exposed to a one-sided message, they will be carried  
11 along by that message more, whereas with competing  
12 two-sided messages, they'll get both and the effects  
13 will tend to cancel one another out.

14 Q What effect does timing have on voting  
15 behavior in an election?

16 MR. DEELEY: Objection, vague.

17 A Do you mean timing before the election,  
18 the number of days before the election day?

19 BY MR. BOPP:

20 Q Yeah, timing of the message beforehand.

21 A The empirical evidence seems to  
22 demonstrate that advertising that's closer to

1 election day has larger effects on shifting either  
2 vote preferences or actual vote counts. There is,  
3 in the first place, a sizable proportion of  
4 undecided voters up through election day in most  
5 contests. They are available for persuasion. And  
6 the evidence that's cited in the report finds  
7 empirically that in the latter stages of the  
8 election, the impact of advertising seems to  
9 increase in its effect on vote choice and vote  
10 preferences.

11 Q I recall you cited a study regarding two  
12 weeks prior to the election.

13 A Yes.

14 Q All right? Are there studies that go --  
15 that examine the ultimate effect of messages in a  
16 time period greater than two weeks?

17 A I have not found in the literature  
18 anything that addresses other time scales, so I'm  
19 not aware of research that specifically addresses  
20 any arbitrary point before that.

21 Q Okay. How about messages that are two and  
22 a half months before an election?

1 A I know of no direct evidence on that.

2 Q Two months before an election, do you know  
3 of any --

4 A No.

5 Q -- evidence or studies?

6 A No, I don't.

7 Q One month before an election?

8 MR. DEELEY: Objection, asked and  
9 answered.

10 A To the extent that the Johnston book  
11 that's cited in here does look at the impact of  
12 advertising over the entire course of the campaign  
13 coming up to election day, they find that  
14 advertising continuously updates voters'  
15 preferences, and so the effect of past advertising  
16 sets the level that you are starting from but the  
17 effects of advertising in this week then moves you  
18 up and down relative to that.

19 So based on their empirical evidence, the  
20 implication would be that earlier advertising had an  
21 effect and helped push the level to a particular  
22 point but then subsequent advertising moves that.

1 In other words, there's not a long-term persistence  
2 of the earlier ads, they get -- they set the stage,  
3 if you will, for this week's ads, which then move  
4 you up and down relative to that. So they are an  
5 argument for both a continuous effect of advertising  
6 throughout the campaign period as well as a greater  
7 influence of late campaigning because you'll always  
8 shift in response to the current advertising as  
9 well.

10 BY MR. BOPP:

11 Q When you say "current advertising," what  
12 is it -- is it advertising on the same subject or is  
13 it no matter what the subjects are you have this  
14 effect?

15 A In their case, they are looking at total  
16 pro- or anti-candidate advertising. So the net  
17 advertising for each of the two candidates  
18 regardless of the specific nature of the issue.

19 Q Has there been any studies on  
20 advertisements on a particular issue throughout the  
21 time period?

22 A Not that I'm aware of.

1 Q And so when you've used the phrase "media  
2 message," that would include any public  
3 communication. It would include ads, but it would  
4 include any public communication like the evening  
5 news broadcast, talk radio, anything of that nature?

6 A Yes.

7 (Discussion off record.)

8 (Recess taken.)

9 BY MR. BOPP:

10 Q By the way, between the time you submitted  
11 the draft report and your final report, what  
12 conversations did you have with anyone associated  
13 with this case?

14 A I gave them the draft on -- sorry --  
15 Wednesday morning. We had a discussion that  
16 afternoon at 5:30. Then I gave another draft on  
17 Thursday afternoon which resulted in a Friday  
18 discussion of typos essentially. And then we had a  
19 check-in just to make sure where we were in terms of  
20 meeting the deadlines and everything. The only --  
21 yeah, yeah. I think that's right. Sorry, I  
22 don't -- I don't think there were other

1           A     That targeting thing, I'm not sure whether  
2 that was specific to radio or was television.

3           Q     Okay.

4           A     From the document I don't think it's clear  
5 whether it was just radio or TV or both.

6           Q     Okay.

7           A     I'm just not clear about that.

8           Q     It says that for this audience, meaning  
9 the targeted audience, "the public policy aware  
10 adults, ages 45+ with male skew," it says that it is  
11 unlikely that political ads will change opinions in  
12 this group.

13                   Is that what your report is reflecting?

14           A     If what they were targeting is what that  
15 thing said, "public policy aware adults," I  
16 understood that to mean people who had substantial  
17 amounts of political interest and involvement, so  
18 for those people, the messages that they would hear,  
19 whether it was the radio or the TV, either one of  
20 those, would tend to actually be noticed because  
21 they are politically aware and involved and  
22 interested, but it's also less likely that it would

1 change someone's mind to the extent that it would,  
2 because these are already aware and involved people,  
3 they would tend to resist the change if it's a  
4 message that runs counter to their preferences. So  
5 it should reinforce people that are already  
6 concerned about the judicial nominations issue, and  
7 it should not be expected to convert someone who  
8 feels on the other side. That's what I'm saying.

9 Q Okay. Would this be an audience that you  
10 would want to target if you were wanting the  
11 listener to respond by calling a senator about the  
12 issue and lobby them?

13 A As an empirical question, these would be  
14 the people that are probably most likely to be  
15 involved enough to make a phone call or a contact,  
16 though they may be people that would already be  
17 mobilized. So I think the answer is probably yes,  
18 these would be people that would be more likely to  
19 make the call than people who are the opposite,  
20 unaware, uninvolved, yes.

21 Q Turn to page 38. The first full  
22 paragraph, the last sentence says, "Early ads matter

1 to work their way back down from that if it's a  
2 competitive process, but it's not the case that  
3 these ads, the moment of 60 days before, say,  
4 continue to independently affect the vote as we go  
5 along, rather they set the baseline that's then  
6 moved about by these other things.

7 BY MR. BOPP:

8 Q Okay.

9 A It's a tricky question of autocorrelation  
10 in the form of the model, which we can talk about if  
11 you prefer.

12 Q Well, I don't want to get in over my head.  
13 (Plaintiff's Deposition Exhibit Number 30  
14 was marked for identification.)

15 BY MR. BOPP:

16 Q I'm going to show you what's been marked  
17 as Exhibit 30. Now -- oh, gosh. I take it back.  
18 You can't read that. You could before. Sorry, I  
19 have no questions on 30. Sorry about that.

20 Are you familiar with the Wisconsin  
21 Advertising Project publishing an online, at least,  
22 maybe in other contexts as well, a report called

1 Political Advertising in the 2002 Elections?

2 A Not specifically, no.

3 Q Okay.

4 (Plaintiff's Deposition Exhibit Number 31  
5 was marked for identification.)

