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# *Public Hearing*

before

## SENATE JUDICIARY COMMITTEE

*“New Jersey’s campaign finance laws”*

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**LOCATION:** Committee Room 6  
State House Annex  
Trenton, New Jersey

**DATE:** April 17, 1997  
10:00 a.m.

**MEMBERS OF COMMITTEE PRESENT:**

Senator William L. Gormley, Chairman  
Senator James S. Cafiero, Vice-Chairman  
Senator Louis F. Kosco  
Senator Robert J. Martin  
Senator John J. Matheussen  
Senator John A. Girgenti  
Senator Edward T. O’Connor Jr.  
Senator Raymond J. Zane



**ALSO PRESENT:**

John J. Tumulty  
*Office of Legislative Services  
Committee Aide*

Jim Harkness  
*Senate Majority  
Committee Aide*

Emery Ungrady  
*Senate Democratic  
Committee Aide*

*Hearing Recorded and Transcribed by*  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, CN 068, Trenton, New Jersey

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## **APPENDIX**

**SENATOR WILLIAM L. GORMLEY (Chairman):** I'd like to welcome everyone to today's hearing on campaign financing. We have a good cross-reference of witnesses. I hope that as a result of today's hearing, we'll be able to get a consensus on changes that, hopefully, will make the system more responsive and more informative.

I'd like to call as the first witness the head of ELEC, Fred Herrmann.

**FREDERICK M. HERRMANN, Ph.D.:** Good morning. I'd like to start by thanking Senator Gormley for having this hearing this morning. I'd like to also thank the Committee and also the sponsors of the various reform bills which have been put in over the past couple of years.

I'd like to start my testimony by discussing the 1993 reform law, some of the things that have already been done, and then I would want to talk about some of the things that, perhaps, we can consider doing for the future.

The Commission believes that the 1993 reform law, based on the recommendations of the Rosenthal Commission in 1990, was a useful and a valuable effort. Although there have been suggestions for changing some of its provisions from various sources, including ELEC, there are many important improvements in it.

First of all, we added, in 1993, contribution limits. We did not have contribution limits in New Jersey, except in the gubernatorial setting, up to 1993 and that was a major change in the law. Now, as we know, we have contribution limits at all levels -- for legislative elections, for local elections, even for school board elections.

We also now require the contributors to campaigns list their occupations and employers. Prior to 1993, contributors had to give their name and home address, but we didn't know who they worked for, and this was an important improvement in terms of getting heightened disclosure in the system.

We also added PAC registration in 1993. Prior to that, since 1984, Political Action Committees had to report to the Commission each quarter; however, they didn't really have to disclose who they were, and since many of the PACs have generic names -- a common one would be the Good Government PAC, we never ran into a Bad Government PAC -- you often did not know who they were. You could get the report, you could see the contributors, you could see the expenditures, but you really didn't know who the group was.

With PAC registration, now we get the name of the group. They have to tell us their type. They have to tell us whether they're a corporation, a union, ideological group, trade association. They have to tell us who controls the organization, their names, their home addresses, their occupations and employers. They also have to tell us who initiated the group, who started it, names, addresses, occupation, and employers. Finally, they have to give us a statement of objectives: Why does this PAC exist? What is its purpose?

With that information, the public now has a lot more information about how the Political Action Committees are, and it's sad to say, very few other states do that. I'm only aware of about four other states that have that sort of provision. So that was an excellent change in the law.

Also, in 1993, we added campaign fund usage guidelines. For the first time in New Jersey, we clearly banned personal use of the money, which was extraordinary. But before 1993, probably the most egregious violation one could have -- taking your campaign money and going on a camping trip or paying for your child's college, or whatever, was not illegal. Today it is, because of the 1993 amendments.

Also the 1993 amendments list what the appropriate uses of money are. You can, obviously, use the money to run your campaign. You can give it to other candidates, capped with a contribution limit, of course. You can use it for the ordinary and necessary expenses of holding public office. You can give the money to charity. You can also return it to contributors if you so desire.

We also limited the number of committees that a candidate could have. This is important because with the disclosure system, if you have multiple committees, it's very difficult to find out where the money is going.

SENATOR GORMLEY: If I may interject--

DR. HERRMANN: Yes.

SENATOR GORMLEY: --on those committees. We hear the term leadership PAC used in a variety of contexts around the country.

DR. HERRMANN: Yes.

SENATOR GORMLEY: What we eliminated in the 1993 law, is that what is referred as leadership PACs in certain contexts in other states?

DR. HERRMANN: My understanding is, I guess in looking at articles about other states and reading some political science books -- which I do occasionally -- the term leadership PAC, as it's being used now nationally,

is really referring to what we used to refer to as a personal PAC in New Jersey. The leadership PACs we have now -- and the Commission did a study of this last year -- are really legislative party committees. They are more akin to something like the Senate Congressional Committee or the House Congressional Committee, which are party committees.

But the leadership PACs-- Again, as the term is being used nationally, is referring to what we would call in New Jersey personal PACs which were eliminated in 1993, which is the restriction of the number of committees you can have.

For example, in 1987 we had one candidate who had seven different committees. Two of those committees were personal PACs which you couldn't identify that they were related to this legislator because they didn't have his name on them.

SENATOR GORMLEY: Is the person still here? (laughter)

DR. HERRMANN: He's no longer--

SENATOR GORMLEY: Keep going. Carry on, carry on.

DR. HERRMANN: I wasn't going to name names.

SENATOR GORMLEY: It just brought up a little curiosity there.

DR. HERRMANN: With limiting the number of committees you can have to two, we get clear public disclosure. We have fewer filing errors, because the unnamed individual, as a matter of fact, we did fine because, as he was transferring money back and forth between seven committees, he lost contact with his money and made all sorts of mistakes.

Also now that we have contribution limits, it would almost be impossible to try and enforce contribution limits when you have to look at

seven different committees. Because if Joe Smith gives to one committee a little bit of money and a little bit of money to committee two and a little bit of money to committee three, you're going to have to look at all those reports to try and figure out what that person's total amount is.

We also added continuous candidate reporting, which is crucial. Prior to 1993, at the end of State race for the Senate, a Senator would get elected and then would start raising money for the next campaign four years later. The public would not see that money until a month before the primary election, because we didn't have continuous reporting. We added that in 1993, and now, as you all know, you have to report every quarter until you get to the election year -- a big improvement.

We tripled the fine scales in 1993. We also added higher fines for contribution limit violations in 1993, and we also added preelection court challenges for excessive PAC contributions in 1993. And I'm happy to say that that provision of the law has been used at least twice to my knowledge where candidates took other candidates to court because of receiving excessive PAC contributions in a preelection setting.

So there were a number of very important changes in 1993.

SENATOR O'CONNOR: Mr. Chairman.

SENATOR GORMLEY: Sure.

SENATOR O'CONNOR: Excuse the interruption.

DR. HERRMANN: Sure, Senator.

SENATOR O'CONNOR: Those changes that you just highlighted, by and large, were recommendations from the Rosenthal Commission. Correct?

DR. HERRMANN: That's correct, Senator.

SENATOR O'CONNOR: And that was a Commission that was established by Senator Lynch, I believe.

DR. HERRMANN: Senator Lynch and Assemblyman Doria set that up in 1990.

SENATOR O'CONNOR: Okay. And how long did the Commission actually conduct its work before it made the recommendations?

DR. HERRMANN: I believe it was over about a four-month period. They were meeting, I think, on a weekly basis, Senator.

SENATOR O'CONNOR: All right. Thank you. You basically think that those changes were all good changes, well-constructed changes?

DR. HERRMANN: At the time, the Commission had a few concerns, that we listed, with the reform legislation. But overall, we thought that -- certainly, the things I've mentioned already this morning were all very, very good recommendations.

SENATOR O'CONNOR: Okay. Just one last thing.

DR. HERRMANN: Oh, sure.

SENATOR O'CONNOR: I read your letter in the packet of things that we got -- concerning when you began your tenure in this position -- and someone, one of your counterparts in another state, made the comment to you that you can have all the information in the world, but the question is how you disseminate it and what use it is.

DR. HERRMANN: Yes.

SENATOR O'CONNOR: What opinion do you have at this stage in your career about the utility of all the things that you just described -- all the

reports that we submit and all the data that you have? Is it doing any good to anybody?

DR. HERRMANN: I think it is, but the short answer to the question is -- and as I go on with my testimony I'll probably be a little more windy on it -- that probably the most important thing you can do in a state-- The law, of course, is very important, but if you don't have an agency that can enforce that law and administer the law, you probably haven't accomplished too much.

See, the other thing is -- this is a comment nationally -- that ethics agencies across the country have been underfunded. They don't have enough autonomy. They don't have enough enforcement power, and it has really, in a large way, undermined the utility of these laws. And that is something that is going on, it's a national problem.

SENATOR O'CONNOR: Thank you.

DR. HERRMANN: Specifically, turning to some of the areas for change that the Commission has recommended in the past few years and will be recommending again in our annual report for this year, we're recommending -- and we've recommended this before -- banning direct corporate/union contributions. Interestingly, President Theodore Roosevelt recommended that in 1907, and that was probably the first law in this area in the United States, banning direct corporate contributions, and we still don't do that in New Jersey.

We think that direct corporate/union contributions are incompatible with the existence of PACs. Since corporations and unions can form PACs, it's almost getting a double hit on the contribution limits. There

is an appearance of a problem which goes back to the beginning of the century. There is a concern that corporations and unions taking their treasury money and putting directly into the political process just doesn't look right. And then there are disclosure problems. Corporations often have names that don't tell you who the corporations are.

I was trying to come up with a name that wouldn't be a real corporation. I think I've got one. Say, the Wonder Corporation, they're contributing money, and you look at all these campaign reports and you see the Wonder Corporation is giving all this money. You might not be able to find out who the Wonder Corporation is or what it represents. Is it a toy company? Is it an insurance company? Does it have an interest in various areas? So there are often disclosure problems with just having corporations directly contributing.

We're also interested in some further PAC reform. The contribution limit chart, which I believe you might have in front of you, would be something I'd refer you to. For whatever reason, in 1993, we did not create contributions limits for individuals, corporations, unions, and groups that give to PACs. It's unlimited. So if I'm an individual, I can put a million dollars-- I can contribute a million dollars to a PAC. We don't think that that's appropriate. We think the contribution limits should apply there.

Secondly, we think that we should set in the law minimum criteria for the number of contributors and the number of supported candidates that a PAC gives to and receives money from. In other words, the PACs become bona fide. We have found that there is a problem -- and there have been some examples in the media of this -- with wealthy individuals creating their own

PAC; perhaps their spouse is the second person involved with the PAC or a cousin or a former employee. They can put unlimited amounts of money into the PAC and then the PAC can go ahead and give, so they're almost -- they are -- getting a double bite at the (indiscernible).

So we think by defining what a PAC is in the law, which we haven't really done-- To say that you have a minimum number of contributors and a minimum number of candidates that you're supporting, we can tighten up what I'm afraid has become a loophole. A lot of other states have done that. We're one of the states that do not have a definition of what a PAC is.

SENATOR GORMLEY: So the major problem you've seen with PACs is that we don't have a campaign contribution limit to the PAC.

DR. HERRMANN: Correct, Senator. We do not.

SENATOR GORMLEY: Okay.

DR. HERRMANN: One of those things.

We also think at the Commission -- and we did a big report on this last year -- that we should greatly reduce contribution limits for money given to the State and legislative party committees. That contribution limit is, I think we all know, currently \$30,000. We did a study of the legislative leadership committees and found that 98 percent of the money was coming in at under \$10,000. So there doesn't seem to even be any reason at all, even in terms of the ability of these committees to function, that you couldn't drop the contribution limit 67 percent and allow them to continue to function. It would certainly be a much better appearance.

The average contribution given to those committees, even though there is -- well, at the time, a \$25,000 contribution limit -- the average

contribution was only \$1700. So we think that they can continue to exist. But if the contribution limit is brought down significantly, we've cured one of the major concerns you have in a campaign finance reporting system, which is getting too much money from any one source; that doesn't have a good appearance.

Issue advocacy is another difficult, difficult area. What issue advocacy is, if I can explain it is, if you run a campaign ad and you don't use words such as vote for Jones, oppose Smith, reject this person's candidacy -- express language like that -- the courts have been telling us that this is not campaign related. The problem is that in reality, this is campaign related. But currently, because of court interpretation at this point, we can't get reporting of that kind of activity.

SENATOR GORMLEY: So let's put this in context. Someone could run an ad naming a particular legislator -- we like those hypotheticals -- saying -- making negative comments about that person in terms of a particular issue.

DR. HERRMANN: Yes, sir.

SENATOR GORMLEY: Which, in the minds of the public, would have the same impact as a campaign ad.

DR. HERRMANN: Yes.

SENATOR GORMLEY: The groups giving to those ads, right now, are basically-- They're not reporting or don't have to report.

DR. HERRMANN: Correct. They're not reporting it. They're not labeling it.

SENATOR GORMLEY: They're not labeling it. They have no limits whatsoever, they can spend as much as they want, and there is no reporting.

DR. HERRMANN: Correct. It's an open faucet.

SENATOR ZANE: But you also have the First Amendment.

SENATOR GORMLEY: Yes, no question about that.

SENATOR ZANE: But if somebody feels strongly about something and if there is a legislator or a Congressman or a United States Senator that's involved in the other side, how do you preclude somebody who has the wherewithal, feels strongly from doing it? I don't think we can.

DR. HERRMANN: It's going to be difficult, Senator. It might be possible. It's something that the Federal Election Commission has been exploring, but unsuccessfully, for a number of years. There may be ways to craft legislation narrowly -- because, you're right, the First Amendment is paramount -- to not offend the First Amendment and, yet, get at activity which I think most people would consider campaign related.

For example, the type of ad we're talking about is an ad that names a name or maybe it runs two weeks before an election, and it says, "Congressman Smith has been the worst Representative in the history of this State. His environmental record is terrible. His housing record is terrible. His educational record is terrible. He even beats his children. You should give him a call and tell him that he's the worst Representative you've ever heard of."

Now, that runs two weeks before the election. A reasonable person might also conclude "Gee, not only might I call him, but I probably won't vote for him." That's the concern. Is there a way we can craft legislation --

narrowly, because it would have to be narrowly because of the First Amendment -- to try and at least get that sort of activity reported? We're not saying it can't be done, but at least it could be reported. The public would know where the money came from. The advertisement would be labeled so the public would know who ran the advertisement.

Unfortunately, today-- I mean, the purpose of an issue ad in the pure sense is that any citizen, absolutely, has a right to speak out on issues and say, "I don't like government" or "I don't like this legislator" or whatever, but--

SENATOR ZANE: I think if you could demonstrate that that was either being generated at the request of a political party -- the opposition -- or it were being done at the request of an opponent, then I think you probably have the tools today to do something about that.

DR. HERRMANN: Yes. I believe if it were coordinated, I think that's correct.

SENATOR GORMLEY: If I may, respectfully-- I don't think so. Having had personal experience in this area in 1991, it's very hard to point the finger and say that one side is coordinating with the other. Just to prove it--

I don't question your sincerity, Ray, but to actually prove that they said, "We'll coordinate it," they're not going to leave a paper trail on something like that. Someone will talk to someone on the phone and say, "All right, you're in charge of the negatives. You do the issues advocacy or the independent expenditure. We'll run the positives. We'll use our campaign money for the positives." I just think proving it would be very, very difficult unless you were to have someone who was involved in the process come forward and just admit that that's what they had done. It's very hard to prove.

It's easy to say-- It might appear to be easy to prove you can link them, but all they do is, the press calls and says, "No, we don't have anything to do with one another, and we're going to keep running them--" And you're right, it is freedom of speech, and I think the best we can do is -- because we're not going to limit freedom of speech, you're correct in that -- how do we report, as best as possible, where this money comes from, in a timely manner, so at least, if there is some cross-referencing between the two campaigns, at least the public would know that. But it's -- I think it's almost impossible to prove.

SENATOR ZANE: God help us-- I hope to God we never have Big Brother. You may feel-- And I happen to know what you're talking about, and I think most of us probably do. And I would not have wanted to have been in your shoes for one second with what you dealt with. Nor am I defending anybody in this at all. And I can't say I really concentrate on the ads, but the theme of it, from what I read in the paper, you were on one side of an issue, and that organization was on the other side.

SENATOR GORMLEY: They didn't run it about the issue. They ran it about my family.

SENATOR ZANE: Well then, that is clearly wrong. I agree with that.

SENATOR GORMLEY: But, no, the point is--

SENATOR ZANE: That's not what he's talking about, though. He's talking about issues. That is wrong.

SENATOR GORMLEY: No, no-- Wait, can I tell you something? You can take any-- Now, he mentioned wife-beating in his hypothetical, in terms of the person. You can take any theme, Ray, and let me tell you, you

talk to one of these people within the Beltway, they'll do a poll, and they'll say, "These are the words we want to use. Get there." And you know, they have this game now, Six Degrees of Kevin Bacon, they eventually can link it. They'll come up with the ad and the words, and they'll be within issue advocacy, or independent expenditure. And I'm in agreement with you. I think the people-- You can't limit the ability of people to put money in. All I'm talking about, because I don't want to throw out any misconceptions that there's something grandiose or Big Brother-like, because it's far more important that we protect the basic system-- It's just to go to, how do we get them to report everything they've done, and who is giving them the money? That's as good as we can do, under the circumstances, because, you don't want to legislate for the exception, or the abuse. And that's why we do have a Constitution; we don't want to do that. But, at the same time, at least if we can get this information out, I think it would be -- it's a step in the right direction. I'm sorry, go ahead.

DR. HERRMANN: We also think, although the penalties were tripled in 1993, that they're still not high enough, in terms of statutory maximums. We had a situation in 1993, where an entity made an independent expenditure of \$200,000 and failed to report it in a timely manner, and we only could fine them \$7000. And the entity was quoted in the newspaper as saying, "Well, we spent \$200,000 and got away with it. They only fined us \$7000. That's an acceptable cost of doing business." And the commission-- I'm sure you would agree, breaking the law should never be acceptable. So we think that higher penalties are in order. I would note that

some states allow penalties up to the amount of the infraction. So that might be something the Legislature could consider.

SENATOR GORMLEY: So what we're talking about is, let us assume people have avoided reporting twenty-- Well, I don't want to be partisan, and I assume -- let's say that both sides are equal in this.

DR. HERRMANN: Right.

SENATOR GORMLEY: We've talked about budgeting for fines.

SENATOR ZANE: That's probably correct.

SENATOR GORMLEY: Being fair. But about both sides in certain circumstances, budgeting for fines, knowing, after you win, we'll pay the fine. It's a "cost," a cost of doing business. And at least we should make the fine as high as we can, if people are going to have that attitude. And what you're talking about is, in terms of a suggestion, is that, let us assume \$20,000 is spent on a campaign and they avoid reporting it. We would make the fine the same \$20,000?

DR. HERRMANN: Yes. That would be the maximum. I think it would depend on the facts, situation, and first offense.

SENATOR GORMLEY: But the point is, if they avoid until after the election reporting the amount of money, they should be fined the equivalent amount of money or up to that amount.

DR. HERRMANN: Right. It certainly, Senator, becomes more egregious to file after an election than late before the election.

SENATOR GORMLEY: Thank you.

DR. HERRMANN: You're welcome. Another thing that we've discussed in the past, that we still think should be considered, is public

financing of legislative elections. We think that's doable. It's something a couple of other states are doing -- Minnesota and Wisconsin, I believe. And it's something that, again, should be considered in New Jersey. And we think there are ways it could be done which would be efficient and not cost as much, I think. The approach in the past has been to try and follow it after the gubernatorial program. There might be more efficient ways of doing it. But, again, it's something that could be looked at.

We also believe that the autonomy of the Commission should be strengthened. Although I think New Jersey has done an excellent job in terms of the structuring of ELEC -- I think we're one of the best structured agencies in the nation -- there are still some things that can be done. The terms of the commissioners are currently three years; we've argued for a number of years that they should be five. The terms should be longer than the appointing authority, which in this case is the governor. The reason for that is, it creates more separation between the commissioners and the appointing authority. So you don't have a situation in an eight-year period where one governor could replace the whole commission, which is possible at this point. We also think that the law should allow the governor to select a chair for fixed term. The current law -- and this goes back to 1973 -- has our chair serving at the pleasure of the governor. Now, she can't remove the chair as a commissioner, but she can remove the chair as the chair, and that's not good for autonomy.

Finally, we think that perhaps some language could be crafted to allow for 90-day replacement of commissioners or they retain their seat. Unfortunately, over the past seven years, the commission, which is supposed to have four commissioners, has operated for almost the entire time, with only

a few months where this wasn't the case, with three commissioners. We're supposed to be-- We've always behaved as a nonpartisan Commission, but the appearance has got to be bipartisan; we should have two Republicans and two Democrats. When you have three commissioners, it's tilted one way or the other. So we felt with maybe a 90-day replacement language or retain the seat, that we would not have vacancies running too long.

Finally, we think that it's absolutely essential that adequate funding for recomputerization be given to the Commission and adequate funding for enforcement. The last sentence in the Rosenthal Commission report that we've already talked about a little bit said: "Simply enacting new campaign financing lobbying laws will prove meaningless unless the agency charged with administering and enforcing those laws is given the means to do so." It is very heartening to ELEC that Senator Gormley's and other reform bills that we've looked at have taken this advice and include provisions to fund ELEC's work at a higher level. ELEC has already begun to recomputerize its operations but needs the help of the Legislature to ensure that such technologies as electronic reporting, remote accessing and scanning become a reality for the citizens of our State. Based on two studies that it conducted in the early '90s, ELEC has rewired its office, set up a local area network, and is in the process of converting the software from its old system to a new system. Moreover, with the help of a special appropriation that we got from the Legislature last year, the Commission is working on an electronic filing project for the gubernatorial general election.

At this point, let me speak a little briefly about why it is important to computerize ELEC. The Commission is a small agency with a large mission.

It is responsible for the collection and disclosure of financial data from candidates, political action committees, and political party committees throughout the State. ELEC also oversees the registration of lobbyists and the disclosure of their lobbying activities and finances. The Commission administers the gubernatorial public financing program as well, regulating millions of dollars of private, as well as public, money. Finally, ELEC monitors the personal financial disclosure of candidates for gubernatorial and legislative office. Taken all together, the Commission is confronted with an enormous workload. ELEC's numbers tell the story even better. Each year, the Commission reviews up to 25,000 reports filed by over 6000 candidate committees. It handles about 13,000 public requests for information and photocopies close to 200,000 pages of reports needed by the public. The Commission oversees the activities of 600 lobbyists, 1100 political party committees, and 300 PACs.

The data collection and disclosure functions of the Commission should be thoroughly automated through current computer technologies. These modernistic tools have the potential to ease greatly the storage of file data and its rapid dissemination to the public and the media. Electronic filing of reports is an option that will aid filing entities, as well as ELEC. It will enable the distribution of forms to filers on computer diskettes and receipt back of their data on the same diskettes, which can then be loaded electronically into a database. And I brought a prop. (holds up computer disk) This might be the first prop I've used in 13 years.

But this is a computer diskette. And what we're talking about, very simply, is that we would develop a program at the Commission for, say,

electronic filing. We would then program these little babies, and we would send them out to the candidates and the treasurers. The treasurer or the candidate would stick it into the computer, turn on the computer, and there you would see the ELEC report on the computer screen. You then type in the information, then it gets put onto the computer diskette, and the computer diskette is mailed to the Commission. The Commission then takes the computer diskette, sticks it in our computer, and voila, all the information is there.

Technologies are there to do this. We are currently working, as I mentioned, on a pilot project for the gubernatorial general election to design software -- which we're currently working on -- that will do this. The next step, I would say, would be to do this for legislative candidates. It works. Other states are starting to do it, and it will make just a tremendous difference in the ability of the public and the media and even the candidates to follow the money.

High technology has also the ability to provide the public with remote access to all of the Commission's stored data. With a terminal and a modem, members of the public and the media could review reported data not only in ELEC's public room, but also in a county or municipal library, an office, or even at home.

Recomputerizing the Commission will benefit not only ELEC, but also those who file, as well as the public and the media. The Commission will be able to reduce its workload in collecting and disclosing data; relegate its clerical tasks to machines, allowing better use of limited staff resources; eliminate the need to process, store, and duplicate hundreds of thousands of

pieces of paper; enter and analyze more of the data it receives; and improve its service to those who file in the public and media by meeting their demands in a much more acceptable time frame.

Candidates, committees, and lobbyists will be offered a filing method that will reduce their burden in providing information to ELEC, while they will also benefit by accessing data remotely, so they can easily view all of the information that has been collected. The public and the media will benefit by obtaining information in a much shorter period of time and by taking advantage of remote access systems to review much more simply the Commission's database.

ELEC believes that the State of New Jersey made a good start in improving the regulation of campaign financing in 1993. Nevertheless, there is more that must be done to assure the citizens of our State that government is being run in the most open and honest manner. A crucial part of any further reform effort must be to provide ELEC with the resources to continue upgrading and enhancing its computer system and to enforce the law.

The Commission is pleased to note that President Clinton recently asked the Congress to increase the FEC's budget as part of the bipartisan effort to restore the public trust in the way we finance elections. Moreover, the State of Maryland, as part of the campaign finance reform initiative, called for the computerization of campaign reporting. The annual operating budget of their election agency will be increased by almost a quarter of a million dollars for this purpose. The recent actions of the President and the government of Maryland should serve as models for New Jersey.

ELEC agrees with Bobbie Horowicz (phonetic spelling) of Hands Across New Jersey that the first expense of government should be to maintain the integrity of our democratic process.

SENATOR GORMLEY: Are there questions from members of the Committee? (no response)

I have a couple of questions. Leadership PACs, as they are called, could you briefly go -- briefly--

DR. HERRMANN: Okay. (laughter)

SENATOR GORMLEY: Sorry about that. Could you briefly go over their history in New Jersey and do the comparison as you had done earlier with regard to other states, and your feeling -- with a limited, a lower amount that could be donated -- about those leadership PACs?

DR. HERRMANN: Well, we have recommended that the contribution limits be decreased by 67 percent. These kinds of committees -- the leadership committees -- have existed in the United States-- I got a copy of a book recently; this is a Federal study, 1926, of campaign funding in the United States. There were Senate-Congressional leadership committees. They have existed for years, and it's part of the party process.

We pointed out in our white paper that these leadership PACs really should be called legislative party committees, because PAC means a special interest group, they're party entities. The Rosenthal Commission formalized them in 1993, but I think it should also be noted that all of those committees existed prior to 1993. The change in 1993 was we eliminated all sorts of other committees -- personal PACs, mobile candidate committees -- and they were one of the few types of fund-raising vehicles that were left.

So our feeling was that they have made sense, if they are restricted. Our concern is that too much money is going in and then there is a horrible appearance.

SENATOR GORMLEY: Sure.

DR. HERRMANN: But they do serve a function of providing money to candidates who need it. I think we have situations-- Even if you're an incumbent, if you're running against a multimillionaire, where are you going to get the money? And a relatively good source of money might be from a party committee.

So I think one of the points that is made in this book -- which I actually was a little bit surprised about-- The author said that one of the first things we have to accept in a democracy is that campaigns cost money. I mean, that's how you get your message out. That's how you communicate to the public. The trick is, is to create a system where too much money isn't coming from single sources.

And that you also have to -- and I think Senator Zane's point is well taken-- The trick is to balance the need to protect the government from the appearance of corruption with First Amendment rights to communicate, and where you draw that line is crucial. If you go too far in the area of regulation, you can be cutting off First Amendment rights. On the other hand, if you go too far in the other way -- you don't regulate this behavior -- you can end up with at least the appearance of a corrupt government, which is devastating in a democracy. And I think one of the things that we're all aware of now, we live in an era where the public is not only skeptical about government-- We've got militia groups forming in the United States. We have

terroristic acts being performed in the United States, and a lot of this is predicated on the distrust of government.

SENATOR GORMLEY: What you're saying in terms of those types of committees is that if you place it in context with independent expenditure, issue advocacy--

DR. HERRMANN: Bundling.

SENATOR GORMLEY: --and the other political party, that if a particular candidate didn't have the wherewithal and was targeted on a single issue or whatever with a blank check by the other side, a committee like this could be that candidate's only source of money to offset the freedom of speech right of one of those other categories.

DR. HERRMANN: I think that's quite possibly correct. I think for challengers it's important, too, because one of the major sources of money a challenger might get is from a party committee.

SENATOR GORMLEY: Senator Martin.

SENATOR MARTIN: Let's talk about that issue a little bit, because I know it's a concern of the Chair and I think it's a concern of all of us. Absent some type of infusion from the party, given the parameters which have been sort of spelled out by the Feds on some constitutional bases which we don't have the ability to control, do you have suggestions on how one could offset a tremendous amount of money brought about by an independent source targeted at somebody? I'm putting aside whether their message is wrongful or whatever. We'll assume that it is accurate, but it doesn't have to be. I think it bothers-- It troubles us more when it seems to be blatantly

wrong on its facts, but putting that aside, I think it's a genuine concern that we all would have that this ability seems to be there.

Absent leadership PACs and a candidate's -- at least right now -- own ability to generate some funding, what would be alternatives to come back at?

DR. HERRMANN: Well, that's an excellent question, Senator. I think probably the cleanest source of money you can get is public financing, and the Commission for years has argued that we should have legislative public financing. Perhaps the next best source is party money. The concern, again, traditionally has been where is the money coming from, not where is the money going. If you have too much money coming in, in large amounts, there is an appearance that perhaps there is a quid pro quo. But if a political party committee can raise large amounts of money in small contributions, that's not a bad source of money.

But my question was if there is-- Right now, there could be an unlimited source of funding by not a party candidate, but just a group who had a message to send, and they could direct it completely and attack at a candidate, be it an incumbent or a challenger -- but let's say an incumbent. Is there any other way that the candidate would be able to retaliate is not the right word, but at least to be able to give another explanation, to be able to challenge the information being provided by this independent source?

DR. HERRMANN: Well, under the current system we have contribution limits. If you are the target of, say, an independent expenditure campaign or you're running against a millionaire, it will be extremely difficult to get enough money to get your message out to compete with that message or

to counter a message -- a negative message, most likely -- about you. You will have a very difficult time getting the money out.

One of the sources of money that you could get currently is, we have the Republican State Committee and the Democratic State Committee and the county party committees and the legislative leadership committees, and you can get money from them. But if we continue to nibble away at the sources of the funds--

I think an important point here, too, is that the Supreme Court Justices in the *Colorado* case made the point, repeatedly, that they didn't think there was really even an appearance of being corrupted by your own political party. They said that the concern that we have in the political system is special interest corruption but not candidates being corrupted by their political parties.

The Justices-- In the dictum, there was one suggestion which is very similar to what we did in the white paper. They said if you're concerned about -- and this a concern, maybe there is some oinking going on-- Somebody gives a large amount of money to a political party and wink, wink, and they direct the money to somebody else. Currently, if you do that, that's a major offense. There is a penalty in the law that you can be fined three times the amount of money, but that's a concern.

The way to address that concern further is just to drop the contribution limit of the money going to the party but not cutting off the ability of the party to fund candidates on a needs basis.

SENATOR MARTIN: Well, I think I followed what you said, but when we talk about that overused phrase, a level playing field, what strikes me

right now is if we were to go to public funds or to go to some other way in which you had limited funding of candidates -- perhaps by even further diminishing the contributions to them -- you could have-- Perhaps, with a two-party system, you could have both candidates play by the rules and not spend a dime more than either one and have relatively modest campaigns, but you could have a gang-up on one of those candidates by an outside source or outside sources that make it incredibly uneven in the way in which the campaign sort of followed through. And I don't know how to cope with that.

DR. HERRMANN: Well, let me clearly respond to what you said. Yes, that is true.

SENATOR MARTIN: And self-interests dictates, that being the case, you sort of have a nuclear buildup. The only way to protect yourself is to look for whatever sources you can and develop as big a war chest to sort of fend off that possibility.

DR. HERRMANN: Campaigns are expensive propositions, there is no question about it. And why we were collecting and spending the money is to communicate a message to the public. If we create a system in which candidates can't tell the public who they are and where they stand on the issues, we've eroded democracy by doing that. So there are a lot of competing issues here besides -- with the campaign finance reform. If you do it in certain ways, there are other things that you want, like a level playing field and the ability to communicate, that can be lost. So there has to be a balance.

SENATOR GORMLEY: So, if I may follow up on that-- To reiterate, if there is an issue advocacy, in terms of independent expenditure, it's in many ways a blank check with the problems in reporting.

DR. HERRMANN: Right.

SENATOR GORMLEY: And it affects the system on that Tuesday because it's an open stream for a negative campaign.

DR. HERRMANN: Correct.

SENATOR GORMLEY: One other question. Money, for you, in terms of-- It would appear, with those last two categories that we talked about, what we can do is enhance information exchange and enforcement.

I remember one time you had the grand total of one investigator. I understand you have tripled your staff and you're up to three now.

DR. HERRMANN: That's correct.

SENATOR GORMLEY: That's quite an assemblage you've got there to handle it. What's the total dollar amount that's reported that's spent on campaigns in New Jersey in a year?

DR. HERRMANN: I've got-- We've put together a compendium of some statistics. I'll throw out a couple of the numbers, and they're kind of startling. The amount spent on legislation election in 1995 -- of course, that was only an Assembly race -- \$14.9 million. In 1993, where both Houses were running -- this is just legislative elections -- \$20.4 million. School Board elections, in 1995, \$618,000 was spent. Main municipal elections, in 1995, \$2.4 million was spent. The total amount spent for local, primary, and general elections in 1995 was \$14.8 million. In 1994, it was \$21 million. Then, of course, in the gubernatorial election, millions of dollars are being spent there.

SENATOR GORMLEY: And that's what's reported?

DR. HERRMANN: Yes, well--

SENATOR GORMLEY: 'Cause the problem is what isn't reported in a timely manner, or whatever. We had talked about this earlier. There are a variety of proposal around on a bipartisan basis.

DR. HERRMANN: Yes.

SENATOR GORMLEY: We had talked earlier about adding \$900,000 to the budget -- \$500,000 of it dealing with computerization--

DR. HERRMANN: Yes.

SENATOR GORMLEY: So that the public, the media, or whomever could know through those computer disks, that day, who's giving the money. So that individuals could cross-reference different PACs or different funding streams to see if there is some level of coordination on that money and do it before election day.

We also talked about additional investigators.

DR. HERRMANN: Yes.

SENATOR GORMLEY: With a \$900,000 addition to the budget, how many more investigators would you be able to have -- more than the three that you now have?

DR. HERRMANN: We could add considerably more. Ten more? I mean, it would be possible to add quite a few more. We have some committees that we could probably assign two investigators to, and they could spend a year. We're talking millions of dollars in some committees, incredibly complex financial transactions.

And (indiscernible) a lot of the activity of the Commission wouldn't necessarily be punitive. I think in a lot of situations, if we have more people look at these reports earlier, people would get in a lot less trouble. The

problem is now that we'll have reports that sit there for five years and some that never get gotten to, and then, all of a sudden, you've got a five-year problem. Whereas, if we had enough people, we could get to people, say, within a few weeks, a few months and say, "You've got a problem here," bring them in, and get it straightened out.