6 MR. DEELEY: Jim, before you do that, are  
7 you going to leave Exhibit 30 attached to the  
8 deposition?

9 MR. BOPP: Yes.

10 MR. DEELEY: I'm going to ask to get a  
11 copy of it.

12 MR. BOPP: Yeah, I think we need to do  
13 that, even though it's not of much value.

14 BY MR. BOPP:

15 Q I show you what's been marked as  
16 Plaintiff's Exhibit 31. Now, this purports to be  
17 that report by Professor Goldstein and Rivlin,  
18 R-I-V-L -- is that his last?

19 A -- I-N.

20 Q -- I-N. Right. That was found on the  
21 Wisconsin Advertising Project web site. Now, is  
22 this the type of report that would be a reliable

1 authority that would be relied upon by people,  
2 experts in your field?

3 A I haven't seen the report, but given that,  
4 yes, this would be a credible source of information.

5 Q Would you hand me that. I marked the  
6 wrong version. I'll have her --

7 MR. BOPP: Would you mind just putting  
8 Exhibit 31 over top of that.

9 (Plaintiff's Deposition Exhibit Number 31  
10 was remarked for identification.)

11 BY MR. BOPP:

12 Q I hand you Exhibit 31 and -- because I  
13 marked the wrong copy. Are you familiar with the  
14 Election Law Journal?

15 A I'm sorry, just say it again.

16 Q The Election Law Journal?

17 A No.

18 MR. BOPP: All right. I have no further  
19 questions.

20 MR. DEELEY: Okay. We are going to need a  
21 ten-minute break.

22 MR. BOPP: Okay.

***Amended Expert Report of Kenneth M.  
Goldstein (from *McConnell v. FEC*,  
251 F. Supp. 2d 176 (D.D.C. 2003))***  
**EXHIBIT 15**

**AMENDED EXPERT REPORT OF  
KENNETH M. GOLDSTEIN**

**I. QUALIFICATIONS**

I am an associate Professor of Political Science at the University of Wisconsin-Madison, where I specialize in the study of interest groups, political advertising, and survey methodology. I received my B.A. in Political Science from Haverford College in 1987 and my Ph.D. in Political Science from the University of Michigan in 1996. The focus of my Ph.D. studies was American politics and research methodology. I have served on the faculty at the University of Wisconsin-Madison since 2000, teaching courses and conducting research on American politics and survey research methodology. I was granted tenure at the University of Wisconsin-Madison during the last academic year.

I am on the Dean's Oversight Board of the Survey Research Center at the University of Wisconsin. In addition, I serve on the College of Letters and Science Human Subjects Committee, which approves all research involving human subjects within the college. I have also taught courses in survey research and served on the Dean's planning committee for the Survey Research Center at Arizona State University from 1996 to 2000. I have served on two planning committees for the National Elections Study, renowned as the premier survey research project on elections conducted in the scholarly community.

I am the author or co-author of 17 publications (books, book chapters, and refereed journal articles). The majority of my work has focused on studying the use and effectiveness of political advertising as well as interest group lobbying tactics. Attached as Appendix B is a copy of my curriculum vitae, which lists in more detail my academic background, positions, and publications.

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I have great confidence in the CMAG data in terms of tracking the airings of particular ads at particular times. Appendix I contains a copy of an analysis, "Measuring Exposure to Campaign Advertising", that I have co-authored with two graduate students, Travis Ridout and Michael Franz, and a colleague at the University of Virginia, Paul Freedman. This analysis is currently under scholarly review at the journal, *Political Communication*. It provides a detailed explanation of the validity of the CMAG frequency data and the coding process.

The CMAG storyboards enabled us to undertake an extensive analysis of the ads and develop a database of information concerning political television advertising.<sup>5</sup> Specifically, a team of students (the coders), working under my supervision, assessed the content of each of these storyboards on a wide range of topics, such as content, tone, issues addressed, whether the ads mentioned a political candidate or provided a toll-free number to call, etc. (see Appendix F for complete coding sheet). Multiple coders reviewed a subset of storyboards as a check on the reliability of the coding. I reviewed all ads financed by interest groups and broadcast within 60 days of a general election. I also reviewed and revised the coding where coding by the initial coders was in conflict or where I determined that an error had been made.

In addition to collecting certain specific information concerning each storyboard reviewed, the study also asked coders: "In your opinion, is the purpose of the ad to provide information about or urge action on a bill or issue, or is it to generate support or opposition for a particular candidate?" In this report, I refer to ads coded as providing information or urging action as "Genuine Issue Ads," and ads coded as generating support or opposition for a particular candidate as "Electioneering Ads."

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<sup>5</sup> The database is attached to this report as electronic Appendix L.

*Transcript of Deposition of*  
*Jason Vanderground*  
**EXHIBIT 16**

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF COLUMBIA

3  
4 WISCONSIN RIGHT TO LIFE, INC.,

5 Plaintiff,

6 -vs-

No. D.D.C. 04-1260

7 FEDERAL ELECTION COMMISSION, and  
8 SENATOR JOHN McCain, et al.,

9 Defendants.  
\_\_\_\_\_ )

10 DEPOSITION OF JASON VANDERGROUND, taken pursuant  
11 to Notice, at 25 Ottawa, in the city of Grand Rapids,  
12 Michigan, at 9:10 a.m., on Wednesday, June 7, 2006,  
13 before Dawn M. Houghton, C.S.R. #3071, a Certified  
Shorthand Reporter within and for the County of Kent,  
State of Michigan.

14 APPEARANCES:

15 For the Plaintiff:

16 MR. JAMES BOPP, JR.  
17 BOPP, COLESON & BOSTROM  
18 1 South 6th Street  
Terre Haute, Indiana 47807

19 For the Defendant Federal Election Commission:

20 MR. KEVIN DEELEY  
21 FEDERAL ELECTION COMMISSION  
22 999 E Street, Northwest  
Washington, DC 20463

23 For the Intervenors (appearing telephonically):

24 MR. BRENT BICKLEY  
25 WILMERHALE  
1875 Pennsylvania Avenue  
Washington, DC 20006

1 finish that question and then talk about a break. I think  
2 you mentioned we'll have water brought in, so if at any  
3 point you need to get water or refill your glass, that's  
4 fine, just let me know.

5 If you give me an answer at some point and then  
6 later on you realize that there was some additional  
7 information you should have told me or some amendment that  
8 you should probably give, that's fine, just let me know  
9 when it's on your mind. We can do that at any point.