Our goal isn't to penalize people. We're not here to collect money for the State of New Jersey. We're here to get disclosure. So we've always taken an approach--

SENATOR GORMLEY: Before election day.

DR. HERRMANN: Oh, absolutely. Because you're disenfranchising. If you go in the voting booth, you want to know this information before you vote, not after you vote.

SENATOR ZANE: I'd like to ask another one.

SENATOR GORMLEY: Yes.

SENATOR ZANE: In addition to campaign funding reform, do you see any other needs? I mean, you deal in circles, I guess, throughout the country with other people who are counterparts of yours in other states, do you see any need to address any other aspects of the election process -- to change that?

I'll tell you specifically what I'm talking about. If someone decides to go negative in a campaign and they're factual, so be it. But all too often in campaigns, people are as reckless as they possibly come. I remember commenting on it four years ago on the floor of the Senate, and the response from a very responsible legislator -- one I truly respect -- surprised me. He said, "It's the campaigns." Do you have any thoughts about that? I'm not

looking for you to dwell on it, but I know the subject is something else, but do you know of any states that are doing anything about that? Is there any screening process, any review, any looking for the truth in dealing with comments?

DR. HERRMANN: There have been attempts, Senator, actually for years in a number of states to deal with the issue of negative advertising. I think the Eagleton Institute, as a matter of fact, just a few months ago, had a statewide televised program that dealt with that issue. The big concern in attempting to regulate that and one where we have to be very careful, of course, is the First Amendment and how you get a handle on that. I think--

SENATOR ZANE: The First Amendment gives you a right to be truthful. It doesn't give you the right to be a liar, and there are campaigns that, in essence -- and I don't think anybody here would disagree with that -- where the campaigns are actually corrupt. They're lies with what is said.

SENATOR GORMLEY: Right. But -- and I don't want to go into too much of my history -- the bottom line is what they do is, they find the phrase they need that drives the poll. They look at your record until they can find something that they can call -- call it whatever they want to -- there is a strand of truth to it -- a strand of half-truth to it -- but it is enough to get beyond that point to say, "Well, that was our opinion." And then they have the money from the independent expenditure and go for it. That's the way they do it. Believe me.

And I'm in total agreement with you. But what they'll do is they'll go over somebody's record, they'll call a fee a tax. We've seen this before. Obviously, you want-- Listen, it's a political campaign, there should be some--

Obviously, there should be the right of a candidate to characterize things as they want to, and obviously, there should be some leeway with that, and that is the nature of a political campaign and that's our history.

What's happened is, some very bright professionals who don't care about who the candidate is or what area of the country it is look at a poll and deal with individuals and deal with a system as if they're a piece of meat. They drive the process.

SENATOR ZANE: So nothing is happening anyplace else? That's the bottom line of my question.

DR. HERRMANN: Oh, I think one of the things that appears somewhat fruitful -- I think Minnesota is doing this -- there have been partnerships between the media, public officials, and the public to try and work out codes of conduct for campaigns and use that as a measurable standard. That appears to be one fruitful approach to this that has been tried, and maybe that's, I think-- The evil before them, that was something, I think, that was brought out there that might be a possibility for New Jersey.

SENATOR ZANE: Thank you.

SENATOR MARTIN: Fred, you had talked before at various times in previous years -- and maybe you touched on it a little bit here, but I didn't pick up on it -- regarding a fee for certain types, at certain levels. The idea being that modest campaign contributions probably would not be charged with a fee, but as you moved up there might be something graduated which would make it much easier for you to sustain your activities. Where are you with that at the present?

DR. HERRMANN: I appreciate you asking that, Senator. We've been studying this now for at least half a decade. Our original thinking was along the lines of filing fees, but looking at what other states are doing today in our studies, the best way to do this is just to add to the operational budget of the agency. There are a lot of problems technically, administratively, and maybe even constitutionally with collecting filing fees. So I guess I'd fall back on Bobbie Horowicz's comment that the first expense of government should be to ensure the integrity of the process, and the Commission believes that that's the best way to go, just adding to the operational budget.

SENATOR MARTIN: So you've changed your position?

DR. HERRMANN: Yes, we have. We have, based on five further years of study and looking at what other states are doing. No other state that I'm aware of now is relying on filing fees for this sort of thing. They're just implementing or augmenting the budgets of their agencies.

SENATOR GORMLEY: Senator Girgenti.

SENATOR GIRGENTI: Just one quick question, Fred. Have you-- You said other alternatives and you were saying public financing is one, have you taken a position on that in terms of, do you think it's a better way to go? Is that what ELEC is saying? And what would be the funding mechanism for that? Would it be more of an increase on the amount of dollar to checkoff, or where was that money supposed to come from? Have you estimated-- I mean, obviously, you can't give an exact figure, but what would it cost?

DR. HERRMANN: Well, I'll throw out a possibility. I think, and this is ELEC's thinking as well in the past because we did a white paper on this-- I think our thinking originally was to try and base a legislative public financing system on the gubernatorial system. That has a lot of problems because legislative elections are a lot different than gubernatorial elections.

And in my reading I encountered -- and this amazed me -- one of the oldest laws in this field. In 1909 in Colorado, they had a public financing law for all candidates. They gave the money to the political parties, and they allowed the political parties to decide who should get it. Why that was felt to be an efficient mode was the party, of course, will -- say, if it's the legislative party, they're going to be interested in putting money into targeted races, ones that they can win with challenges, perhaps that have a chance. If you do it district by district and everybody gets the same amount of money, probably 75 percent of your candidates who are sure winners are going to get the same amount of money as people who are really in highly competitive races. So you could spend a lot fewer dollars by perhaps filtering the money through the political parties.

That's one model, it goes back to 1909, but I know that Brook Jackson (phonetic spelling) who is an expert in the field now -- a CNN reporter, formally of *The Wall Street Journal* -- reiterates that proposal in a book he wrote in 1988, which I don't think has been picked up on. But that is a possible model that we haven't looked, and that might be one that could be explored. It would save a lot of money and it would target the money to where it should go in competitive races.

SENATOR MARTIN: Doesn't it raise some of the same problems as a leadership PAC?

DR. HERRMANN: Well, one of the things that we talked about in our white paper was perhaps having a reasonable participation standard if you set up legislative party committees. I think a big concern that the Commission had in 1993 that many people still have today is that these are essentially one-man shows and that if there was broader participation that would, I think, eliminate that concern, and it is a relatively healthy vehicle for supplying money to candidates.

SENATOR GIRGENTI: Just to follow up-- Right now, on the gubernatorial election, for instance, you're on an equal plane. How would you visualize these type of -- public financing of legislative elections? You're saying that there would be an inherent advantage with the incumbent, obviously.

DR. HERRMANN: Well, actually not. I think the inherent advantage would be to the competitive races. I think that essentially in an average legislative election, maybe 25 percent of the election are competitive and the other 75 percent are not. That's just the luck of the draw. I think we've designed a very fair apportionate system in New Jersey, but no matter how you draw the districts, some are going to be safe and some aren't going to be safe.

The point was that if you pump the same amount of money into noncompetitive races, it's essentially wasted money. The party seems to be one of the great arbiters of where they should put the money to be successful.

SENATOR GIRGENTI: But if you base it on the model of the gubernatorial election-- For instance, in the primary now, you're spending

money when there's really no opposition. And if you did that, it would have to be a different type of legislation, obviously, because there would just be a lot of money being-- People would not have opposition, yet they'd be pumping money into public financing, and it just seems like there would be a lot of money going to terrific expenditures probably for no different results.

DR. HERRMANN: Exactly, Senator. I think that's a concern. I think we had some statistics that said that the incumbents in an election a couple of years ago outspent the challengers by 56 percent. Now, that sounds -- that's dreadful. But if you looked at the targeted races -- the close races -- I think the difference was 6 percent. So that's where the money should go, and those people who have a highly competitive race, they're the ones who need the money. If we give people in-- If the 75 percent of the people who don't have the competitive race get the same amount of money, they've got too much and the people who need it don't have enough. So that's one possibility and it might be something we can explore further down the road.

SENATOR GIRGENTI: Would you be-- Just the source that you would get the funding from would be the checkoff you're saying?

DR. HERRMANN: Oh, probably the general revenues would be, but, again, the checkoff is a possibility. One of the problems that not only New Jersey, but we've experienced across the nation is that the checkoff rate has declined.

SENATOR GIRGENTI: Right. You putting of the general fund into it as time goes on.

DR. HERRMANN: Right. Nothing the Commission recommended a few years ago was that-- We've indexed all the parts of the

public financing program except the checkoff, so we're giving out more and more money, but the amount of money being checked off has remained flat and that doesn't make sense. You'd have to index it. But the checkoff is a possibility. You're just taking money out of the general revenue account.

Again, going back to Bobbie Horowicz's comment, which I thought was incredible when she made it, this has got to be the first expense of government.

SENATOR GIRGENTI: Thank you.

DR. HERRMANN: You're welcome.

SENATOR GORMLEY: Thank you for your testimony.

DR. HERRMANN: Thank you, Mr. Chairman.

SENATOR GORMLEY: Senators Schluter and MacInnes.

We'll start with Senator Schluter.

**SENATOR WILLIAM E. SCHLUTER:** Thank you, Senator. Really, we did not come here together and this is not a joint effort, but however you want to arrange it.

SENATOR GORMLEY: We're just showing a bipartisan atmosphere. We wanted everybody simultaneously brought up, equal.

SENATOR SCHLUTER: If I may, I would like to just go through some formal comments. I do have some testimony which has been left with you.

First, Mr. Chairman, I applaud you and the members of this Committee for having this hearing. This is an important subject, not just to me or Senator MacInnes, it's important to many, many people as we can see from what's happening at the Federal level and what's happening in other

states. Certainly, campaign finance reform is something which should be addressed.

I have a couple of preliminary remarks which I think might put my specific observations in the proper context. First of all, I think we are blessed, as you just heard, with one of the best and most professional Executive Directors of an election campaign commission of any state in the nation. Dr. Herrmann does an outstanding job. He has been President of COGEL, which is a national organization, to which I belong, of state ethics and campaign organizations. He knows an awful lot about this subject, and he's doing a great job with what he has.

I come from a couple of bias, you might say, or a couple of basic beliefs. First of all, I do believe that campaign money, political money does purchase results. It does have an influencing factor in the process. And this is important to recognize. I don't think we would see as much money in the process if we didn't -- if the payers didn't expect to get some sort of results. This is not to say that anybody breaks the law, as we have observed in the recent matter before the Ethics Committee on the Senate Minority Leader and where that matter was resolved.

My second observation is I do not think that experience has shown that disclosure is enough. I think you have to have contribution limits, and this has been the experience around the various states. I think, also, that the amount of money is very important. Senator Martin referred to the arms race, how it builds up, and this gets back to where you get the money and the more you get from special interests, the more likelihood there is for the perception or the actuality of a corrupting influence.

With that, I would like to read, very briefly, from my prepared testimony. When considering campaign finance reform, it is essential to make such reform comprehensive. On too many occasions, campaign finance statutes are nibbled at around the edges or done on a piecemeal basis, often causing secondary impacts or loopholes. It serves little purpose to put one's finger in one leak in the dike if this only causes another leak to appear somewhere else.

As we all know, I was very anxious to have the Legislature consider SCR-24, my measure which would, after public referendum, change the Constitution to allow initiative and referendum to apply to campaign finance reform and several other integrity issues. This approach, I submit, worked in Massachusetts with an omnibus reform bill inspired by *I* and *R* at the end of 1994. I would suggest that your Committee study the Massachusetts' model and the process very closely, because it was a comprehensive reform, and I believe it was fair.

I'd like to tick off a number of items which I'm sure your Committee will be studying and will be considering:

Leadership PACs. It consumed a lot of your comments, Mr. Chairman, and others. The contribution levels, in my judgement, are too high and the cycle based on a year rather than a campaign cycle seems to have some unfairness about it. The structure of the leadership PACs did not follow the Rosenthal model, in respect to the fact that the Rosenthal Commission talked about caucus committees not individuals.

When I think Dr. Herrmann was referring to the national models, the Senate Campaign Committee or the House Republican or Democrat

Campaign Committee, it was a caucus type of committee. We don't have that in the 1993 law. We have individuals who are named in the law, and according to a legal opinion which I received and which I will submit to you, the law is unconstitutional with respect to leadership PACs as in the 1993 law.

SENATOR GORMLEY: Whose opinion?

SENATOR SCHLUTER: From Mr. Lawson of Legislative Services.

SENATOR GORMLEY: Okay.

SENATOR SCHLUTER: I have it right here.

It is because of the basis that it specifies only four leadership PACs. United We Stand or anybody else is not given the same ability to get the great amounts of money that the four individual people are.

SENATOR GORMLEY: All right.

SENATOR SCHLUTER: And I submit this to you.

Incidentally, the record will also show it was a different Election Law Enforcement Commission than is constituted now. But the Election Law Enforcement Commission in 1993 also opposed the principle of leadership PACs as carried forward in that legislation.

Number two, political party limits--

SENATOR ZANE: Senator, may we ask questions as we go along?

SENATOR GORMLEY: Sure, go right ahead.

SENATOR ZANE: Senator Schluter, are you advocating-- One of your bills -- somebody's-- One advocates reduction of contributions to PACs to \$10,000, another calls for the elimination of the PACs.

Gordon, I think yours calls for the elimination. Am I correct?

**SENATOR GORDON A. MacINNES:** Of the leadership PACs?

SENATOR ZANE: Yes.

SENATOR MacINNES: Yes.

SENATOR ZANE: And I think yours calls for a reduction to \$10,000. Am I accurate with that?

SENATOR SCHLUTER: No. Senator, I have three positions I could take.

SENATOR ZANE: Three? (laughter)

SENATOR SCHLUTER: I could take the--

SENATOR GORMLEY: Animal, vegetable, or mineral.

SENATOR ZANE: You're well prepared. (laughter)

SENATOR SCHLUTER: I have two bills. One to eliminate leadership PACs, which is the same as Senator MacInnes'. I guess maybe it's two.

SENATOR ZANE: Well, what is your position? Which one of the three are you on today? Are you eliminating, you calling for it, or--

SENATOR SCHLUTER: I realize this is a process, Senator, respectfully--

SENATOR ZANE: Yes.

SENATOR SCHLUTER: --that this is a process where you're going to study, and if the best that can be done is to reduce it considerably, this would be an improvement. If the next best that can be done is to give it caucus control rather than individual control and overcome the legal problem, this would be an improvement--

SENATOR ZANE: What if it's just--

SENATOR SCHLUTER: My ultimate would be to accept the universal gift, as suggested by Senator Lynch and others, of perhaps \$1800 across-the-board gift for all entities, political PACs, individuals, and so on.

SENATOR ZANE: In light of the legal opinion you have, which I have not seen, you still would support retaining the leadership PACs, just lowering the amount?

SENATOR SCHLUTER: If that's the best that could be done, yes. And I had legislation in to do that, if that was the best that could be done.

SENATOR ZANE: Okay. Thank you.

SENATOR SCHLUTER: Speaking about political party contribution limits--

SENATOR GORMLEY: Excuse me.

Senator Matheussen.

SENATOR MATHEUSSEN: I don't mean to keep interrupting the witness, but, Senator Schluter, you mentioned-- You gave an example of United We Stand, let's say, or any other group out there that might have the ability to get involved in elections. The last witness said to us that there are no restrictions under the present law. If that organization or any other organization wanted to establish a political action committee, there are no limitations on the amount of money that they could take in.

So using, let's say, the example that you gave, United We Stand versus a leadership PAC -- the four leadership PACs that are currently under the legislative process -- is that really a good example, because technically that

PAC that would be created by this outside organization could collect unlimited funds from any individual or any corporation or any person whatsoever.

SENATOR SCHLUTER: I am not-- United We Stand does not have equal party status to the minority or the majority party in either House.

SENATOR MATHEUSSEN: But according to the last witness, United We Stand could create its own PAC.

SENATOR SCHLUTER: I don't believe they are constituted as a PAC. I would have to defer to--

SENATOR MATHEUSSEN: But they could--

SENATOR SCHLUTER: I would have to defer to Dr. Herrmann on that. In a continuing political committee, I think the limits are \$5000, or whatever they are, and they are at a definite disadvantage in raising money from that particular--

SENATOR MATHEUSSEN: Well, we may just have opened the door to giving them an extreme advantage, and that is, if they create their own PAC, according to the last witness.

Okay. I didn't mean to interrupt you, but I just wanted to clarify that.

SENATOR SCHLUTER: The next item, political party contribution limits: These are also, in my opinion, too high and must be scaled down in order to establish parity with reduced contribution limits if you are going to reduce them for leadership PACs.

And I bring to your attention a very real problem where if you do reduce leadership PACs but you allow political party organizations, and particularly county organizations, to have the present levels, you do not have

a level playing field, and you have the George Norcross (phonetic spelling) situation -- if I can be personal about it -- which--

SENATOR GORMLEY: That was pretty personal. (laughter)

SENATOR SCHLUTER: Which makes it unfair and it shouldn't be unfair.

SENATOR GORMLEY: Let me--

SENATOR ZANE: What are you referring to, with the George Norcross situation?

SENATOR SCHLUTER: Well, I'm referring to the ability of one--

SENATOR ZANE: You mentioned it. What are you referring to?

SENATOR SCHLUTER: --county committee, all right -- to a county committee with a \$25,000 contribution limit. If a candidate who maybe runs in a particular county does not have the leadership PAC money to finance his or her campaign and you get a real, real strong fund-raiser who can pour tens or hundreds of thousands of dollars into that because of the advantage they have as a county leader, having a \$25,000 limit, you have an unfair playing field.

SENATOR GORMLEY: But in terms of fairness -- and I'm sorry for interrupting, but I think it's a good dialogue.