10 So could you please spell your last name for the  
11 record?

12 A. It's V-a-n-d-e-r-g-r-o-u-n-d.

13 Q. And could you state your address, please?

14 A. 62 Mayfield Avenue, Grand Rapids, Michigan, 49503.

15 Q. And where do you work?

16 A. Hanon McKendry.

17 Q. What is Hanon McKendry?

18 A. It's a brand consulting and advertising firm.

19 Q. And can you describe what you mean by brand consulting?

20 A. It's marketing, communications, promotions.

21 Q. And what kind of clients do you have?

22 A. Corporate clients and nonprofit clients.

23 Q. And is that the type of clients that Hanon McKendry has or  
24 you personally?

25 A. Hanon McKendry.

1 Q. And what kind of clients do you personally have?

2 A. Primarily nonprofit clients.

3 Q. And can you describe a little bit the types of nonprofit  
4 clients that you have?

5 A. Do you want a list?

6 Q. Sure.

7 A. Alliance Defense Fund, the Grand Rapids Downtown Alliance,  
8 Homeward, Focus on the Family.

9 MR. BOPP: Excuse me.

10 (Brief conference off the record.)

11 BY MR. DEELEY:

12 Q. And do you work for any of those clients when they are  
13 doing advocacy?

14 A. What do you mean by that?

15 Q. Sort of as opposed to just marketing services or an entity  
16 like doing sort of political advocacy?

17 A. So what was the question again?

18 Q. Do you -- does your work for any of those entities consist  
19 of assisting them in their advocacy efforts?

20 A. Sometimes.

21 Q. And which clients are those?

22 A. Currently?

23 Q. Currently or recently.

24 A. One was Wisconsin Right to Life, Alliance Defense Fund.

25 Q. And what is Alliance Defense Fund's cause?

- 1 A. They're concerned with religious freedom.
- 2 Q. And in addition to your own clients, do you also assist  
3 with other projects at Hanon McKendry?
- 4 A. Sometimes.
- 5 Q. And are you familiar with other clients that Hanon  
6 McKendry has done advocacy work for?
- 7 A. Somewhat.
- 8 Q. Who are some of those clients?
- 9 A. I can't remember more -- I don't have a specific --
- 10 Q. Okay. Does Hanon McKendry do any work for political  
11 candidates?
- 12 A. No, typically not.
- 13 Q. What about political parties?
- 14 A. I don't remember.
- 15 Q. Have you worked while at Hanon McKendry for any political  
16 candidates?
- 17 A. Yes.
- 18 Q. Which candidates were those?
- 19 A. Brian Craig (sp).
- 20 Q. And what office was he running for?
- 21 A. I can't remember.
- 22 Q. When was it?
- 23 A. Five years, six years ago.
- 24 Q. What is your position at Hanon McKendry?
- 25 A. Lead consultant.

- 1 Q. And what does that mean?
- 2 A. What do you mean?
- 3 Q. Can you describe what that position entails?
- 4 A. It's the person that is the -- the point person between  
5 the firm and the client that is responsible for all the  
6 work that needs to be done by the agency for the client  
7 and then interacting with the client.
- 8 Q. And how long have you been at Hanon McKendry?
- 9 A. Eight years.
- 10 Q. Did you have any jobs before you came to Hanon McKendry in  
11 political advertising?
- 12 A. No.
- 13 Q. Any jobs working for candidates?
- 14 A. No.
- 15 Q. Political parties?
- 16 A. No.
- 17 Q. Advocacy groups?
- 18 A. No.
- 19 Q. And for how long have you held a position of lead  
20 consultant?
- 21 A. I don't remember.
- 22 Q. Approximately?
- 23 A. Three years.
- 24 Q. And what position or positions did you hold before that  
25 time?

1 A. Strategic planner, account executive, assistant account  
2 executive.

3 Q. And can you briefly summarize the distinctions between  
4 those positions?

5 A. Assistant account executive is working under a lead  
6 account person, typically more day-to-day operations,  
7 internal operations; an account executive, then, is in  
8 charge of the relationship between the client and the  
9 agency; strategic planner is more involved in strategic  
10 planning and research; and then a lead consultant is  
11 really the person who is there leading a team of people  
12 that are working on the account. It's a more senior  
13 account position.

14 Q. Have you worked on the same types of accounts throughout  
15 your time here --

16 A. No.

17 Q. -- for the most part? And how has that changed over  
18 time?

19 A. I work more on nonprofit accounts than I used to in the  
20 past.

21 MR. DEELEY: I'd like to have marked for  
22 identification Exhibit Number 1.

23 (Deposition Exhibit Number 1 was marked.)

24 MR. DEELEY: For the record, this is a document  
25 that has a Bates identification number at the bottom of

1 Q. What are they?

2 A. They are lists of clients that Hanon McKendry's had over  
3 the history of the firm.

4 Q. And could you identify which accounts you worked on, if  
5 any?

6 A. Citizens for Compassionate Care, Kids First! Yes!,  
7 Michigan Catholic Conference, Massachusetts Catholic  
8 Conference, Right to Life, U.S. Conference of Catholic  
9 Bishops, Life Ed, Judge Murphy, Alliance Defense Fund,  
10 Colorado Alliance for Reform in Education, Focus on the  
11 Family.

12 Q. And from -- from your work here, are you familiar at all  
13 with some of the accounts that you didn't directly work on  
14 but you have had some exposure to?

15 A. A little bit.

16 MR. DEELEY: I'd like to mark for  
17 identification Exhibit Number 2.

18 (Deposition Exhibit Number 2 was marked.)

19 BY MR. DEELEY:

20 Q. Are you familiar with what's been marked as Exhibit Number  
21 2?

22 A. Yes.

23 Q. What is it?

24 A. It's a subpoena.

25 Q. And how are you familiar with it?

- 1 Q. So television, for example, what are some reasons that you  
2 would encourage a client to advertise on TV?
- 3 A. It's -- you can reach a lot of people in a short amount of  
4 time. It's high profile.
- 5 Q. And are there some instances when you don't recommend that  
6 clients use television advertising?
- 7 A. Sometimes.
- 8 Q. And what are the circumstances that lead to that  
9 recommendation?
- 10 A. Most often it's because they can't afford it.
- 11 Q. Are there any other reasons?
- 12 A. Typically not.
- 13 Q. What are the reasons why you sometimes recommend direct  
14 mail?
- 15 A. It's a very efficient way of communicating. A lot of  
16 times if you have a list that is consistent with your  
17 target audience, it's a great way to reach that audience.  
18 Typically it's a complimentary element to a broadcast  
19 campaign. It's a reinforcement tool.
- 20 Q. And are there circumstances where you would typically  
21 advise against using direct mail?
- 22 A. There could be.
- 23 Q. Can you think of any in the past that have occurred in  
24 your work?
- 25 A. Not specific examples.

1 Q. What about newspaper advertising, what are the  
2 circumstances that lead you to recommend advertising in  
3 print?

4 A. A lot of times if you want to reach -- a newspaper  
5 audience typically is a more male audience, a slightly  
6 older audience, a higher income audience, and so if your  
7 campaign is designed to reach that audience, sometimes  
8 newspaper can be a good medium. A lot of times if you  
9 want to have a single presence on a certain day, it's a  
10 good medium to use. If you have something high profile  
11 that's happening a particular day that you want to draw  
12 attention to, it's a good way of communicating that.

13 Q. Can you explain a little bit the term single presence?

14 A. What do you mean?

15 Q. I think you said if you want to have a single presence.

16 A. If -- a lot of times a full page newspaper ad has a  
17 presence to it that few other mediums have. A lot of  
18 times other mediums, you know, it airs for 30 seconds or  
19 it airs for 30 seconds/60 seconds and it kind of goes  
20 away. With a newspaper ad, a lot of times it's just  
21 something that will get a lot of attention that day.

22 Q. And what about radio, what are the circumstances that make  
23 that a good choice for people?

24 A. A lot of times radio is a good frequency medium, so where  
25 TV, you can reach a large audience, radio helps you build

1 up the frequency of that message so that people are seeing  
2 the campaign four, five, six times and then it ends up  
3 being more effective. Because you don't have visuals,  
4 there's some creative things that you can do that can  
5 dimensionalize what you're doing.

6 Q. And what are the circumstances that would lead you to  
7 advise against the use of radio?

8 A. I can't think of any.

9 Q. Have all your -- have you advised all your clients to use  
10 radio?

11 A. No.

12 Q. And which clients did you not advise to use radio?

13 A. I can't even remember.

14 Q. Why were there some clients that you did not advise to use  
15 radio?

16 A. I can't remember.

17 Q. Have you advised all your clients to use television  
18 advertising?

19 A. I can't remember.

20 Q. If you would turn back to Exhibit Number 1, the third  
21 page, the second client listed, Of The People, do you know  
22 whether television advertising was used for them?

23 A. I believe so.

24 Q. Do you know whether radio was used for them?

25 A. I don't know.

1 A. Correct.

2 Q. And does that include advertising that's done over the  
3 radio that sometimes has to be done in short time limits?

4 A. Yes.

5 Q. And under urgent circumstances, how quickly is Hanon  
6 McKendry able to create and air a radio advertisement?

7 A. I can't remember.

8 Q. Approximately.

9 A. Do you mean from beginning to end?

10 Q. Yes.

11 MR. BOPP: Just a second.

12 (Brief conference off the record.)

13 BY MR. DEELEY:

14 Q. After your conference with counsel, you may answer.

15 A. A week.

16 Q. And at Hanon McKendry, is it sometimes necessary to run  
17 television advertisements, create them, and air them on  
18 very short timelines?

19 A. Yes.

20 Q. And if an urgent circumstance presents itself, how quickly  
21 is Hanon McKendry able to create and air television  
22 advertisements?

23 A. Two weeks.

24 Q. If you are deciding when to run advertisements, is the  
25 time period right before an election an easier time to run

1 A. Okay.

2 Q. I had asked about candidate advertising, and now I want to  
3 ask you about when you're doing political advertising but  
4 for an organization about an issue, not about a candidate  
5 election.

6 A. Okay.

7 Q. What is the action that you're seeking in that type of  
8 advertising?

9 A. You want people to understand an issue and either to be  
10 sympathetic to that issue or to act on that issue, be  
11 supportive of that issue.

12 Q. When creating that last category of advertising about a  
13 political issue and not a candidate election, is it  
14 advantageous to name an office holder when you do that  
15 type of advertising?

16 A. What type?

17 Q. If you're running an advertisement about a political issue  
18 and not about a particular candidate's election.

19 A. It can be.

20 Q. And when can it be?

21 A. When can it be?

22 Q. Yes.

23 A. It typically provides a very clear call to action for  
24 people. When you specifically say you want -- you're  
25 asking for this action directed towards this person, it's

1 -- it's easier for people to remember and act on.

2 Q. And are there some circumstances when it is not  
3 advantageous when running that type of advertising to name  
4 a particular office holder?

5 A. It can be.

6 Q. And what are those circumstances?

7 A. If it was a state level issue and you had a large number  
8 of people that needed to be lobbied, you may not list them  
9 by name. You may direct someone to a Web site where there  
10 was a list of names and they could find out who the  
11 representative was.

12 Q. Are there other circumstances that you can think of right  
13 now that -- where it would not be advantageous to name a  
14 particular office holder when running that type of  
15 advertising?

16 A. No.

17 Q. Do you have an understanding as to whether Hanon McKendry  
18 had an attorney in 2004?

19 A. I believe so.

20 Q. And do you have an understanding as to who that attorney  
21 was?

22 A. What do you mean had an attorney?

23 Q. In any capacity did they -- were they represented by an  
24 attorney, to your knowledge, in 2004?

25 A. I believe so.

- 1 Q. And who was that attorney?
- 2 A. I don't know specifically.
- 3 Q. Was it Mr. Bopp?
- 4 A. I don't believe so.
- 5 Q. And you mentioned earlier work that Hanon McKendry did for  
6 Wisconsin Right to Life. When did that work occur?
- 7 A. In 2004.
- 8 Q. Any other time periods?
- 9 A. Not that I can remember, no.
- 10 Q. And how did you first learn of the possibility that Hanon  
11 McKendry would do work for Wisconsin Right to Life?
- 12 A. I was informed by our founder and chief creative officer,  
13 Bill McKendry.
- 14 Q. And what did he tell you?
- 15 A. That he had been contacted by Wisconsin Right to Life and  
16 that I should follow up with them.
- 17 Q. And do you have an understanding as to why, among all the  
18 advertising consultants in the world, Wisconsin Right to  
19 Life ended up contacting him?
- 20 A. Yes.
- 21 Q. Why was that?
- 22 A. I believe it was the body of work that we had done. We  
23 had worked on similar clients, Right to Life clients, and  
24 we have a reputation for doing high quality  
25 communications.

1 Q. And did he -- or do you have an understanding as to who in  
2 particular passed along that reputation to Wisconsin Right  
3 to Life?

4 A. Yes.

5 Q. Who was that?

6 A. Barbara Listing at Michigan Right to Life.

7 Q. And how do you know that?

8 A. I believe Bill told me.

9 Q. And do you have an understanding as to who from Wisconsin  
10 Right to Life contacted Bill?

11 A. Yes.

12 Q. And who was that?

13 A. Barbara Lyons.

14 Q. And what did Bill indicate to you was the project that  
15 Wisconsin Right to Life was seeking to hire someone for?

16 A. I can't remember.

17 Q. Did you follow up with Barbara Lyons?

18 A. Yes.

19 Q. And did you call Barb?

20 A. I can't remember.

21 Q. And when you spoke with her or when you contacted her, did  
22 she indicate to you what project she was seeking to hire  
23 an agency for?

24 A. Yes.

25 Q. And what project did she indicate that was?

1 A. I don't remember that.

2 Q. Was it your understanding during your early conversations  
3 about the proposed filibuster campaign that Hanon McKendry  
4 was being asked to design a filibuster campaign that would  
5 lead to a court challenge?

6 A. I don't remember.

7 Q. At any point during your work for -- on the filibuster  
8 campaign, were you under the impression that the client  
9 expected you to develop the campaign in a way that would  
10 lead to a court challenge to the law?