And, Gordon, feel free, because everybody else is engaged.

If we're talking about a level playing field, if we get back to independent expenditure, if we get back to issue advocacy -- the examples that we're talking about -- what happens-- Suppose that same Chairman you brought up -- suppose he has somebody being attacked for doing something that was right, and suppose an issue advocacy group is spending \$5 million or

\$10 million -- whatever they want, because they have no limit -- how does that legislator, unless they have a source of revenue to offset it-- And, you know, we always can get into the nuclear disarmament analogies, but how does someone offset that single-issue group running negatives? It's something you have to think about, that there has to be--

SENATOR MacINNES: You don't.

SENATOR GORMLEY: You don't. That's the-- Well--

SENATOR MacINNES: You don't. If you're talking about \$5 million, you don't. Life is unfair, and the Constitution protects the issue advocacy group and they've got the money, and sometimes you're not going to be able to offset that, however unfair the situation, right?

SENATOR GORMLEY: So, Gordon, let us assume that someone has done what we generally consider to be the right thing, which is that special commodity we'd like to protect. And let us assume a single-issue group comes after that individual and there is not a leadership fund or some fund that, at least in the right circumstances -- and this is for the public to decide what's right--

SENATOR MacINNES: Good.

SENATOR GORMLEY: --that there isn't a source of money of some sort that could back up that individual who doesn't have the wherewithal to raise money to offset a group like that. Do we just say, "Oh, the person lost?"

SENATOR MacINNES: I think what you have to decide is whether disadvantages of having the leadership PACs in place--

SENATOR GORMLEY: Okay.

SENATOR MacINNES: --which are enormous, are offset by the occasional use of leadership PACs to deal with the situation you've described, and that's a judgement call. I come down on the side that the disadvantages far outweigh the occasional use of leadership PACs to overcome unfair attacks from independent expenditures, which, frankly, I haven't seen happen very often. I don't see-- I know it's happened once in a while, but in terms of the--

SENATOR GORMLEY: Maybe it just seems to happen in my district. (laughter)

SENATOR MacINNES: Right. And you're in a good position to talk about it, as a consequence of your Chairmanship and the experience you've had, but I don't think that's the typical experience that we're talking about. Year in and year out, you have 120 candidates for both parties--

SENATOR GORMLEY: Well, Gordon, maybe you would have one more vote to ban assault weapons than just my vote, which was an issue, I know, you felt strongly about.

SENATOR MacINNES: Right.

SENATOR GORMLEY: And then I wound up in the position with an independent expenditure -- not going back over the issue, the issue is decided. But if people know that that wherewithal can be cranked up, don't you think that would cause a certain hesitancy in terms of certain people on votes where they would be the one member or one of only two of a party to do so? Isn't that possible?

SENATOR MacINNES: Yes, I suppose it's in the realm of possibilities, sure. But I think that I would prefer that the Committee direct its attention at things where the constitutional questions aren't so strongly

against what you would like to see happen in terms of the unfairness that's created by the court decisions, basically, that protects those independent expenditures.

SENATOR GORMLEY: But, Gordon, that's reality. That's an election. We can deal with it--

SENATOR MacINNES: That's what I'm describing, too, I think.

SENATOR GORMLEY: Well, no, we are dealing-- I'm trying to deal with it across the board, and unless you deal with every source of money that can come in, in an election, no matter what the vehicle, and you're excluding one, that's similar to not putting -- I'll give the simplistic analogy of the fourth wheel on the car, or whatever-- To say that there is one source of money that's outside the system, and we're not going to acknowledge the-- If we can't handle it, we're not going to acknowledge the potential to offset it in certain circumstances. I think that is very important.

SENATOR MacINNES: Well, you're going to offset it at a price, and you have to decide whether the price is one you want to pay. That's an individual judgement. I've looked at the situation and said that the price we're now paying day in and day out, by having this appearance of big money buying big influence in the State, through very large contributions to the leadership PACs is not worth it.

Where the people who receive those leadership PAC funds are implicitly accepting a circumstance where the constitutional legislative officers, who begin with enormous power -- the President and the Speaker, enormous power -- they've now compounded that power, increased it exponentially-- Is that the right way to say that word? No.

SENATOR GORMLEY: Exponentially.

SENATOR MacINNES: Say it for me, will you? I can't say it.

(laughter) Very--

SENATOR GORMLEY: A lot. (laughter)

SENATOR MacINNES: A lot. They've increased their power enormously, and you're now left with a circumstance where the appearance is that you've bought into the agenda of the large contributors who have made those \$100,000 to the Senate President over the last four years. And that when the big questions come up that effect those interests, it's going to get decided in a way which benefits them. And that's the appearance and it's allowed under the law, and it's not a matter of legality, it's a matter of good appearance and good government.

SENATOR GORMLEY: Well, I think we have to strike a balance -- and you bring up a good point -- of appearance plus reality.

SENATOR MARTIN: Senator Gormley.

SENATOR GORMLEY: Yes.

SENATOR MARTIN: I think it's important-- You outlined a problem and we had touched upon it earlier. One of the things that we were not sure of, if in fact that we work at this issue of leadership PACs, which we're talking about now-- Suppose we just took this one bill that Senator Schluter has proposed. In effect, it would be limiting a source of income to some legislator. What we don't know is if that goes into place -- it seems to me it would be more likely that the things that you've been talking about, these independents--

SENATOR GORMLEY: Would grow?

SENATOR MARTIN: --would grow because, as you tie somebody's hands up more, the likelihood that you could be able to weigh in and have an impact could increase.

SENATOR MacINNES: That doesn't sound like it's independent.

SENATOR MARTIN: That's why I think Senator Schluter's earlier point about trying to deal with everything comprehensively-- I recognize what Senator MacInnes says and that there are some areas that seem to be outside of our control, which are U.S. constitutional issues. On the other hand, they are directly interrelated to the things that we're trying to deal with, and to ignore them is, I think, to then put us into a fantasyland.

The other issue, which is related -- just so we've laid all the cards on the table -- is the ability of one to finance their own campaigns. There are State Senators -- some in this room -- who have much more means and have, in the past, been able to generate at key times money into their campaigns which have been very instrumental in winning or losing. That's another issue.

SENATOR GORMLEY: Senator.

SENATOR MARTIN: And so while we're talking about the influence of money with special interests, we also have to talk about another, I think, very real concern, whether we're going to make it much harder for a person of average means to be able to compete if they're limited from other sources like leadership campaigns, to deal with millionaires.

SENATOR GORMLEY: Senator Zane, then Senator Schluter.

SENATOR ZANE: Either one of you or maybe both, what are your collective thoughts-- The term leveling the playing field has been used here today. I think you maybe, possibly, used it earlier, I'm not sure. What

are your thoughts about someone who, for example, does not participate in PACs, does not take from leadership, has the wherewithal to fund their own campaign, and they can -- using their own personal resources -- can far outspend their opponent and are willing to do it? Should that be limited as well?

SENATOR SCHLUTER: Respectfully, Mr. Chairman, I have very definite ideas and definite comments in my testimony, and a lot of what you're saying I think will be covered when I finish it.

SENATOR GORMLEY: Why don't you conclude your testimony--

SENATOR SCHLUTER: Unless he wants to ask Senator--

SENATOR ZANE: I want to ask both.

SENATOR GORMLEY: All right, why don't we--

SENATOR ZANE: I think Senator Martin hit an excellent point.

SENATOR GORMLEY: All right. Here's what we'll do: conclude your testimony--

SENATOR SCHLUTER: Okay.

SENATOR GORMLEY: --then, at the conclusion of the testimony, I'd appreciate your answering the joint point that was brought up by both Senators. Now, let's conclude the testimony.

SENATOR SCHLUTER: I will try and be fast. Senator, I cannot agree more with your comment before about saying if you do all of these reforms and then you have one aberration that sticks out, it's unfair, and you're, in my opinion, absolutely right, and that's why I think the whole

process -- I think this fits in with Senator Martin's comment -- has to be comprehensive.

I point to the development of leadership PACs with the \$25,000 contribution limit. During that process, the political parties in the counties were increased to \$25,000 and it was assumed that there was a level playing field. What I'm saying now, in item number II, that if you reduce leadership PAC contribution limits, you should reduce political party contribution limits so you get parity -- notwithstanding the fact that leadership PACs have an extra advantage in the fact that the individuals have control of the agenda and they have a better ability to command these kinds of contributions.

With respect to universal contribution limits, Senator Zane asked what was my answer to the leadership PACs. I could accept universal contribution limits, and there is a lot of good thought out there right now which argues in favor of that not only from individuals, but from political action committees.

There is another concept -- which I have listed under IV -- which is aggregate limits. It applies at the Federal level. It applies in Massachusetts, and I would ask your Committee to consider aggregate limits. Because if you limit the amount of money that one contributor can give in an election cycle to whatever it is, \$25,000, \$50,000, in the aggregate to political parties and to candidates, you can, I think, address part of the problem of these party-related expenditures on issue advocacy, and so on.

I would like to second the comments by Dr. Herrmann about the elimination of direct corporate and union contributions, make it consistent -- make New Jersey consistent with the Federal level. We have a process in New

Jersey where regulated industries are not allowed to make contributions but other corporations are. What is the difference between a regulated industry which has its rates regulated by BPU or insurance regulations or a corporation which has its discharges regulated by DEP and other items? So the corporation is a public entity and I believe that they should be -- except through PACs -- prohibited, as on the national level, from giving directly.

If you do that, I would recommend that the PACs have greater degrees of regulation than they have in New Jersey. We did make improvements in 1993, but with greater improvements I think it would make a fair system.

Now, with respect to spending limits and with respect to the issue that was raised about the advantage of a wealthy individual, my item number VII says that spending limits can be accomplished through three methods. One, partial public financing -- which is done in New York City. It is a possibility. The second is subsidized media for candidates.

The third is something which -- and I've had legislation drafted, but I haven't introduced it yet -- was passed in the California referendum last year, and that is having a two-tiered contribution limit. If you agree as a candidate to spending limits, you can be allowed to have contributions doubled from the different sources rather than at their present level, which gives you a greater advantage to get the more limited funds.

I think in good systems which are properly crafted, you will see where those people with an awful lot of money will agree to the spending limits, just because of the stigma, because of the personal compunction to agree to them, rather than to go out and buy an election. I think the gubernatorial

finance system in New Jersey has proved that. We've only had one occasion where a person tried to go out and spend inordinate amounts of money and that didn't work.

Issue advocacy -- item number VIII-- I have a bill in on grassroots lobbying, which would, I think, take care of a lot on the disclosure end. It's not the issue advocacy of the--

SENATOR GORMLEY: It's different. It's different. I appreciate-- You're making fair comments about the grass roots, but it's a different issue.

SENATOR SCHLUTER: It is different, but I think if that were put in place, it would just be another impediment for some of these nefarious--

SENATOR GORMLEY: Fair comment.

SENATOR SCHLUTER: --interests to overcome. A side issue is a limit on gifts and travel for legislators. Incidentally, the Rosenthal Commission, in all of its recommendations, did an outstanding job in reforming lobbying. I don't think they did such an outstanding job in campaign finance or in the gifts to legislators.

Finally, the comments -- and I think the expression by the Committee members on adequate financing for the Election Law Enforcement Commission are very appropriate. This Commission has to be well funded. Again, this matter of soft money, this matter of issue advocacy I think can be addressed. It can be approached. Research, creativity, courage, perhaps aggregating other methods can develop a fabric which would make it much more difficult and, perhaps, I think protect the public.

Finally, I see in this Committee a will to really approach this problem, and I commend you for this approach. Anything I can do to help, I will be happy to.

Thank you.

SENATOR GORMLEY: Quickly, the last two points you brought up, I think the will is there, I would really appreciate the words whenever you get them, because-- I'm not being facetious now. In terms of those two latter sources of money you mentioned, in terms of regulating them-- But let's stick to the format that I recommended.

I would appreciate your answering the joint question that was brought up in terms of the candidates' individual spending limit, and then I'd like Senator MacInnes to be allowed to go straight through his testimony, and we will not interrupt him.

SENATOR SCHLUTER: Well, I hope-- Senator Zane, I think it was you who asked about the candidates' spending limits. I spelled out three possibilities, and if they are properly crafted, I think there is ample inducement to have the candidates agree to those spending limits and have a level playing field.

SENATOR ZANE: What does that mean, to agree? I mean, if someone doesn't agree, then they spend what they want. How does that reform?

SENATOR SCHLUTER: Because then you don't get the free television which your opponent gets.

SENATOR GORMLEY: That's not going to happen. Free television is--

SENATOR SCHLUTER: Well, in our gubernatorial system we have debates. We also have statements which are mailed out by the county clerks to all of the voters.

SENATOR GORMLEY: It comes down to \$35,000 for 30 seconds on Jeopardy, and that's what it's all about. Jeopardy and Wheel of Fortune dominate the discussions on how that money is spent. I've been there.

SENATOR SCHLUTER: I submit that when the law originally went in, in 1974, it was only for the general. Money was spent hand over fist in the 1977 primary, and right after that the law was applied to the primaries. We've seen only one case of one candidate that I know, since then, who has not agreed to that, and I think it has worked very, very well.

SENATOR GORMLEY: Senator MacInnes, if you could just answer about capping an individual candidate and then go right to your testimony. We will not be interrupting.

SENATOR MacINNES: Well, normally, I'd defer to Professor-of-law Martin, but as I understand the current situation, the courts have held -- in a case that I think is *Buckley v. Valeo* or something -- that limitations on individual expressions of one's First Amendments rights by spending money on behalf of one's own campaign is unconstitutional.

Senator Bradley -- former Senator Bradley -- has addressed this problem by recommending, along with others, that there be a constitutional amendment to correct that. One of the easy ways, therefore, to deal with it would be for anybody who has this concern, which is so burning, to introduce such a constitutional amendment or to memorialize Congress to at least get the ball rolling so that we'll have chance to ratify it if it can get enacted.

Short of that, I think the best answer is the public financing answer. And that's the only-- It seems to me, if you're under the circumstance where the Supreme Court won't let you do it in any other direct way, that the acceptance of public funding is the only other alternative that we have.

I think that New Jersey led the way in public financing with the gubernatorial election. I think extending it to the primaries as we did has worked very, very well until recently when soft money has begun to dilute the impact of public financing. But in the first three cycles of public financing, it worked very, very well. People held to the limits and, as Senator Schluter points out, the only person who opted out on it lost. So I think that that's the best answer.

Should I go ahead?

SENATOR GORMLEY: Go ahead with your testimony.

SENATOR MacINNES: It's brief. I have it here. If I can, I'll distribute it. It's not that long, but let me just go through it.

I want to thank Senator Gormley and the Committee for keeping his word by holding today's hearing. Hearings can be important. They can also be used to disguise inaction. Until bills that address the major defects in campaign finance are posted and released, then the promise of action is still a hollow one.

The biggest defect is easy to identify. The system allows big money to buy big influence. The people who run the corporations, unions, and associations that put up the big money are neither wastrels nor stupid. They contribute hundreds of thousands to the leadership PACs and State party committees because their investments are repaid.

This connection between money and influence is not conjecture or a conspiracy theory. Take a look at the information Senator Lynch released last month that connects the dots between the contributions and decisions. Read those case studies of a system corroded by an obscene level of contributions to four legislative leaders and two party committees.

I have -- and I think I made copies and have them available -- the analyses that Senator Lynch released last month showing these connections. It was picked up in a number of press stories and editorials.

Fortunately, Senator Gormley recognizes this problem. His bill, S-2020, would slash the maximum annual contribution from \$25,000 to \$10,000. So we agree we need to do something. We know we have a problem. We need to do something to restore the public's confidence but disagree about the price of doing so. Senator Lynch and I have proposed S-750 that would set a ceiling of \$1800, adjusted periodically for inflation, for all political contributions -- from everyone to everyone -- and that would take care of the leadership PAC problem.

There are two big problems with S-2020, Senator Gormley's bill. The first is that the ceiling on the contributions is still too high -- \$40,000 during a Senate cycle of four years from Philip Morris still suggests that such large contributions are designed to purchase influence. So let's bring the ceiling down, if not to \$1800, then why not to \$5000? It's a matter of judgement.

The second problem is that S-2020 takes effect in January of 1998, at least those sections that pertain to the reduction in the contribution ceiling. Now, the last report I saw said that the Senate President has \$2

million on hand -- \$2 million. Now that strikes me as enough for one campaign, so why don't we put a stop to the madness now? Let's put the effective date on S-2020 immediately -- make the effective date immediate on all provisions of S-2020.

I think we have a chance this spring to demonstrate that SCR-24 is not necessary. We don't need to ask the voters to restore integrity to our campaign finance system because we won't. The Legislature can act when presented with unmistakable evidence that the system is wide open to the corrosive influences of big money. We need more than hearings. We need to release bills of real reform, such as S-750 or an amended S-2020, and to enact them. That's the way to overcome the impetus for something like initiative and referendum in the area of campaign finance reform. If you can't do that, then let's proceed -- and Senator Schluter and I certainly will -- to try and enact SCR-24.

Thank you very much.

SENATOR GORMLEY: Questions from members of the Committee?

SENATOR MARTIN: First of all, I would very much like to see Senator Lynch's report that connects the dots. I did see newspaper clippings of them.

SENATOR MacINNES: They're all here. (indicating)

SENATOR MARTIN: Is it-- (handed material)

Thank you.

SENATOR MacINNES: They're all here. The newspapers reports had the analyses.

SENATOR MARTIN: You've made inferences, Senator MacInnes-- Just so we're clear, are you willing to say that there are specific incidents in which these contributions have purchased legislators' votes in order to get bills passed? Are you willing to talk about specific legislation passed, name names, and suggest influence?