11 A. No.

12 Q. Did anyone at Wisconsin Right to Life ever express to you  
13 the hope that a court challenge to the law would not in  
14 fact be necessary?

15 A. I don't remember.

16 Q. Did anyone ever indicate to you on behalf of Wisconsin  
17 Right to Life that -- a hope that the ad campaign would  
18 lead to a court challenge?

19 A. I don't remember.

20 Q. When did you become aware that Wisconsin Right to Life was  
21 possibly interested in hiring Hanon McKendry?

22 A. The -- in 2004.

23 Q. Approximately when in 2004?

24 A. The summer.

25 Q. And we looked at the proposal, the written proposal that

- 1           you ultimately made to Wisconsin Right to Life.
- 2           Approximately how long before that proposal was submitted
- 3           to Wisconsin Right to Life did you first hear of the
- 4           possibility of your firm being hired by them?
- 5    A.    I don't remember.
- 6    Q.    Approximately.
- 7    A.    A month.
- 8    Q.    And about how many conversations or meetings did you have
- 9           with someone from Wisconsin Right to Life before you
- 10          submitted the written proposal?
- 11   A.    I don't remember.
- 12   Q.    Do you remember roughly?
- 13   A.    No.
- 14   Q.    What, if any, research did you do before drafting the
- 15          written proposal?
- 16   A.    What do you mean by that?
- 17   Q.    Research either in preparation for the campaign or in
- 18          order to write the proposal itself.
- 19   A.    I gathered some background information, I looked at the
- 20          State of Wisconsin, I probably looked at some of the media
- 21          outlets in Wisconsin. It was primarily looking at the
- 22          state, the people in the state, and how the state was
- 23          divided up and good media outlets in various markets
- 24          throughout the state.
- 25   Q.    And did you look at all during that time into the race for

1 the Senate that was occurring in Wisconsin in 2004?

2 A. No.

3 MR. DEELEY: I'd like to mark for  
4 identification Exhibit Number 3.

5 (Deposition Exhibit Number 3 was marked.)

6 BY MR. DEELEY:

7 Q. And Exhibit 3 has a Bates number on the first page that is  
8 HM-01-111. Are you familiar with what's been marked as  
9 Exhibit 3?

10 A. No.

11 Q. Have you ever seen this before?

12 A. I don't remember it.

13 Q. Are you familiar with the way that images from the  
14 Worldwide Web print on the printers here at Hanon  
15 McKendry?

16 A. I think I've seen them.

17 Q. Is the small font at the top and bottom of the page  
18 consistent with the way the printers print images from the  
19 Worldwide Web here at Hanon McKendry?

20 A. I -- I don't know. No, I --

21 Q. You're not sure?

22 A. I'm not sure.

23 Q. As you developed your proposal to Ms. Lyons, did you  
24 gather more information about what it was exactly her  
25 organization was asking Hanon McKendry to do?

1 or was that just yourself?

2 A. It was primarily myself.

3 Q. As you had conversations with Wisconsin Right to Life  
4 understanding what -- trying to understand what they were  
5 asking you to do, did they specify more clearly what  
6 result they were seeking from the filibuster campaign?

7 A. Yes.

8 Q. What were they seeking out of the filibuster campaign?

9 A. They wanted to inform people about the issue and they  
10 wanted to motivate them, you know, to get involved, to  
11 tell their friends, to make people aware, ultimately to  
12 call on their senators and exert enough influence on them  
13 to encourage them to vote yes or no on judicial nominees  
14 that were before the U.S. Senate.

15 Q. And in advertising, the -- the way that you go about  
16 trying to persuade people is a little bit different than  
17 the way that you go about trying to mobilize them into do  
18 something, is that a fair statement?

19 A. Yes.

20 Q. And did they -- did you come to an understanding as to a  
21 relative priority between those two? Was one more  
22 important than the other to Wisconsin Right to Life?

23 A. Between which two?

24 Q. Between persuading people on the issue and mobilizing them  
25 to do something?

1 A. It's really -- it's probably two parts. It's -- it's a  
2 coin, it has two sides, and so you have to do -- you have  
3 to do the first in order to be able to do the second, and  
4 you need the second in order to pay off on the first  
5 component of it.

6 Q. Did Wisconsin Right to Life express to you a position on  
7 the actual votes on the filibusters? Did they prefer that  
8 the judges get -- that the senators vote against the  
9 filibusters?

10 A. Yes.

11 Q. And did they express to you the hope that the ad campaign  
12 would try and have the effect of making it more likely  
13 that the senators would vote against filibusters?

14 A. Yes.

15 Q. In your early conversations with them, did folks from  
16 Wisconsin Right to Life indicate when they expected the  
17 filibuster issue to come to votes in the future?

18 A. Yes.

19 Q. And when did they expect them to come to a vote?

20 A. Later on in the year.

21 Q. What part of the year?

22 A. I can't remember specifically.

23 Q. And did you plan the campaign with the expectation that  
24 the votes on the filibuster would occur at a certain  
25 time?

1 A. I can't remember.

2 Q. Did you do research on when the filibuster votes were  
3 likely to occur in the Senate while you were preparing the  
4 advertising campaign?

5 A. Yes.

6 Q. And what was the result of that research?

7 A. I can't remember, just that it was later in the year.

8 Q. And did you monitor the Senate schedule to try and ensure  
9 that the filibuster advertising occurred before votes on  
10 judicial filibusters?

11 A. I believe so.

12 Q. And how did you monitor the Senate's schedule?

13 A. Just Internet research, doing discovery, Googling it.

14 Q. And did you attempt to set up the schedule so that the  
15 advertising campaign would occur shortly before votes on  
16 judicial filibusters were to occur?

17 A. I don't remember specifically.

18 Q. Well, backing away from specific research, was it your  
19 goal for the filibuster campaign advertising to go on the  
20 air shortly before the Senate voted on some judicial  
21 filibusters?

22 A. I believe so.

23 Q. Did you learn in July or earlier that there was a chance  
24 that some votes on judicial filibusters were going to  
25 occur in July?

1 A. I don't remember that.

2 Q. Stepping away from the specific July timeline, did you  
3 have any conversations about the possibility of changing  
4 the timeline that you had prepared for the ad campaign in  
5 light of what the Senate schedule -- how it ultimately  
6 unfolded?

7 A. I don't remember that.

8 Q. Were there any conversations about the possibility of  
9 specifically expediting the process of getting the  
10 campaign filibuster ads on the air in light of when Senate  
11 votes on filibusters were likely to occur?

12 A. I don't remember that, no.

13 Q. Because you were aware that the filibuster campaign may  
14 have been leading to a court case, did you do anything  
15 differently than you would have in managing the campaign  
16 if there was no risk of that?