SENATOR MacINNES: Well, I'm not--

SENATOR MARTIN: How far are we going with this?

SENATOR MacINNES: I'm going this far, that we know enough from the appearance. We don't need to have evidence at a level which would permit criminal prosecution to know that we have a problem. We have an appearance problem that is widespread and undeniable, and that is, that we have very sensible, rational people using shareholder money, using hard-to-raise private contributions from all sorts of people or businesses, and they are giving that money in very large clumps to just a couple of committees.

And by the way, the amount that goes to one committee versus another changes, as does the political power or influence of the committee. So that when you have a change in control, all of a sudden, the contributions that were formerly going to party X, now go to party Y. So if you don't think that's an appearance problem, then you and I would disagree with that, but I think it is an appearance problem. I think people give that money for a reason, because it's worth the investment. Their return is valued enough that they persist year after year after year in making the maximum contributions to the leadership PACs and to the State party committees.

SENATOR MARTIN: I didn't say there wasn't an appearance problem. I'm just trying to distinguish or at least understand your point. One, you're now saying there is an appearance problem.

SENATOR MacINNES: Right.

SENATOR MARTIN: Are you willing to go further in that and say beyond appearance, there is a buying and a selling of votes in New Jersey? Is that your accusation?

SENATOR MacINNES: I don't have the evidence for that. If I had that, then I would turn it over to the prosecutor, I guess. What I have is a belief, a conclusion that the appearance problem is sufficient motivation to change the problem, to correct the problem.

SENATOR MARTIN: With respect to changing the rules in the middle of the game, you're saying we should enact something as soon as possible, change the rules that would affect this election cycle.

SENATOR MacINNES: Right.

SENATOR MARTIN: Is that your position, too, Senator Schluter? Would you like to see us change the contribution limits in the middle of an election cycle?

SENATOR SCHLUTER: I would agree to that the same way Chapter 83 was enacted in 1973. It was put right into effect -- and that was full disclosure -- and it was applied. If study proved that it gives a disadvantage to people who have money, I'm not sure. But I have no real problem with immediate implementation.

SENATOR MARTIN: Well, it seems to me we're talking about this elusive word, fairness. To some extent, people play by certain rules, and

I don't know if -- it strikes me that it would be best to change the rules at the time that there is the least sort of, maybe, advantage/disadvantage to particular races. I don't know how it breaks down in any particular race, but right in the middle of a game where somebody could anticipate or not anticipate funding, I think, is somewhat problematic.

SENATOR MacINNES: If I could-- Obviously, the disadvantage if we were to-- If Senator Gormley were to accept my amendment to S-2020, to have it take effect immediately, and we were able to enact that legislation--

SENATOR GORMLEY: And to be honest, it wouldn't happen immediately, so I would be disingenuous to the public to say that it's going to go through the Assembly and be signed in time for it to happen.

SENATOR MacINNES: Well, some bills--

SENATOR MARTIN: I mean, if we passed a bill right now-- You said that the Senate President has \$2 million. I don't know what the differential is. I know he has more than the Senate Minority. If we were able to pass something, enact it, boom, so that the Senate Minority now has -- is locked in or very unlikely to be able to raise amounts of money to play catch-up, that's fine by at least you two guys. You don't care about the timing of any of this?

SENATOR MacINNES: I'd prefer to have it take effect immediately, because I remember the leadership PACs kicked in, in the middle of the campaign cycle. It was a date in 1993, after which, individual members were no longer free to make contributions above a certain level, and that took place right in the middle of the cycle. If that's the stopping point, however, to enacting S-2020-- Of course, I'd be happy to see S-2020 enacted if it took

effect in January of 1998, I'd prefer to see it immediately. I'd rather be serious about-- Since we've identified the problem--

Senator Gormley, Senator Schluter, and I agree that we have a problem. We need to correct, and we ought to correct it now, not eight months--

SENATOR MARTIN: I don't have a problem-- I just want to be clear, because you've talked about changing and you said it would be best to change now. But if we were to construct a date and pass something, we wouldn't hear some later complaining by the losers in that process saying, "Hey, why did you do it now? The fat cats are protecting their base." So we wouldn't hear that, at least from Senator MacInnes, because you'd like to see it as soon as we can possibly put this into place.

SENATOR MacINNES: Well, you want a guarantee of ironclad consistency. I can't--

SENATOR MARTIN: I don't want a guarantee of anything. I just want to know what your position is.

SENATOR GORMLEY: That is kind of pushy to ask for consistency hearings.

SENATOR MacINNES: Right. (laughter)

SENATOR GORMLEY: Just for the record, you did give one example of \$40,000 in contributions.

SENATOR MacINNES: Well, your bill over a four-year cycle, if it were enacted--

SENATOR GORMLEY: No, you gave the name of a particular company.

SENATOR MacINNES: Yes, I did.

SENATOR GORMLEY: Okay.

SENATOR MacINNES: It's been a rather generous contributor to such PACs, I thought it was one that was widely known as a generous contributor and I assume they would continue to be generous.

SENATOR GORMLEY: And some of us sponsored a 25-cent tax on cigarettes to build schools, and that's the way those questions are answered as I see it.

SENATOR MacINNES: Fine. Fine.

SENATOR GORMLEY: Okay.

Senator Kosco.

SENATOR KOSCO: Thank you. I'll be a little bit more specific than with the question that Senator Martin started to ask.

We talk a lot about appearance. We talk a lot about problems. We talk a lot about influence. I'd like to ask the Senator: Do you really believe that a contributor to your campaign changes the way or influences the way you vote?

SENATOR MacINNES: No, I don't.

SENATOR KOSCO: We're talking about in general and we're talking about a problem, so I want to be specific. Does it influence you when you look through your contributors and say, "Well, this person contributed to my campaign, so I think I'll vote the way they want me to?"

SENATOR MacINNES: No, but I have over--

SENATOR KOSCO: I think it requires a yes or a no answer.

SENATOR MacINNES: Well, we're not-- I'm not on trial here. I think it requires--

SENATOR KOSCO: No, but it's a specific question.

SENATOR MacINNES: I think it requires a reasonable answer, Senator Kosco. My reasonable answer would be that in my campaign I've raised money from over 1000 individuals. I think the greatest protection against what you're concerned about is to have a very broad base of contributors who are individual citizens.

SENATOR KOSCO: What am I concerned about?

SENATOR MacINNES: The appearance that I'm going to react to an issue solely because of a contribution from somebody to my campaign.

SENATOR KOSCO: Yes, well, that's what we're talking about.

SENATOR MacINNES: Right, I understand that.

SENATOR KOSCO: Does it affect your vote? Personally.

SENATOR MacINNES: You're asking me-- No, I don't think it does. I'm saying-- What I'm trying to explain is that I have a very broad base of support from individuals.

SENATOR KOSCO: And you think you're unique?

SENATOR MacINNES: No, I'm not talking for anybody else. I'm just talking for myself.

SENATOR KOSCO: Okay. But you think that everybody else would be influenced by a contribution, but not yourself?

SENATOR MacINNES: No, I didn't say that. I didn't say anything like that, as a matter of fact. What I said was--

SENATOR KOSCO: Well, that's the inference I'm getting.

SENATOR MacINNES: No, I was talking about leadership PACs, and the rules for leadership PACs are very different. Leadership PACs can collect in a four-year cycle of a Senate term \$100,000 from an individual. Now, I think there is a difference between \$100,000 and \$1800. I think there's a big difference, and I think that those differences should be acknowledged by the Legislature as being open to an appearance that they've gotten out of hand and that they're too large and that the public might draw an inference that there is a reason that people are willing to part with such large sums.

SENATOR KOSCO: All right. Now the leadership accounts take that money and they spread it out amongst candidates, including yourself and myself.

SENATOR MacINNES: No, I don't take leadership PAC money.

SENATOR KOSCO: Okay. So you don't-- You have never taken any leadership PAC money.

SENATOR MacINNES: I have never taken any leadership PAC money.

SENATOR KOSCO: But you believe that that money -- that they do spread it out and those candidates that they do spread it out to would be influenced because-- I mean, how do they know who contributed to that PAC in the first place?

SENATOR MacINNES: Well, they read newspapers.

SENATOR KOSCO: Well, that's your first--

SENATOR MacINNES: They read newspapers and stories are printed that say--

SENATOR KOSCO: That's what's causing the problem in the first place.

SENATOR MacINNES: --"Here are the largest 10 contributors to the leadership PACs." I mean, I don't think that's difficult information for most people to come by. And then they weigh--

But the problem is that it compounds the power that already inheres in the two constitutional officers -- the President and the Speaker -- who run the Legislature. The fear is that on the decisions that you can't count and are not made publicly, that the influence is seen and in the decision not to have a bill considered, in a decision to work with a Committee Chairman not to have a bill brought up for a hearing, deciding which Committee gets the bill in the first place, and then having an awful lot to say about the agenda of the Committees. And then, if it comes out of the Committee, having sole authority to decide whether the full Senate will get to vote on it.

Those are enormous powers. Now, we've compounded them with the power to raise money in amounts that other people can't raise the money. That's the problem.

SENATOR SCHLUTER: I'd like to-- Your question was addressed to both of us, so if I may--

SENATOR GORMLEY: This will be the final answer, because we have other witnesses.

SENATOR SCHLUTER: Okay.

Senator, does a contribution make a difference? Yes. It makes a difference in access. It makes a difference in the--

SENATOR KOSCO: But I'm talking specifically about your vote. The whole general public has access to a legislator. They know where we are, they can come and talk to us. They can call us on the phone; most of us still have our telephone numbers listed in the book. So that's a different story. I'm talking about pushing that button when it comes time to vote yes or no. Do you think about, did this person or did this group or did this special interest group--

SENATOR SCHLUTER: Let me answer.

SENATOR KOSCO: --did they contribute to my campaign, and should I vote yes or no?

SENATOR SCHLUTER: Let me answer why I think access is important and it is vital. Because I happen to have a primary campaign right now, I am spending over 50 percent of my time raising money. This doesn't give me the ability to do legislation and do other constituent service that I would like to. I have Finance Chairmen. Now, when my Finance Chairmen call me -- because they have been willing to volunteer to help me raise the inordinate amounts of money that you have to raise -- who gets the return call first? The Finance Chairmen.

Forget about you're being in a campaign, but if you do get money from a large contributor -- and that, I think, buys more access than the regular public who knows your telephone number and I think the facts and experience will prove that out--

SENATOR KOSCO: Well, I totally disagree with you.

SENATOR SCHLUTER: Well, that access--

SENATOR GORMLEY: Excuse me. Excuse me. I don't think we're going to agree on this. I think we've established that. I appreciate the questions and the dialogue, but we're going to have to move on.

Thank you for your testimony.

SENATOR SCHLUTER: Thank you.

SENATOR MacINNES: Thank you.

SENATOR MARTIN: Senator MacInnes, I hope you'll be the coprime sponsor of that resolution. I will have it prepared.

SENATOR MacINNES: To memorialize Congress?

SENATOR MARTIN: To memorialize Congress about individual expenditures of candidates.

SENATOR MacINNES: Right here -- about *Buckley v. Valeo*, about changing the Constitution? Sure. I'll cosponsor it. I've got no problem with that.

SENATOR GORMLEY: Neil Upmeyer.

SENATOR ZANE: Senator Gormley, while he's walking up, just a quick comment. I am more concerned about the implication-- I don't care if it's from a Democrat or a Republican, the implication that we're controlled and driven by somebody's campaign contribution-- God help the President of the Senate and the Speaker, because by the time we're finished with this, they're going to look like crooks -- past, future -- unless they're some dramatic changes.

I sat here and heard the comments a few minutes ago about legislation being considered by a Committee and controlled, and I think, frankly, it was Senator MacInnes who made it-- I am more concerned -- and

I'm here longer than any of you -- about getting a bill put up because I'm a Democrat and you people are Republican and control the Committees.

SENATOR KOSCO: Been that, done that.

SENATOR ZANE: Pardon me?

SENATOR KOSCO: Been in that position.

SENATOR ZANE: That's right. I know you have. I don't think I've thought that it's because of somebody-- I just cannot-- I just don't think the system is that sinister. Maybe I'm naive about that, but-- I think we're here to be dealing with a specific bill instead of a lot of potshots.

SENATOR GORMLEY: Well, we--

SENATOR ZANE: Because this is going to end up being very, very destructive by innuendo. The suggestion, the suggestion that it's influenced by money -- and, frankly, I think Senator Martin was right to press a little bit for some specifics if those comments are made.

SENATOR GORMLEY: When you bring this topic up, those comments are going to be made no matter what the format. That's just the nature of dealing with this issue. I think it's best that we look at it on an overall basis, that we'll review this with the Committee after the hearing, and put forward a package that does address some of the areas where there is common agreement. But no matter what format you choose for this, because of the nature of appearance or however anyone wants to label it, you're going to hear comments like that.

Mr. Upmeyer.

**NEIL UPMEYER:** Senator, thank you.

Is this on? (referring to microphone)

SENATOR GORMLEY: Is it red?

MR. UPMEYER: It's red now.

Good morning. I'm Neil Upmeyer, and I'm the President of the Center for Analysis of Public Issues. Earlier this week, we released a study, which we do every year, that reviews the campaign finance performance of the leadership PACs and the State political parties from the preceding year. I hope that you all have a copy of that study, so I will just briefly make a few comments, and then we can talk about the kinds of things you all have been discussing already this morning, if you'd like.

The 1993 reform of New Jersey's campaign finance law was supposed to change the way special interests effect our political process. By establishing a strict limit on the amount of money that can be donated to legislative candidates, the aim of the law was to control the influence of special-interest groups looking to have their way in Trenton. Instead, it opened a gaping loophole that funnels huge sums to political action committees controlled by the legislative leaders and the State political parties.

Special interests have quickly adapted to the routine. Big donors giving \$10,000 or more have poured \$21 million into the coffers of the statewide party committees over the last four years. Last year, 258 donors of \$10,000 or more contributed a total of over \$6 million to these committees. The top 22 donors each gave \$50,000 or more and favored the Republican committees over the Democrats by a margin of four to one.

Aside from the disparity in donation to the majority Republicans compared to the Democrats, there is little hint of partisanship in their giving. Sixteen of the top twenty-two investors covered all bases by contributing to

both Republicans and Democrats. The Laborers Union -- the top-dollar donor -- contributed \$70,000 to Republican committees and \$36,000 to Democrats. Since 1973, the union has contributed more than half a million dollars through these committees. Philip Morris, the second largest contributor, gave \$50,000 to the Republicans and \$55,000 to the Democrats. Over the past four years, Philip Morris has pumped \$469,000 into the coffers of the State party committees and the leadership PACs of both parties.

Where are the small contributors? They are virtually nonexistent. Contributions of \$200 or less, made up only .5 percent of the total. Republicans raised \$42,000 in small donations and Democrats raised less than \$10,000. The largest contributions to the Republican State Committee and the Republican leadership PACs last year came from two engineering firms: Steinman Boynton Gronquist and Birdsall in New York, and Remington and Vernick in Haddonfield. Together, these two firms invested a total of nearly \$157,000 in the Republicans last year and only \$6000 in the Democrats. Over the last four years, the two have given \$470,000 including a total of \$347,000 and \$122,000 to the Democrats.

Two of New Jersey's largest law firms also made the Republicans' list of biggest givers. Sills Cummis Zuckerman and its partners and Riker Danzig and its partners together gave \$146,000 to Republicans last year. The law firms, understanding who butters their bread, were far less generous with the minority Democrats giving them only \$11,000.

The largest contributor to the Democratic State Committee and the Democrats leadership PACs last year was Philip Morris USA. The tobacco company gave a total of \$55,000 in 1996. The only individuals to make the

Democrats' top-10 list last year were Vance and Darin Beth Opperman from Wayzata, Minnesota, not from New Jersey. Together they gave \$50,000 to the Democratic State Committee.

Except for the transfer of funds from these committees to Federal accounts regulated by the Federal Election Commission, there is little change to note in the pattern of giving in 1996 compared to earlier years. The same donors give year after year, usually giving both parties, for the purpose of gaining influence with party leadership. The undue influence that accompanies the large contributions made to the leadership PACs and the State parties can and should be reigned in by lowering the contribution limits as they apply to those committees.

SENATOR GORMLEY: Thank you.

MR. UPMEYER: Yes, sir.

SENATOR GORMLEY: Senator Martin.

SENATOR MARTIN: May I sort of engage you into the same conversation we've had before, and that is, understanding that there are several different sources of funding and choices to be made and certain constitutional limitations in making your recommendations, have you given thought to unintended consequences about, for example, does this heighten people of independent means and ability to have a favored place? Does it heighten the ability of third party or independent sources if we attempt to limit a potential resource that a candidate would have through his party through a leadership PAC?

I mean, I don't disagree with you. I think that leadership PACs, having sponsored the -- I won't call it the reform bill -- I'll just call it the Act

in 1993, I don't think any of us quite saw the significance of how leadership PACs could be used. But nevertheless, I am troubled today in this day and age about some of these other emerging considerations, and I think they are emerging.

For example, of one of your suggestions about limiting these PACs and contributions in general, my understanding is that the Federal government has gone further than we have and, yet, they seem to have had much more problems because of whether they're legal or not, spirit versus the law, and so on. So all I'm concerned about, again, is having gone through 1993 and saw-- I think it was pictured in one place, they said this loophole was big enough to drive a truck through. With the leadership PACs, would we by somehow trying to only deal with that and/or just contributions in and of themselves create other loopholes in which there's favoritism for certain candidates and not others?

MR. UPMEYER: Right. Well, I completely agree that we must always be conscious of possible unintended consequences of reform. I think that reform in and of itself is never complete. You're always adjusting the system and you're tweaking it according to what happens as a consequence of what you've done. We should try to be very careful that we don't create new loopholes. I think that's a very important point.

I believe it was Senator MacInnes who raised the question about individuals of wealth, spending on their behalf, for instance. I believe that he is correct about *Buckley v. Valeo*. That is the rule of the land. That the only way that you can control that sort of -- the free speech giving of a person

spending on his own behalf in a candidacy would be to establish public financing. So--

SENATOR MARTIN: And assuming the candidate would then voluntarily--

MR. UPMEYER: That's right.

SENATOR MARTIN: --agree to participate which would then--

MR. UPMEYER: That's exactly right. You couldn't force them to. They would have to voluntarily participate.

So, in my view, that is the single largest recommendation for a public financing scheme. And I thought that Fred Herrmann's description of the public financing scheme which is targeted to competitive races -- which is where you would see this phenomenon of the wealthy individual spending -- that has merit, and I think that warrants a lot of serious consideration by this Committee.

My personal view over the years has been that it did not make sense to extend public financing to legislative races because of this phenomenon that very few races are competitive. You're going to get into a position where you're going to be criticized of spending the public's money for no reason at all.

SENATOR MARTIN: I just want to interrupt you for one point which hasn't been said here, but I want to say it, and I can say it maybe neutrally because I don't have a primary or as yet a general competitor. But what I've seen is--

We keep hearing about competitive races and there are-- And you have to make two distinctions, there are competitive races in general elections

and competitive races in primaries. What we have seen-- I may have an exception this year, but I didn't the last time and I know that many of my colleagues have found that where you have the safe districts there has been a phenomena of increased primary pressure, and in some cases, because the primaries have low-voter turnout, the ability to be able to turn those seats around from the incumbents has become a major issue.

So some of us who have played in that game -- I think Senator Gormley could comment on this, as well -- know that there are-- When we talk about safe districts, damn it, there's a lot less safe districts than one thinks when you add up either a primary or the potential for a primary, and I think that now covers almost all 40 districts.

MR. UPMEYER: But part of the justification for having leadership PACs is that they are there to provide assistance in competitive races, they don't now do that in primaries either. So we already have that problem.

SENATOR MARTIN: There is no limit and, in fact, I don't think you're accurate on that.

MR. UPMEYER: But they're not doing it. You don't see-- You would not see the Senate President's PAC giving to you over another Republican competitor in your primary.

SENATOR MARTIN: How do you know that?

MR. UPMEYER: Well, I'm not aware of it. I don't think--

SENATOR GORMLEY: Wrong. Wrong.

SENATOR MARTIN: I think it's occurring this year, if I'm not mistaken.

SENATOR GORMLEY: I even knew the answer to that one.

Thank you very much for your testimony. We have a number of other witnesses. Thank you very much.

MR. UPMEYER: Glad to. Thank you.

SENATOR GORMLEY: I'm going to ask the Committee to -- we all have a great interest in this topic -- try to hold questions to a commentary at the end, because we'd like to give everyone a fair chance to testify.

The next two witnesses--

SENATOR ZANE: Senator Gormley, we don't have to resolve all of this in one day, do we?

SENATOR GORMLEY: By 2:00 it's got to be done and introduced.

SENATOR ZANE: If we have questions that we want to ask, I think we ought to be able to. I want to get out of here, as well as everybody else.

SENATOR MARTIN: We wanted to get this passed by next week.  
(laughter)

SENATOR GORMLEY: I didn't say you couldn't ask a question.

SENATOR ZANE: I know. I understand what you're saying, but at the same time, it gives like a chilling effect when the Chairman says we'd like you not to, so we can get this through. I mean, there are questions-- I'm really learning a lot from people today by virtue of some of the questions and very enlightened by Senator Martin's questions--

SENATOR GORMLEY: I didn't mean to parallel the prior use of chilling effect.

SENATOR ZANE: --and Senator Kosco's.

SENATOR GORMLEY: In certain other cases-- I wasn't trying to emulate where you got the phrase chilling effect.

Thank you.

The next two witnesses will be Ed Martone and Art Eisenberg from the ACLU.

**EDWARD MARTONE:** Good afternoon, Mr. Chairman, and members of the Committee. Thank you for the opportunity to address this important issue. I can tell you just on a personal note that I've done some thinking on this subject and see a lot of problems, have some problems with a lot of the solutions that are offered, and I don't have better ones of my own, I must honestly tell you. So I've called in someone who has done much more thinking about it, has written much more about it, and I think is an expert on this issue and, certainly, and our position on this issue. I'd like to introduce to you Art Eisenberg, who has been on the legal staff of the ACLU for about 25 years. He has been the Legal Director of the New York affiliate of the ACLU for 7 or 8 years. I'm going to ask Mr. Eisenberg to address some of the questions you've raised this morning.

**ARTHUR EISENBERG, ESQ.:** Thank you, Ed, and thank you, Senators.

I'd like in a few moments to just talk globally about the constitutional implications of efforts of campaign finance reform and then speak specifically about the range of public financing proposals of a variety of sorts that have been advanced as potentially constitutional solutions to the problem.

To begin with, I think it is well recognized from the conversations that have been had this morning that calls for campaign finance reform rest upon two very laudable goals. The first involves an effort to at least reduce the capacity of moneyed interests to buy access to officeholders. The second, broadly speaking, involves the notion that, if possible, we should try to equalize expressive opportunities in a political campaign and create what some have called this morning a level playing field and what others have described as a fair fight.

These reform efforts are frequently accompanied, as we heard from Senator MacInnes this morning, by the claim that in order to really make an impact on the problem as it is perceived, we need to impose spending limits. But, after all, the Supreme Court in *Buckley v. Valeo*, when confronting spending limits imposed by the Federal statute, found that such spending limits violated the First Amendment. And so the reform advocates frequently come forward and say, in essence, *Buckley v. Valeo* was wrongly decided, it is out of step with a well-understood First Amendment principles, and it ought to be overturned either by the Supreme Court or by constitutional amendment.

In a few moments, I just want to suggest that while *Buckley* may be flawed in some significant respects, I think *Buckley* rests upon two fundamental propositions which I think are largely incontestable. And I'd like to just sort of lay those out to provide a framework for discussion.

The first is the proposition that political speech, campaign speech lies at the core of the First Amendment. I don't think there would be serious dispute about that proposition. The second is that efforts to reduce spending

will necessarily reduce, at the very least, the quantity of speech, and as a consequence, the range of issues that can be discussed and the size of the audience that will be reached.

The first proposition, as I say, is incontestable and unarguable. The second has been, in some forums, contested with an argument I think that flows from some aphorism that *Buckley v. Valeo* rests upon the notion that money is speech. I don't think *Buckley* said and *Buckley*, in fact, did not say that money is speech, but what *Buckley* recognizes is that there is a long line of First Amendment cases which hold that if you limit the financial component of an expressive enterprise, you limit the underlying expressive enterprise itself.

There was a case in Colorado only a few years ago where the State of Colorado said, "If you want to carry around petitions for initiative and referendum" -- Colorado is one of those states that allows legislation through initiative -- "if you want to carry a petition around, you can do so, but groups cannot and individuals cannot pay petitioners to carry those petitions around." That restriction was challenged on First Amendment grounds and the Supreme Court recognized that by limited petition carrying in that fashion, one was limiting -- the State of Colorado was limiting -- First Amendment freedoms in an unconstitutional way, and the Court invalidated that Colorado law.

There are a whole host of cases. Going back to a 1920s case where Huey Long, basically, was unhappy with criticism he was receiving from the New Orleans' newspapers; he persuades the Legislature to pass a law imposing a tax on all newspapers with circulations in excess of 20,000. As it happened, the tax applied only to the New Orleans' newspapers. He came in and said, "Look, they can still write their editorials criticizing me, they're just not going

to make as much profit.” The Supreme Court recognized, even in that case, that if you burden the underlying financial component to a First Amendment enterprise, you burden the expression itself.

So I think when all is said and done, *Buckley* rests upon two well-recognized and, I think, unarguable legal propositions. But I think-- And as a consequence of that, the Court essentially said any burden on campaign spending poses a substantial restriction on free speech and must be justified by some compelling governmental interest which is effectively being advanced. Ultimately, I think the Court saw that the two laudable goals, though they be -- the equalization goal and the concern about the appearance of corruption or the buying of access -- that those interests could not be effectively advanced through spending limits.

By way of demonstrating that point, I think we might consider what the world would have looked like if *Buckley* had been decided differently. If, indeed, the Supreme Court had--

SENATOR GORMLEY: Excuse me. Excuse me. Could we skip to what *Buckley* does? Because you're, quite frankly, so well versed on the issue that I would like you to focus on-- You've heard ideas for reform. You've heard about other sources of money. I'd like to really focus and use your expertise for the benefit of the Committee in terms of what we can limit -- I've mentioned independent expenditure and other issues like that-- Can we really do anything or is it just something that we're always going to have to try to offset, or whatever?

I really would like to get into this big circle of all the sources of money. Are there any restrictions or are some of those sources of money just

there? And you can have disclosure, or whatever, but you're not really going to be able to limit that freedom of speech--

MR. EISENBERG: I think the capacity to achieve genuine equality is diminished to the vanishing point in our real world. As you point out, if you -- given the capacity of money to find an outlet for its expression, if you close up the outlet one place, it's going to find its source elsewhere.

And even with respect to imposing limitations on contributions-- If you start imposing limitations on contributions, the would-be contributors -- the big-money contributors -- will start engaging in independent expenditures. That will, at the very least, buy access. It is hard for me to imagine -- or most observers of the political scene to imagine -- that when you have big-moneyed interests spending, even if it's not coordinated, the officeholders who are the beneficiaries of that spending will notice.

SENATOR GORMLEY: And that's not limited.

MR. EISENBERG: And that can't be limited consistent with *Buckley*.

SENATOR GORMLEY: So you could--

MR. EISENBERG: And I think one of the things to remember about the regime that was put in place -- that *Buckley* reviewed -- was that even under that regime, which in some sense imposed a limitation on virtually everybody, an exception was created for the institutional press. It's important to bear this in mind.

So even under the regime in *Buckley*, everybody was treated equally, except in some Orwellian fashion, some were treated more equally than others. Everybody was limited in what they could spend, but *The New*

*York Times* or Rupert Murdoch could go out and take editorials out expressing opposition or support for candidates, and the candidates couldn't reply.

Imagine that taking place in a small town where there is a single newspaper. You would have a regime where the newspaper, as everybody recognized, had to have a First Amendment right to write editorials in support or in opposition to candidates, but because you're imposing a variety of spending limits or even serious contribution limits, you're going to limit the capacity of the candidate who has been criticized by a local newspaper to respond appropriately.

Those are some of the concerns that the ACLU has with respect to proposals either to impose spending limits or even proposals to impose serious contribution limitations; although, contribution limitations are constitutional. There is simply a very practical concern about that, which is that you will simply drive the money into the form of an independent expenditure.

But that is not to say that there is not a need for considering some reforms, but any reform efforts have to be undertaken modestly. What we are suggesting is that reforms take the form of a series of public financing mechanisms. There can be straight public financing of the sort that New Jersey has engaged in to this point. There can be reduced or free franking privileges for all ballot-qualified candidates. It's nothing but another way of spending money, because somebody has to pay for it.

SENATOR GORMLEY: Sure.

MR. EISENBERG: But one can consider, since, at least at the local level, what drives the source of the problem is the dependency of

officeholders -- and you all know this better than any of us -- on money because of the electoral competition and the cost of television time and mail.

SENATOR GORMLEY: But what you're saying is that short of public financing, which requires someone, in effect, to enter into an agreement in order to not make use of their ability to have unlimited expenditures--

MR. EISENBERG: Right.

SENATOR GORMLEY: Short of public financing, what you are saying -- the issue advocacy, the independent expenditure -- is there is no real limit you see that you could put on those.

MR. EISENBERG: Well, I think there is no way of achieving equality. I think what you can do through public financing -- and I'll speak, if I have a moment or two, to a specific species of public financing--

SENATOR GORMLEY: What I'd like to do is I'd like to limit the-- I appreciate the point of view, but I don't see-- Public finance doesn't seem to be something that will be moving in the near future. I don't see it. But I appreciate your point of view and it highlights the problem on the other end, but I would appreciate--

MR. EISENBERG: Yes, I think we have to bear in mind two--

SENATOR MARTIN: Senator Gormley, may I just make one--

Just following your train of thought and your earlier point about independent financing: If we had public financing, even if there was a voluntary agreement between the two candidates, all the money that would otherwise go to the candidates would either be substantially reduced or eliminated. That money, from what you suggested earlier-- If there are strong independent groups who have a big stake in the outcome, they can still play in

the game, select one of the candidates, and now use all of their money to help to try and tilt that election. You can't do anything about that.

MR. EISENBERG: Right. Yes. What I'm saying is-- Again, focusing on the two interests I identified before -- the equalization interest and what is, I think, wrongly described as the corruption interest, but the interest in having money and interest by access -- I don't think-- Because there are players out there who will have a right to engage in independent expenditures, public financing is not going to deal with the equality concern. It's not going to achieve the level playing field, the fair fight. There's always--

SENATOR MARTIN: And it may make it even more unequal.

MR. EISENBERG: Well, I'm not sure it would do that. But I think what public financing would do would be to at least ameliorate, not eliminate, but reduce or ameliorate, the concern about moneyed interests buying access.

SENATOR MARTIN: But there was an appearance question raised, and the suggestion was the money that is contributed to the candidates creates an appearance that may, in fact, influence their motives.

MR. EISENBERG: Right.

SENATOR MARTIN: Couldn't-- Just a half-step back: If you've got two candidates, they agree to public financing, they're only spending the same amount of money, independents over here decide to contribute with negative ads against one candidate with no agreement, but couldn't there well develop some kind of understanding that the beneficiary who wins an election like that is going to, in some way, be beholding and create if not an

appearance, a quasiappearance of working with these independents who are out there?

MR. EISENBERG: I don't think there is any question but that the independents, if they're spending large enough sums of money, are buying access, so at least the candidate notices.

Coming back to Senator Kosco's question before, I'm not suggesting and I think we have to be careful not to suggest that money is buying votes. That may happen in some rare circumstance, but it's very rare, if it happens at all.

SENATOR MARTIN: 'Cause I could just see--

MR. EISENBERG: But what it does do is it buys access to some degree.

SENATOR MARTIN: But what I could just see is this hypothetical: Two candidates, close election, agree to public finance, spend the same amount of money, and, all of a sudden, out of the blue, to help one of them is a tremendous amount of money by certain special interests that are independent, and they knock my -- let's just say if I was in it -- opponent out of the water. I'd like it better that they didn't contribute to me because I couldn't say that they were buying my vote--

MR. EISENBERG: Right.

SENATOR MARTIN: --but after the election is over, isn't the suggestion that I would give them access, that I would be beholding to them? Wouldn't it be almost the same as if they had put the money to me and I had spent it?

MR. EISENBERG: I think that's right. I think that's right. So what I think is that you're not going to achieve equality because of the outside players who can always skew the debate in when, where, or the other. You'll never achieve actual equality. What you might be able to do through public financing is reduce the dependency.

What I'm concerned about is the fact that you all have to spend so much time raising money and that, in some respects, distracts from your capacity to, as suggested before, work on legislation or service constituents. But there is also the capacity of that money, that you need because you're dependent upon paying for television or paying for radio or even just paying for mailings, to give people with big money access to you. There may be a way through a regime of public financing, including reduced mailing rates, including free TV time -- and that's not without some constitutional problems--

SENATOR GORMLEY: Excuse me. As I said, in terms of the case law, we certainly appreciate it. In terms of those ideas about free media, I think that's an interesting idea, but you know better than I the limitations of ever achieving that goal.

MR. EISENBERG: And I think there are constitutional problems with the proposal, as well.

SENATOR GORMLEY: So it's even harder--

MR. EISENBERG: Which is, in fact, why I wanted to address it for just a moment.

SENATOR GORMLEY: No. If I may, and believe me we appreciate your being here and the focus you've given us on the case--

MR. EISENBERG: Fair enough. Fair enough.

SENATOR GORMLEY: --I think to go off into that arena takes us far beyond anything we could even consider. It makes for a very interesting dialogue, but it's something that, obviously, we wouldn't be dealing with.

We appreciate you making the trip and being available to the Committee today.

Are there any other questions? (no response)

MR. MARTONE: Could I just have a second?

SENATOR GORMLEY: Sure.

MR. MARTONE: There is a-- I realize that for a lot of reasons, mostly economic, the idea of candidates for 120 offices getting checks from the government is not a possibility when we talk about campaign financing, but Art did mention that there are some-- We might be able to be creative about that and consider them under--

SENATOR GORMLEY: We could do it in alphabetical order of the counties or-- (laughter)

MR. MARTONE: No, things like, as was mentioned, candidates--

SENATOR KOSCO: That will work for me.

MR. MARTONE: --who qualify for the ballot getting vouchers to ride New Jersey Transit buses and trains for free, getting franking privileges, getting a pass so that they don't have to pay tolls.

SENATOR ZANE: We don't have any buses at my end of the State.

MR. MARTONE: So that the candidates don't have to pay tolls on the highways-- I mean, there are some ways that we can underwrite the process without necessarily writing a check to candidates.

SENATOR GORMLEY: Thank you very much for your testimony.

MR. MARTONE: Thank you.

MR. EISENBERG: Thank you.

SENATOR GORMLEY: Dennis Jaffe and Paul Contillo.

**PAUL CONTILLO:** Senator, thank you. Thanks for having the hearing. You're the one Senator I haven't served with. I'll be very brief. I just want to speak in general terms.

I think you all have seen the different polls where over 90 percent of the public thinks that our public financing system is broken. It has to be effected. I think we all agree on the first point, that ELEC needs more money for better enforcement and certainly for electronic disclosure.