17 A. No.

18 Q. Did anyone from Wisconsin Right to Life ever express the  
19 hope that the lawsuit over campaign filibuster --  
20 filibuster campaign would lead people to become opposed to  
21 the McCain-Feingold Law?

22 A. No.

23 Q. Was it your hope that a lawsuit over the filibuster  
24 campaign would lead people to become opposed to the  
25 McCain-Feingold Law?

1 just create a campaign for Wisconsin Right to Life. They  
2 came with a specific issue that they wanted to address and  
3 we created that campaign for them. They were the ones  
4 that were keeping their finger on the situation to the  
5 greatest extent. We were only doing it in a secondary  
6 fashion. And so the assignment was never retracted from  
7 them and we just simply fulfilled that assignment.

8 Q. And did they basically tell you when they -- the time  
9 period in which they wanted the advertisements to run?

10 A. Yes.

11 Q. And did they ever have any discussions with you as the  
12 campaign developed about changing those times?

13 A. Not that I remember.

14 Q. During the development of the ad campaign, did anyone ever  
15 mention to you that one purpose of the ad campaign was to  
16 affect the Senate race in Wisconsin in 2004?

17 A. No.

18 Q. Was there any discussion about what the likely impact of  
19 the ad campaign would be on the Senate race --

20 A. No.

21 Q. -- in Wisconsin in 2004?

22 A. No.

23 Q. There was not even an offhand comment anywhere that you  
24 recall?

25 A. Not -- not that I can remember. I don't remember that

1 being an issue of concern or a topic of our  
2 conversations.

3 Q. Were you aware that Senator Feingold was up for  
4 re-election --

5 A. Yes.

6 Q. -- in 2004?

7 A. Yes.

8 THE WITNESS: Can we take another break?

9 MR. BOPP: Yes, sure, whenever you want to or  
10 need to.

11 MR. DEELEY: Sure.

12 (A brief recess was taken from 11:35 a.m. to  
13 11:42 a.m.)

14 BY MR. DEELEY:

15 Q. Over the course of developing the filibuster campaign, did  
16 the client ever indicate to you at any point that they  
17 wanted the purpose of the campaign to change in any way?

18 A. No.

19 Q. That sort of initial goals that they set out remained your  
20 understanding of the goals throughout the campaign, is  
21 that right?

22 A. I don't know if I understand exactly what you're saying.

23 Q. They never conveyed to you that they had changed their  
24 mind about one of the purposes of having the campaign and  
25 they wanted a slightly different purpose as it developed?

1 Q. And why did you decide to have a Web site?

2 A. Because we needed -- we needed to share information with  
3 people and that's probably the best way to do it nowadays,  
4 one of the best ways, especially when you have more -- a  
5 large amount of information. We also wanted people to be  
6 able to get the contact information there for the  
7 senators, to E-mail the senators or have phone numbers.  
8 We -- that way they could keep track of the campaign, see  
9 press releases, see articles, see all the different points  
10 about the issue. It just gives us more time to share our  
11 message with them.

12 Q. And why did you decide to do radio?

13 A. Because it was an effective way to reach that audience and  
14 it was cost effective. There were good -- there were good  
15 radio formats, types of stations that lined up with who we  
16 were trying to communicate with.

17 Q. Who was that?

18 A. What's that?

19 Q. Who were you trying to communicate with?

20 A. I can't remember the specific audience.

21 Q. Oh, that's right, but you remember there was a match?

22 A. Yes.

23 Q. And what about TV, why did you decide to use TV ads?

24 A. High profile, high visibility, seen by a lot of people,  
25 again at -- it was an effective way to connect with that

1 audience and it let us get a more complete message by  
2 being able to use some visuals and audio and music, and we  
3 could tell a fuller story than we could in other mediums.  
4 It was just more compelling. We felt like it would get  
5 people's attention.

6 Q. Did you consider using direct mail?

7 A. No, I don't remember that ever being a topic.

8 Q. Why not?

9 A. I don't know.

10 Q. Did you ever consider using print ads?

11 A. I can't remember specifically.

12 Q. Do you have an understanding as to whether op-eds were  
13 written as part of the campaign?

14 A. Yes.

15 Q. And were they?

16 A. Yes, they were.

17 Q. Were you involved in those?

18 A. No.

19 Q. And do you have an understanding as to why they were one  
20 of the means of communication you used?

21 A. No.

22 Q. Do you have an understanding as to whether writing letters  
23 to senators, encouraging people to write letters to  
24 senators was used as a tool of the campaign?

25 A. Probably because it's one way that people would still make

1 A. About what activities needed to take place during various  
2 weeks in order to be prepared to launch the campaign.

3 Q. And what types of decisions did you record that had been  
4 dictated to you by somebody else?

5 A. The launch of the filibuster campaign on 8-1 and then also  
6 the campaign finance launch 8-15.

7 Q. And had you gotten the information on those dates from  
8 Barbara Lyons?

9 A. Yes.

10 Q. And did she explain why she had chosen those dates?

11 A. Yes.

12 Q. Why?

13 A. For the launch, for the anti-judicial nominee filibuster  
14 launch, she had said that she would like to get campaign  
15 started as soon as possible, and so we looked at how long  
16 it would take to develop TV and radio and the Web site,  
17 and that was the date that we agreed to was -- was the  
18 first date that we could launch the campaign based on  
19 making all the preparations. The second date the campaign  
20 --

21 MR. BOPP: And as to that, as the question seems  
22 to encompass that, I object to that as involving planned  
23 -- or historical or planned future advocacy, object to the  
24 question on that grounds as being beyond the order, and  
25 instruct the witness not to answer that aspect of your

1 question.

2 BY MR. DEELEY:

3 Q. And who was part of the decision that the earliest you  
4 could launch the judicial filibuster campaign was August  
5 1st?

6 A. Myself and Barbara.

7 Q. And what about the project prevented you from launching it  
8 earlier?

9 A. It was a large, integrated campaign and there just --  
10 there wasn't enough time to make preparations earlier,  
11 especially during the summer months, people on vacation,  
12 so based on their schedules, we planned out activities  
13 based on the start of our proposal and came to the  
14 agreement that that was -- that was the first date that we  
15 would be able to go public with the campaign, to launch  
16 the campaign.

17 Q. And was the -- the work that Hanon McKendry had to do, was  
18 that part of the work that couldn't be achieved any  
19 sooner?