Secondly, we at Common Cause completely and fully endorse the SCR-24 -- the bill from Senators MacInnes and Schluter. We think in the long term that has to be put in place because there are so many things that develop each year. It's also, I think, an impetus to move the Legislature into action.

The other point I wanted to make was, why do we think that leadership PACs, particularly, are onerous? Because I sit here as a former beneficiary of leadership PACs-- But there's enough power in the Legislature themselves, in the system, where the Senate President and the Speaker of the House, they have the inherent power. He makes Committee Chairmen. He sets agendas. You've heard all this today. But, also, he's inside. He's part of

the system. He's not a party. He's not an outsider trying to influence us. He is us. I think it diminishes all of us -- I shouldn't say us to Senators anymore-- But as Senators, the institution of the Senate, I think, is a much stronger institution when you have 40 elected officials giving a debate -- much like what's happening here today and had happened in our chamber all the time -- 40 independent people. The power of the--

Senator, you were kind enough to unanimously, with Senator Ewing last year, or a couple of years back, sponsor and put out of your Committee a bill I thought was very important for the problems of the Ethics Commission dealing with-- Remember it? It went to the Senate President's office, and it died there. And myself, as a former Senator, I couldn't get a meeting with him to discuss it. I really believe that the one person -- the one lobbyist who came to that meeting who spoke against it had a greater influence in that office than all the rest of the people in the State did. I really believe that. I'm not saying it bought any votes, but it bought the system.

I'll add one other time. I've been in the Legislature so long, when I mention it, you can't go back and trace it-- But it was on a tobacco bill. I mean it would be easy today. It happened like that. (gestures) Put a warning label on smokeless tobacco; it went through the Senate immediately, went over to the other House -- who knows who was in charge then? Which body? It doesn't matter -- the Committee Chairman told me, "Well, I can't release it." He says, "So and so is a great contributor." He said, "I can't release it."

SENATOR ZANE: What did he tell you?

MR. CONTILLO: He said that "So and so contributes a lot to the leadership PAC," that's what he told me.

SENATOR ZANE: You were told that?

MR. CONTILLO: Yes, he did.

SENATOR ZANE: Okay.

MR. CONTILLO: He didn't vote against, just didn't post it.

What did he do strike him?

SENATOR MATHEUSSEN: I hit Bob Martin. I just felt like it. He had this gigantic bee land on his chest. (laughter)

MR. CONTILLO: So my question to you is why did you hit it?

SENATOR MATHEUSSEN: I just felt like hitting him, just for the hell of it. (laughter)

SENATOR MARTIN: And I didn't know what he was going to do. (laughter)

SENATOR KOSCO: There really was no bee there.

SENATOR MATHEUSSEN: Is that proof enough? (displays bee)

SENATOR MARTIN: The invasion of the killer bees.

SENATOR GORMLEY: Okay.

SENATOR CAFIERO: It was one of your contributors.

SENATOR O'CONNOR: You know when that happened, too-- At what point in this hearing that happened, just when Paul made his statement.

SENATOR GORMLEY: All right. Senator Martin is safe now. We can continue with the hearing.

MR. CONTILLO: Okay. Those are my comments. Dennis Jaffe, who is our Executive Director, is much better on the details than I, and he's got a prepared statement for you.

SENATOR GORMLEY: Okay. Great.

Dennis.

**DENNIS JAFFE:** Thank you.

“With the reelection of members the leaders’ responsibility, they may be included to do whatever has to be done to raise the requisite funds. While the incidence of unethical behavior may not be great, its implications may be substantial. Despite having opted, as a member of the New Jersey Ad Hoc Commission on Ethics and Campaign Finance, in favor of leadership PACs on a few years ago, I am very uncomfortable with a system that facilitates such payoffs,” Alan Rosenthal, author of *Drawing the Line*, which examined legislative ethics at the State level. Rosenthal Chaired that Commission.

He goes on to say, “Legislative leaders are turning into campaign managers and, as a consequence, are neglecting their institutional duties. None of this serves the Legislature well. Thus, from the perspective of responsibility to the Legislature as an institution, the elimination of leadership PACs would probably be a gain rather than a loss.”

What is wrong with leadership PACs? It is not only the size of the contributions currently allowable by law. Rosenthal compared the power of legislative leaders with rank-and-file legislators. He wrote, “They have the ability to deliver more in return for what they get.”

Rosenthal also shared his thinking on gifts to legislators. The Commission voted to require disclosure rather than to ban them. “We did not give too much thought to adopting the so-called no-cup-of-coffee rule, which prohibits legislators from anything of value from lobbyists and their principals.

More recently, in New Mexico, I opposed the no-cup-of-coffee rule; in Kentucky I supported it. It was just that in a period of less than a year, I had changed my mind.”

Rosenthal explains, “However I personally started out on this issue of leadership PACs, I have come, albeit regretfully, to the conclusion that on both ethical and institutional grounds, leadership PACs ought to be curtailed, at least in a number of states, if not in all of them.” It is safe to expect that Rosenthal’s insights in the years to come will continue to be of interest.

The abolition of leadership PACs has been endorsed by New Jersey Common Cause, the League of Women Voters, the New Jersey Public Research Group Citizen Lobby, and other. The Election Law Enforcement Commission also opposed their establishment. In a letter dated February 25, 1993, the Commissioners unanimously warned of “endowing legislative leaders with enormous fund-raising ability out of proportion to all other legislators.”

If I may refer, also-- Senator O’Connor, you referred earlier to questions about whether ELEC is able to do sufficiently its job with the money that is provided to it -- if I can paraphrase correctly.

In that same letter, the Commissioners, at that time -- who were Owen McNany, Stanley Bedford, and David Linett -- wrote, “It would be a fraud on the public to enact legislation which cannot be properly enforced.” No additional moneys have been provided since then. I would submit that legislative staff -- and agency staff in particular -- must demonstrate that they are providing services that are worthy of the administration that they are serving.

Legislators have raised the concern that special interest money is a real threat to candidates raising money, even with \$1800 contribution limits. We agree. Common Cause has attempted to give substantial thought to the concern that legislators and others have raised about issue advocacy.

In addition to eliminating leadership PACs, Common Cause recommends five viable steps:

First, ban direct corporate and union contributions. It is embarrassing that New Jersey has fallen below the standard of other states and, worse, the Federal campaign finance system.

Second, close up a loophole that is not talked about: The absence of limits on contributions to State PACs, referred to earlier today by Dr. Herrmann of ELEC. There are legal, if not meaningful, limits on contributions to State parties and State leadership PACs, but there are no limits on what can be contributed to a State PAC. Further, there is a limit on contributions given to Federal PACs -- \$5000. Let's plug up this gapping loophole with a limit of \$1800.

Third, the money-raising ability of unions through mandated payroll deductions has been assailed. Either explore taking away the unions' ability to automatically deduct these funds or consider not complaining.

Fourth -- and this borrows from the McCain-Feingold legislation at the Federal level in attempting to speak to issue advocacy -- pass legislation applying the reasons minds test, as cited in the *Furgatch* case by the 9th Circuit Court and language currently before Congress included in legislation authored by Senator John McCain, Republican of Arizona.

The reasonable minds test redefines express advocacy. It would more effectively classify what is a reportable expenditure. For example, public communication or political advertising that involves aggregate disbursements of, say, \$5000 or more, that refers to a clearly identified candidate, that a reasonable person would understand as advocating the election or defeat of that candidate, and that is made within a reasonably short period of time preceding an election, thereby precluding the targeted candidate from being able to respond with appropriate resources, would be classified as a political action committee's reportable expenditure.

If a group doesn't call itself a PAC but operates like a PAC, this definition would then classify that group as a PAC, which, *A*, must report expenditures, and *B*, would be subject to incoming contribution limits if you close the contributions to the PACs -- the loophole to which I referred earlier, as did Dr. Herrmann earlier today. ELEC is currently exploring this possibility. There are also other criteria for the period of time further away from the election, where it is not simply a matter of free speech, which is certainly an important constitutional concern.

If I may quote from the Federal legislation, "In the time earlier than a few weeks before an election, it would use criteria where communication is being made for advocating the election or defeat of the candidate as shown by one or more factors, such as a statement or action by the person making the communication; the targeting or placement of the communication; or the use by the person making the communication of polling, demographic, or other similar data related to the candidate's campaign or election." Again, this in

current legislation pending before Congress, introduced by Senators McCain and Feingold.

Common Cause urges legislators to work diligently to satisfy State and Federal constitutional concerns and to halt the nonstop obstacle throwing to thwart reform. It often appears as if legislators are determined to just throw sand in the faces of those seeking to squeeze big money out of the political system.

Fifth, cap all contributions to all party committees at the same \$1800 as with candidates. After you reduce the amount of big money pumped into attack ads by special interest groups, the need for large infusions of cash from the party committees will also be reduced.

Certainly, today's hearing is a welcome first step. Just last November 15, Assembly Speaker Jack Collins said on NJN's *On The Record* that only Washington has a campaign finance problem. The Center for Analysis of Public Issues' report, issued on Monday of this week, which included alleged violations of Federal election law, appears to compellingly refute that.

Just this past October, *The Star-Ledger* reported that the Torricelli for Senate campaign returned a \$1000 contribution from John Huang, a high-ranking Democratic fund-raiser who has become a major target of Federal investigators, and that the Democratic National Committee had returned \$50,000 to a firm partially controlled by Eric Wynn of West Milford, a convicted stock manipulator with ties to organized crime. And this week, we learned that the Republican State Committee is returning \$18,100 in political donations from an Essex County businessman who was convicted of bank

fraud 13 years ago and once testified he bribed witnesses in the 1970s influence-peddling scandal known as Koreagate.

SENATOR ZANE: Senator Gormley, are these offered as proof for why we need reform? We're here because we know we need reform. I'm interested in the specifics -- the five points that they mentioned -- but I think we're aware of these things that they're talking about.

Maybe I'm speaking just for myself, but I think the point is made. I'm really more interested in hearing your view as to what you think should be done, and I know you've given some of that, but that's what I'd like.

MR. JAFFE: Well, that is what I have attempted to do, Senator. I'd simply like to try to address what I believe are some public concerns as to the need for reform.

SENATOR ZANE: I think I'm going to read it on the way home. I'd really like to hear what you think we should be doing with legislation and these bills and critiquing them.

MR. JAFFE: I thought I attempted to do just that, Senator.

SENATOR MARTIN: Is it your position-- You had mentioned earlier about the payroll deductions of unions, do you think that should be eliminated?

MR. JAFFE: I certainly think that if that is a concern of the Legislature, that that's something--

SENATOR MARTIN: Well, is that a concern of yours? That's what I'm asking.

MR. JAFFE: If that's something that is halting reform, yes.

SENATOR ZANE: Well, what do you offer to suggest that it is?

SENATOR GORMLEY: Are you for it or against it?

MR. JAFFE: If the unions having the mandated deductions is a impediment toward eliminating leadership PACs, then to level that playing field, we would support the abolition of that deduction, as well.

SENATOR GORMLEY: Well, you made a lot of other conclusions in your comments. Do you think it's needed or don't you think it's needed? What do you conclude by your review?

MR. JAFFE: As part of that package, I think it's certainly appropriate.

SENATOR MARTIN: And no automatic checkoffs to groups like PIRG?

MR. CONTILLO: That's a checkoff, that's not a requirement is it?

SENATOR MARTIN: Well, that's -- I'm sort of in the same ball park.

MR. JAFFE: I'm not qualified to speak presently about the expenditures of New Jersey PIRG.

MR. CONTILLO: But there's a difference, I think, between a checkoff and a--

SENATOR MARTIN: I know there are some differences, Paul. I just--

MR. CONTILLO: But we have been asked to -- we-- You have been asked to make that a requirement at times, have you not?

SENATOR MARTIN: We've had a positive, and there's been legislation passed.

MR. JAFFE: I do believe, though, Senator, that it was up to the student body at the university to have decided what that process would be, as opposed to the unions which don't have that process.

SENATOR MARTIN: I understand the distinction. I just -- as long as you were talking about certain types of payroll deductions, contributions, and the like -- sort of running through a check list here.

MR. CONTILLO: Checkoffs are not deductions, Senator.

SENATOR MARTIN: Pardon me?

MR. CONTILLO: A checkoff is not an automatic deduction.

MR. JAFFE: Campaign finance reform is an issue on which voters demand action today, even if it does mean effectuating some changes after this election. Proposing a postelection campaign finance study commission, comprised of political insiders, simply cannot be given serious consideration.

Protecting leadership PACs with contribution limits of \$10,000 would have little impact on the total amount of money raised by the leaders, as documented by ELEC. As compiled by the Center for Analysis of Public Issues, big donors giving \$10,000 or more have poured \$21 million into the political action committees controlled by legislative leaders and the State party committees.

After watching worthy campaign finance proposals languish in Committee for three consecutive legislative sessions, New Jersey Common Cause endorsed SCR-24, a bill sponsored by Senators Bill Schluter and Gordon MacInnes, and cosponsored by five Republicans and six Democrats, a balance which we sought. We would indeed prefer that the Legislature address the ills of our campaign finance system so that voters who are

disconnected from the political process can once again find politics meaningful. But having observed that the level of intransigence is greater with this issue than any other, we have concluded that initiative and referendum for political reform is a necessary last resort, escape valve. The Legislature has refused to address serious problems in our campaign finance system. We are left with no other choice but to give the voters the responsibility which the Legislature has shirked.

The Assembly version is sponsored by Assembly members Leonard Lance and Joel Weingarten, and cosponsors include Assembly members Marion Crecco and Reed Gusciora. Other Senate cosponsors are Senators Henry McNamara and Wynona Lipman. It brings together United Taxpayers of New Jersey, Common Cause, the League of Women Voters, the Conservative Party, WOR radio talk show host Bob Grant, former U.S. Senator Bill Bradley, and former Governor Thomas Kean.

SCR-24 is indirect *I* and *R*, providing a negotiations period between the petition sponsors and the Legislature to possibly arrive at an agreeable solution, which would avert a ballot proposition, after it's qualified for the ballot. And SCR-24 has appropriate safety valves. It would allow the Legislature to repeal a voter-approved initiative by a three-fourths majority in the first two years after it's been approved or by a two-thirds majority in the third year. Certainly, *I* and *R* available to many New Jersey municipalities has not resulted in ending deliberative, representative democracy at the local level.

As far as the influence of money on the initiative process, well, of course, it has impact. But in 1996, all six State campaign finance reform initiatives across this country were approved; one was outspent 10 to 1. In

1994, the outspent campaign won in six of the nation's top 10 most expensive propositions. Many factors come into significant play.

Obviously, money does not automatically buy legislative outcomes, but it does have a disproportionate amount of influence on what goes on the table, on what doesn't go on the table, and as a result, it disproportionately shapes legislative outcomes. The risks inherent in our campaign finance system as it is currently established, in which huge contributors have private access to legislators, are far greater than an *I* and *R* in which money would fuel a debate which, after all, would be in public.

Thank you.

SENATOR GORMLEY: Any questions? (no response)

Thank you.

The next witness is Dorothy Dunfee, League of Women Voters.

I'd also like to acknowledge that Assemblyman Lance was here earlier. The Assemblyman is the Assembly sponsor of the companion legislation to SCR-24, and he wanted his support of that legislation to be noted.

**DOROTHY DUNFEE:** Good afternoon.

On behalf of the League of Women Voters of New Jersey, thank you for this opportunity to speak to you this morning regarding the League's goals for a campaign finance reform system that is fairer to candidates and more responsive to the public. I am Dorothy Dunfee, Campaign Finance Reform Specialist and President-elect for the League of Women Voters and also a person who has a cold. I hope you'll forgive the sound of my voice.

We have waited a long time to be here. We are very happy, and we thank you very much for holding this Committee hearing. Campaign finance reform has been a top priority for the League during the current legislative session, and this initiative is part of a nationwide effort by the League on all levels. It's called "Making Democracy Work," which seeks to counter American's growing cynicism about politics and government and build their confidence in the possibility of bringing about positive change.

Since January of 1996, we've been actively involved in supporting reform. We've written, we've spoken to a number of legislators. Members of local Leagues have done this, as well, and we have gotten some very interesting objections. We sort of feel as though we have been put off by 15 months now, with various objections, which I would like to take a few minutes to go over because I think they do pertain to the kinds of discussions that have been going on previously.

One of the things we've been told by reluctant legislators is that people don't care about campaign finance reform. I think, as I indicate here in the testimony, numerous polls show that that's not the case, most of them coming in at around 70 percent -- *The New York Times* even higher than that. The League thinks that it's an important corollary that 79 percent of citizens believe that they can trust the government to do what's right only some of the time or never and an equal number believe that government is run by a few big interests rather than for the benefit of the people. We suspect that if legislators aren't hearing a lot from constituents about this issue, that may have something to do with it, that they just are frustrated and feel powerless about having an effect in regards to issues like this.

Objection number two, that we often hear, is that disclosure is the only thing that's necessary. As long as the public knows who gives what to whom and when and how much, that's all that they need to have. I think that Dr. Herrmann covered the problems with the Election Law Enforcement Commission very well in his earlier testimony.

I'd just like to add to that that the League has been doing some research where we are attempting to connect the dots that were talked about earlier. Because of the fact that much of this has to be done manually -- in particular the contributions to the leadership PACs and the State Committees -- this is hours and hours of work. So you can't really call it access if just goes somewhere and the ordinary citizen can't get it back out again. And in particular, sometimes we hear from legislators in the same breath, "Disclosure is all you need, but no more money for the enforcement commissions." That makes no sense at all, and we applaud the fact that you are interested in providing additional support for ELEC.

Objection number three: Proposed reforms are unfair to challengers. This would be something that would bother us very much if we thought that there were any difference between the kinds of reforms that are being proposed and what the current system is. In other words, the fact of the matter is that incumbents almost always win now, and so it's hard to imagine how making changes could really make this situation worse than it is.