20 A. Yes.

21 Q. And you first spoke with Barbara Lyons in May of 2004.  
22 Correct?

23 A. I don't know.

24 Q. You submitted the written proposal on June 7th, 2004.  
25 Correct?

- 1 A. Right. Yes.
- 2 Q. Let's see. If you want to refer to Exhibit 4, you may.
- 3 A. No. Did you say June 7th?
- 4 Q. I did.
- 5 A. Okay.
- 6 Q. What was the correct date?
- 7 A. This is dated June 9th.
- 8 Q. Is that the day that you submitted the proposal?
- 9 A. I believe so.
- 10 Q. And you had been talking with Miss Lyons for about a month
- 11 before you submitted the proposal. Correct?
- 12 A. Probably.
- 13 Q. And so starting to prepare for the project in early June,
- 14 an August 1 launch was the earliest that Hanon McKendry
- 15 could manage?
- 16 A. Yes.
- 17 Q. Because if there are urgent circumstances, your agency's
- 18 capable of getting ads up and running in two weeks.
- 19 Correct?
- 20 A. We have done that in the past.
- 21 Q. And was there something about this campaign why it
- 22 required significantly more than that amount of time?
- 23 A. Yes.
- 24 Q. What was that?
- 25 A. It -- it was the -- the quality of the spots that we

1 wanted to achieve and it was important to allow enough  
2 time for a good strategy to be written, to allow for  
3 creative concepts to be developed, and to refine those  
4 ideas, to plan out all the production and the shooting and  
5 recording and make sure that we had all the people that we  
6 wanted booked on the jobs, and then produce those and get  
7 them out. So the size of the campaign, the level of  
8 quality, it just -- it required -- it required that  
9 timeframe in order to prepare it to launch.

10 Q. So if you had been able to accomplish all those tasks  
11 sooner, I take it, then, that you would have launched it  
12 -- the campaign earlier than August 1?

13 A. I don't know for sure.

14 Q. Well, I thought what you said was that you and Ms. Lyons  
15 discussed it and that was the earliest that you thought  
16 was possible to launch it, was that correct?

17 A. Yes.

18 Q. So if that was the very earliest that you could have  
19 launched it, then you also could have launched it a little  
20 later than that. Correct?

21 A. I don't know.

22 Q. But you felt some urgency to get it out as soon as you  
23 could manage, is that your testimony?

24 A. Yes, that's fair.

25 Q. And what was the urgency that led to you and Ms. Lyons

1 feeling like you could launch it as soon as you were  
2 able?

3 A. I wouldn't characterize it as urgency. We -- we just sat  
4 down and planned out how long it would take to develop  
5 this type of a campaign, and I made recommendations about  
6 how much time should be given to the firm and to various  
7 projects that we were creating, and she was agreeable to  
8 that timeline, and so we -- we executed the schedule that  
9 we had agreed to.

10 Q. And did she indicate any interest in the timing, any  
11 reason for the launch on August 1 other than that was as  
12 soon as you both felt you would be able to launch it?

13 A. I'm not sure I understand.

14 Q. Did she indicate that there was any other reason why she  
15 wanted to pick that timeframe for launching the campaign  
16 other than the two of you saying that that was the  
17 earliest that you could get to it?

18 A. It was an issue that was very prevalent at the time and so  
19 we wanted to prepare a campaign and address it while it  
20 was being addressed in the media. Those are really --  
21 that's the -- that was the primary reason. It was -- they  
22 wanted to address the judicial nominee filibustering issue  
23 as soon as they possibly could, and that was the calendar  
24 that I outlined for Barbara for preparing it and then  
25 eventually for launching it.

1 Q. Did she ever indicate that one reason why she wanted to  
2 launch it at that time was so that the McCain-Feingold Law  
3 would kick in a few weeks after the airing began?

4 A. No.

5 Q. Did she ever indicate that the potential court case down  
6 the road played any role whatsoever in the timing of the  
7 campaign?

8 A. I'm not sure I understand your question.

9 Q. Did she indicate that the potential court case had some  
10 effect on her thinking about when the campaign should  
11 start?

12 A. No.

13 Q. And are you aware of any significant deviations from the  
14 calendar that happened, what we can see of the calendar,  
15 anyways, in light of the numerous redactions?

16 A. I don't know to what level you mean significant.

17 Q. Well, like something that was scheduled for a week running  
18 a couple of days into the next week would not be  
19 significant. I mean more of a substantial moving around  
20 of the schedule.

21 A. Not to my knowledge, no.

22 Q. The filibuster campaign was directed at Wisconsin  
23 citizens. Correct?

24 A. I believe so.

25 Q. Do you have an understanding as to why the media outreach

1 Q. Were the automated calls that they were doing on the issue  
2 still going on?

3 A. I don't know. I don't know.

4 Q. Did they continue to publish editorials on the issue?

5 A. I don't know.

6 Q. Did they continue to have people send letters to Senators  
7 Kohl and Feingold?

8 A. I don't know.

9 Q. When you found out about the restrictions on -- that the  
10 law has on advertising naming Federal candidates, did you  
11 consider running advertisements on the issue of judicial  
12 filibuster that did not name Senator Feingold?

13 A. No.

14 Q. Why not?

15 A. We just -- we felt like the call to action was much more  
16 effective if it directed people towards a specific action  
17 that they could take, and because there were only two  
18 senators, it was easy to give people their name and then  
19 encourage them to contact their senators, so there was a  
20 specific piece of action that people could take after  
21 seeing the TV and radio spot, and we felt like that just  
22 made for a much more effective, much more compelling  
23 campaign.

24 Q. But when your choice was not run it at all or run it with  
25 that change, wouldn't it have helped your client's cause

1 Q. And did the main page have contact information for  
2 Senators Kohl and Feingold?

3 A. Yes.

4 Q. You have run some broadcast ads on political issues that  
5 did not name any office holders. Correct?

6 A. Yes.

7 Q. And was this judicial filibuster campaign different in  
8 some way from those other campaigns where you did not name  
9 the office holders?

10 A. Yes.

11 Q. And how?

12 A. The ones where we had not named the office holders are  
13 more for state level issues, when you have 50, 60, maybe  
14 70 state senators and representatives, and it would -- the  
15 sheer impossibility of being able to list that many names  
16 in a TV spot or radio spot, so in those cases where it's  
17 just -- it's physically impossible, that the next best  
18 alternative is what we've used, and -- and that's been  
19 providing one number, one memorable number that people can  
20 call, and then they have to go through the extra step of  
21 figuring out who their elected official is.

22 This is different in the fact that there were  
23 only two elected officials and so it was very easy for  
24 people to -- it was much more memorable and much more  
25 compelling a spot, people already knew their names, they

1           may have already heard their senator before, so directing  
2           them to a specific action they can take right away rather  
3           than a nonspecific action that would require several steps  
4           on their part.

5    Q.    If the goal was to provide them a specific action they can  
6           take right away, why didn't you give contact information  
7           for the senators rather than to your own Web site?

8    A.    Say that again.

9    Q.    If you wanted to give them a chance to take direct action  
10           right away, why didn't you give contact information on the  
11           ad for how they could contact the senators rather than  
12           directing people to the BeFair Web site?

13   A.    It's just -- the Web site is just much more memorable.  
14           That's why we picked BeFair, knowing that people are  
15           listening to radio, driving in their car, they don't have  
16           a pen and paper, they're not in a position to write down a  
17           phone number, and then knowing that they're watching TV,  
18           which is a very passive medium where people kind of sit  
19           back and let the medium flow over them. It's not  
20           newspaper where they have it in front of them and they can  
21           easily -- it's not a magazine ad.

22                    It was just -- the percentage of people that  
23           will see the ad and visit a site we believe is just  
24           significantly higher than the number of people that would  
25           see an ad and then try to keep track of some long phone

1 number and then make that call, so we -- that was -- that  
2 was a recommendation that we just use a simple, quick,  
3 memorable dedicated Web site address.

4 Q. And whose recommendation was that? It was your  
5 recommendation, too?

6 A. It was a collective lead team recommendation.

7 Q. Did you test the effect of the ads in any way?

8 A. No.

9 Q. There was no followup polling?

10 A. No, not that I -- none that I can remember.

11 Q. Since the ads were run, have you ever discussed the effect  
12 that they may have had on the Senate race involving  
13 Senator Feingold with anyone?

14 A. No.

15 Q. Are you aware of anyone involved with the filibuster  
16 project having conversations about the effect on the  
17 Senate race?

18 A. No.

19 Q. Do you believe that if the ad-- Well, let me back up. Do  
20 you believe that for the amount of time that the ads were  
21 run, that they did have an impact on Senator Feingold's  
22 election campaign?

23 A. What do you mean?

24 Q. Do you think that they affected that race for the Senate  
25 in any way?

1 A. No.

2 Q. Why not?

3 A. I -- because they were -- to us, all we did was create  
4 spots that addressed an issue, judicial nominee  
5 filibustering, and the tone that we took, you know, put it  
6 in any another quality spot that was very rational, very  
7 reasonable, and just encouraged people to contact their  
8 senator and encourage them to not filibuster.

9 To us, it was just -- I -- I don't see any --  
10 there was nothing -- I don't see anything in that spot  
11 that would -- that would have happened -- had an effect on  
12 the actual election.

13 Q. If the ads had continued to run for as long as you had  
14 hoped to run them, do you think then they would have had  
15 an effect on the election race for the U.S. Senate?

16 A. No.

17 Q. Why not?

18 A. Again, for a similar reason that I stated earlier. I  
19 think the -- if you look at the tone of those spots, the  
20 language that's used, the way in which the issue is  
21 treated and the senators are treated, it's a very  
22 reasonable spot, it's a respectful spot. It doesn't  
23 pertain at all to the politicking. It's just simply a  
24 straight-forward message about an issue.

25 And whether it ran -- would have run right

1 before the election or many weeks before the election,  
2 there's nothing in what we designed into that, nothing in  
3 what we've produced into that, nothing into the desired  
4 effect, so I can't see any -- I can't see any shred of  
5 reason why that would have had any kind of bearing on the  
6 actual election itself.

7 Q. If the ad was changed to have a different tone, still be  
8 run on the issue of judicial filibustering but be less  
9 reasonable, less respectful, more strident, do you then  
10 think it would have had -- if it had been run for as long  
11 as you had hoped to run the ad, that it then would have  
12 had an effect on that Senate race?

13 A. I don't know.

14 Q. Were you aware that Wisconsin Right to Life was not only  
15 conducting this judicial filibuster campaign but also  
16 spending money on that election race, specifically to  
17 defeat Senator Feingold?

18 A. No, I didn't.

19 Q. Did you know that Wisconsin Right to Life was specifically  
20 criticizing Senator Feingold on the issue of judicial  
21 filibusters?

22 A. What do you mean?

23 Q. In its campaign ads run and paid for with its PAC funding,  
24 it was criticizing him -- taking a position on his  
25 election and criticizing him on the issue of judicial

1 filibusters. Were you aware of that?

2 A. No, I haven't seen those.

3 Q. Were you aware that Senator Feingold's opponents in his  
4 election race were criticizing him on the issue of  
5 judicial filibusters?

6 A. No.

7 Q. Assuming that all those things are true, would that change  
8 your opinion on whether or not the ad, if it had been run  
9 for as long as your client wanted to run it, does that  
10 change your opinion about whether or not it would have an  
11 effect on the election?

12 A. No.

13 Q. Why not?

14 A. You're asking -- because -- you're asking about these  
15 ads. Right?

16 Q. Yes. If, assuming what I'm telling you is true, Senator  
17 Feingold's opponents are specifically criticizing him in  
18 their campaign on the issue of filibuster, there's  
19 constant Right to Life criticizing him, using their PAC  
20 funds on the issue of judicial filibusters, if all that is  
21 true, you have not just this ad but a wider market of  
22 information about the filibuster issue, and I tie it to  
23 Senator Feingold, then do you think that the ad would have  
24 had some impact on that Senate election race?

25 A. Again, I can't -- I can't look at the ad and the other

1 activities that you've described that I haven't seen and  
2 say with any certainty that would have had an impact.  
3 Again, all I can speak to are the ads that we were  
4 responsible for creating, and as an advertising person, to  
5 me, there's just absolutely nothing in these words, in the  
6 way that we address the senators, the way the call to  
7 action, the tone -- I don't know if you've watched or  
8 listened to the radio spots the way they were actually  
9 executed. To me, there's nothing in there that is --  
10 should be negatively affecting them in an election. To  
11 me, it's so focused on an issue and a very reasonable,  
12 respectful call to action, I don't see that having that  
13 effect even in that environment.

14 Q. Do you have an understanding as to how much it would have  
15 cost to continue to run the ads had the court decision  
16 been favorable to Wisconsin Right to Life?

17 A. What do you mean cost?

18 Q. How much to continue-- They had hoped to continue running  
19 the ads if they got an exemption. If that had happened,  
20 had you done any planning for figuring out how much it  
21 would cost to run these ads during that timeframe?

22 A. Yes.

23 Q. And how much would it have cost to keep running -- to run  
24 them at whatever level you had planned at? How much was  
25 it going to cost?

1 Q. Did you have any contact with any of the campaigns of  
2 Senator Feingold's opponents in 2004?

3 A. No.

4 Q. Did you have any contact with the candidates that were  
5 running against him in 2004?

6 A. No.

7 MR. DEELEY: I'd like to mark for identification  
8 Exhibit Number 19.

9 (Deposition Exhibit Number 19 was marked.)

10 BY MR. DEELEY:

11 Q. Please review it. Let me know when you're done. Are you  
12 familiar with what's been marked as Exhibit 19?

13 A. No.

14 Q. Do you have -- do you know whose handwriting it is?

15 A. No, I don't.

16 Q. If Senators Feingold and Kohl had both announced in mid  
17 July that they were no longer going to vote for any  
18 filibusters of judicial nominees, would you still have  
19 advocated doing the advertising?

20 A. I don't know.

21 Q. Would there still be a reason to?

22 A. Say the question again.

23 Q. Would there still be a reason to run the advertising if  
24 they had announced that they were not going to vote for  
25 filibusters anymore?