Objection number four: We should not institute reforms in the middle of an election season. That's what we said 15 months ago when we started the advocacy on this issue, that we hoped it would be done sooner, so that we wouldn't get to this point. But in any event, as a practical matter,

when, in New Jersey, legislators are elected every two years, when fund-raising for the next campaign begins almost as soon as the last one is over, and when the Legislature is inherently slow to move on these issues, it is unlikely that there will ever be an optimal time that is not connected with an election in some way. But if the Legislature prefers, the League is agreeable to waiting until January 1, 1998 as the target date for any reforms. We're used to being patient.

Objection number five: Contribution and expenditure limits will make it easy for independently wealthy candidates to buy an election. Such limits already exist on the presidential and gubernatorial levels, and we have discovered that, so far, no one has been able to buy an election. Wealthy candidates have run and lost. The League has faith in the ability of the public to make a decision here. If candidates are running on a limited amount of money and someone else isn't, those people can point that out -- the unfair advantage of the rich and the wealthy. We think the public can make up their minds about that and probably do a very good job.

Objection number six: Contribution and expenditure limits will force money to flow into types of independent expenditures. Now, this is something that we do view very much as a serious threat. I think particularly after the 1996 elections and what happened there, we all have to know that this could be a threat to our democratic system.

One thing that was not pointed out earlier, though, is that we need to consider the possibility that this is going to happen whether or not we enact reform. In other words, in the last election a lot of people realized how potent

this could be, and that potency, I would submit, could very well be as great under the current system as it would be under a reformed system.

But the League believes that there are also some things that could be done constitutionally about this. I have listed some of these here. For example, we can close the loophole for issue advocacy by tightening the definition of what it is, by full disclosure of all contributions for this purpose, and by specifying that any ad with a candidate's name or face that appears less than three months out from an election should be considered a political campaign ad.

We also need to broaden the definition of coordination, to ensure that expenditures are truly independent of a campaign. For example, candidates and independent groups in the last election often shared the same political consultants, media consultants, and pollsters. That's something we can identify and do something about, and I'm sure if we work on the problem more and more we can do better, but the League agrees that we have to stay within the Constitution.

To get to the point of what the League is advocating for now, today, let me just preface that by saying that when we first began our advocacy, 15 months ago, we support the Clean Elections Act because it was a comprehensive bill and we believed that you had to be totally comprehensive if you were going to really make an effect on the system and not plug one loophole just so that another loophole could spring forth. We find it ironic that a lot of the criticisms that are made about the more piecemeal kind of reform that we're advocating now could be taken care of if we supported a comprehensive bill, but we realize at this point that that's not going to happen.

So we're here today to urge you to, at least, pass meaningful reform during this legislative session. For us, meaningful reform would include two things: Number one, it would be the elimination of leadership PACs and, number two, uniform contribution limits of \$1800 to legislators, legislative leaders, and political parties from individuals and PACs. In that statement we also include that corporations and unions would not be able to make contributions.

We believe the leadership PACs are a blight on our political system. The same people who set the legislative agenda and make appointments to key Committees should not also control the purse strings. These PACs render meaningless the 1993 reform which limited contributions to legislators because the PACs simply funnel the huge amounts they receive back to the legislators, thereby circumventing the limits.

One thing I'd like to add as a corollary to the discussions I heard earlier is that I think we really need to take note of the idea of an appearance of conflict on interest. I think that's what were getting down to here. We're not here today that we can connect the dots right now or prove that there is a connection between votes and the money that's given, but it appears that there could be. The amounts of money and the way in which the leadership PACs work make that appearance greater, and like boards of corporations or like nonprofit groups, legislators really have an obligation to avoid that appearance, not only to avoid doing it, but avoid the appearance of a conflict of interest, and I think that needs to be taken into account.

Secondly--

SENATOR GORMLEY: Senator Zane, did you want to say something?

SENATOR ZANE: Yes.

MS. DUNFEE: Sorry.

SENATOR ZANE: That's okay.

If you're almost finished, I'll wait. I have a question for you.

MS. DUNFEE: Okay. Yes, I am almost finished.

Secondly, the reasonable contribution limits of \$1800 allow for significant campaigning on the part of candidates and also allow for some clout for political parties. The League does believe that private money is an essential part of running a campaign, but there need to be reasonable limits so that everyone, not just the wealthiest people or the best organized people, can feel that they are having an input into the system.

I did not mention in our written testimony that the League does favor public financing. I didn't think there was any chance at all that would go anywhere, but for the record, we are in favor.

My last point, we hope that the Legislature will pass these meaningful reforms. We think that self-reform would send the best signal to citizens because it would say to citizens "We are able to do something about this situation, even though in some ways, it may not be in own selfish best interest to do it." However, if the Legislature is not able to do this, then we do support SCR-24, the indirect initiative and referendum, in order to give the people of the State the input into these kinds of issues that they deserve.

Thank you very much.

SENATOR GORMLEY: Senator Zane.

SENATOR ZANE: I gather then that other than SCR-24, the League of Women Voters has not taken a position on any one of the bills, but has taken a position on certain concepts that they believe constitute reform. Is that accurate?

MS. DUNFEE: I'm sorry, that's not true. We do support S-750.

SENATOR ZANE: Okay.

MS. DUNFEE: Which is, in essence, what we were here saying today. We certainly do support the reform for the Election Law Enforcement Commission that was part of the Clean Elections Act, I think it was 18a-1803 (*sic*). And what you are proposing as part of 2020 is similar to that, so we do support that also.

SENATOR ZANE: I think I'm a little bit confused. The bills that you then are supporting is 750--

MS. DUNFEE: Correct.

SENATOR ZANE: --2020 -- is that the other one?

MS. DUNFEE: But not entirely. We are support the reforms for the Election Law Enforcement Commission, but we would prefer to see the elimination of the leadership PACs.

SENATOR ZANE: But the only bill specifically referenced by a bill number within your testimony was the SCR-24. Is that correct?

MS. DUNFEE: Correct. The testimony does go more with concept, but I don't want you to have that impression. That is our last resort support.

SENATOR ZANE: Is that right?

MS. DUNFEE: Yes.

SENATOR ZANE: Let me just ask you-- Tell me just briefly, so I understand this, the process that the League of Women Voters goes through in deciding what bill they support or don't support.

MS. DUNFEE: Okay. It begins with developing a position that's done on a consensus grassroots kind of a level. Now actually, the campaign finance reform positions were first developed in 1973. Leagues on all levels -- local and State -- studied the issues, they send their responses back to the State or back to the national League, these are compiled, and a position which represents what we call a consensus statement is formulated on that basis. Then, when particular legislation comes up, it is compared to the position statement, and the Committee -- in this case, for our League, the Campaign Finance Committee -- takes a look at the legislation and determines whether or not they think it supports our position and if we should proceed therefore.

SENATOR ZANE: As a separate issue, but somewhat related to what we're talking about today -- especially related to SCR-24--

MS. DUNFEE: Okay.

SENATOR ZANE: Does the League support initiative and referendum?

MS. DUNFEE: No.

SENATOR ZANE: Isn't that an inconsistency in your position?

MS. DUNFEE: Yes, and it took us a long time, I guess to come to grips with that inconsistency. We have been considering this legislation for about a year now, I guess -- when Senator Schluter first made us aware that it existed. We were very reluctant. We preferred to have the Legislature pass the reforms themselves, because, basically, we believe that that's what

representative government is. But we're able to go with the indirect initiative and referendum because that doesn't bypass the Legislature, that comes to the Legislature and gives them a chance to act on it themselves. But we did come to this reluctantly, yes.

SENATOR ZANE: Okay. Thank you.

SENATOR GORMLEY: Thank you for your testimony.

MS. DUNFEE: Thank you.

SENATOR GORMLEY: The next two witnesses will be Bob Woodford and James Leonard, NJBIA and State Chamber of Commerce.

**JAMES F. LEONARD:** (speaking from audience) Mr. Chairman, with all due respect, could Mr. Morford join us, as well, for a sense of expediency?

SENATOR GORMLEY: Sure.

**JAMES C. MORFORD:** They had signed up just before I got in the door.

SENATOR GORMLEY: Just identify yourself, whoever chooses to go first.

**ROBERT WOODFORD:** Yes. Bob Woodford, First Vice President of New Jersey Business and Industry Association.

MR. LEONARD: Jim Leonard, Vice President of Government Relations for the State Chamber.

MR. MORFORD: Jim Morford, President of the New Jersey Food Council.

MR. WOODFORD: It certainly became clear that putting together a reasonable, balanced approach that can be bipartisan in addressing

the issues before you was not an easy process. The complexity and the diversity of views already presented here today make it clear that there are going to be people unhappy, and they'll probably go out and claim that money has poisoned the process if it didn't coincide with their views.

I'd like to comment very briefly -- and we have not coordinated any comments or anything, as a team or anything -- on a few of the comments made earlier. One, on the limitation on PAC contributions: BIA, in fact, assists in the administrative costs and fund-raising of the New Jobs PAC, which is a statewide business PAC -- all forms of business -- run by a bipartisan board of trustees and contributing to candidates of both parties.

As I listened to Fred Herrmann's comments, first on the fact that there may be some illegitimate PACs, and I don't know that we have any disagreement with this -- where an individual may pose as a PAC -- and a request was made that there be some minimum number of persons participating in a PAC as contributors and also a minimum number, perhaps, on the other end in terms of contributions--

In terms of the New Jobs PAC, I'd like to just relate, generally, what these limits would mean. We're talking a \$5000 limit and if we had -- and I don't know what our number is now -- 250 contributors to the PAC, you're talking a maximum amount of \$20 per contributor. At \$1800, with that same number of contributors, and any contribution to the limit (*sic*), you'd be talking \$7.20.

It's very hard to see where this is really a necessary limitation and it's such a low limitation, when you're dealing with a mechanism which in itself insulates both the legislator and the contributor from even the appearance of

a quid pro quo in the contribution. You're dealing with an organization in which the individual does know to whom that organization will contribute. You're dealing with an organization which has a diverse base, and the individual legislator who receives a contribution from it is basically determined by a bipartisan board of trustees. There is not even the appearance here of a quid pro quo from an individual contributor and an individual recipient of a contribution.

There was the proposal made that businesses and unions -- and a number of speakers said businesses and unions should not be able to contribute at all in the system. Businesses and unions are not the only antagonists that concern us. Business participates in a political arena with a lot of other organizations, consumerist groups, groups whose primary mission is to seek tough environmental laws, and others. We need access to the process. We need balance in the process, because there are many proposals that could be injurious to the State's economy, to the businesses in this State that are proposed by groups other than unions who will be participants, who are active participants, who do marshal sufficient support to get legislation through today in this Legislature.

So I raise those points because I hope that business will not be shut out of this process. We need to be a part-- We are very concerned that this Committee not recommend that SCR-24 or any initiative and referendum process be the answer -- because it isn't an answer -- in providing campaign finance reform. We've had a long history and I know the other organizations represented here have a long history of opposing an initiative and referendum for many reasons. But one fundamental reason is that it really pours -- it

requires the pouring of more money into the political process than any of the totals that were reeled off, \$20 million, \$19 million contributed in various years and total campaigns.

In the State of California, five related insurance -- competing insurance issues in one year caused contributions and expenditures of \$75 million. Now, we in New Jersey are highly dependent upon New York and Pennsylvania television to do, in this case, a very expensive job -- pouring money into two neighboring states for their TV media -- to do what would have to be a half-baked job of dealing with complex issues.

The problem with initiative and referendum -- the problems and there are many -- includes the fact that to reach the public on complex issues you buy time, and it generally boils down to -- in those states that have this process -- a lot of money spent on public relations, multimillion dollars firms for spot ads that, in generality, oversimplify and often distort the issues. In the process of providing a mechanism which on its facial appearance provides access, you really are closing out access, because the process of initiative and referendum -- even indirect initiative and referendum -- is one in which most of the ability to accommodate and to built consensus is already gone by the time a proposal begins to circulate. The end result of the initiative and referendum process in other states has been reducing the ability of the Legislature to make decisions and weakening both the Legislature and the political parties.

I could go on, but I will not, in terms of the long list of things that we object to in the initiative and referendum process, but please don't open the door to that process. Forge a solution that makes sense. It won't please

everyone, but one that's balanced and bipartisan to address these issues before you. Please, again, don't exclude us entirely from the process in doing so.

Thank you.

SENATOR MARTIN: May I just ask one question?

MR. WOODFORD: Yes.

SENATOR MARTIN: You mentioned your organization, and I think we're all familiar with it, but the concern about reducing the amount of PAC contributions was mentioned to me some time ago by someone -- not of your organization, but with a statewide group-- That if you attempted to put the limits on PACs, one of the alternatives -- if you had the capability -- was to just splinter up into smaller groups.

MR. WOODFORD: That would happen, absolutely.

SENATOR MARTIN: Into counties, for example, so you could have 21 groups as one of the sort of obvious loopholes around dealing with just putting a blanket on PACs, unless you tried to do -- and I'm not sure whether you would run into constitutional issues, like trying to measure the amount based on the number of participants and how you'd determine, like with a business, whether that's individuals or business size or something-- I don't even know how you could begin to sort of identify that.

So assuming you couldn't do it on a basis of volume, you could just fractionalize it out and then accomplish the same goals if you were sort of geared toward trying to put the same amounts of money into the campaigns, I would think. Right?

MR. WOODFORD: Absolutely. I think that would happen immediately. And it would have the effect of diluting less the connection

between the recipient of a contribution and the contributor than would occur in a very broad, statewide PAC.

MR. LEONARD: Thank you, Mr. Chairman. My comments will be brief, as well.

First, I'd like to break up my comments into two parts. As far as the State Chamber is concerned, there are certain issue areas that have been mentioned today -- that have been mentioned previously that we support. I'll mention those and then I'll also touch on two items of general topic -- items that we talked about -- that you all talked about today.

In the spirit of full disclosure, as my colleague has done, I think it's only fair to say that I am Executive Director of the State Chamber's Political Action Committee, albeit, much smaller in size than my two colleagues at the table, that is the case. I'm also a registered lobbyist, and I am also an elected official.

I bring that up because I think the press has, perhaps, done a disservice to this situation. It's easy to have articles written that say that the process is corrupt, there are votes that are purchased, influence, etc., etc., but, quite frankly, as you all know, you and I could not have a meal where I would spend \$30 or \$35 on the meal without it being fully disclosed. I think anyone who has taken the time to go over to ELEC and look through the reports that we all have to file and you all have to file, see that there is no situation where disclosure is not a good thing in this State. It takes an awful lot of time, and it takes an awful lot of effort, but it is a good part of this system.

I bring that up because I have spent some time in several states, as well as the District of Columbia working at Capital Hill. We have a great

system. Sure, there are areas that we, perhaps, could change in our system, but I think we do a disservice if we don't stand up and cheer the good things that we have in our system. But, obviously, there are some areas that we could work on.

The State Chamber would be in favor of computerization and automation of some of the ELEC reports. If you go to Washington, for example, you can spend some time at the FEC, pull up on the computer a PAC report filed by my former employer, and there is my signature on it. You can see each dollar, where it went. That, I think, would be a good thing.

The autonomy of the Election Law Enforcement Commission is an area that we would support, in terms of the terms of office. In terms of the increase in fines, the example that Dr. Herrmann gave in his testimony, I think, is preposterous and it makes everyone look bad. If that situation is going on even once, I think something needs to be done as quickly as possible to make sure that people aren't flaunting the system the way he described. Then, also, an increase in Election Law Enforcement Commission funds, provided that those funds are being used in a judicious manner--

The one area I would also ask is that when this discussion is going on, there be some thought to what is going on in Washington, because cross-purposes could happen and it would be nice if we were consistent with some of the reforms that are being discussed and talked about down there.

Two topic items that I mentioned that I did want to say-- First of all, I think it's an insult to imply that votes can be purchased. I think it's an insult to imply that I could take someone out to dinner or lunch and buy their vote. I take personal offense to that.

Secondly, I think that, with all due respect to Senator Schluter, *I* and *R* would be one of the worst things that could happen to this system, because it is an insult to you. We're saying, essentially, "Well, Senator, it's okay for us to elect you, but when there's a real tough issue, we want to have the direct public decide on what should happen." It leads to legislation by hyperbole, by sound bite, and knee-jerk legislation, which is something that I think would be detrimental to the entire system and to the entire State.

With that, I will entertain any questions or pass it on to my colleague.

MR. MORFORD: Senator Gormley, thank you very much for conducting this hearing and for your leadership in campaign ethics and finance reform.

I'm Jim Morford, as I said before, President of the New Jersey Food Council. I also serve as Treasurer of our modest PAC, the Food Council Committee for Good Government.

Presently, there is a great significant body of law in our State addressing the issue of campaign finance. There is-- Within the structure of the law, the Election Law Enforcement Commission has created a meaningful body of compliance requirements. New Jersey is one of the nation's leaders in governing campaign financing and spending.

Coupled with one of the nation's most comprehensive lobbying report laws, our citizens are protected with the availability of a great deal of information without constitutionally questionable limitations on free speech and discourse in the arena of public policy. Those individuals and

organizations who have a passion for such information are free to pursue it and to publicize it. Those who do not have such passion shouldn't be forced to.

Public disclosure is a fair and reasonable requirement in a democratic society, and the legislation may want to further address more avenues of disclosure, such as clearer identification in matters of issue advocacy. More effective enforcement may be a valid concern and also should be addressed. Much of the attention that has recently been brought to this issue, I think, is a result of the actions in the 1996 presidential campaign. The alleged abuses -- so far made public -- could and should be addressed under existing law. But lacking the political will to prosecute and holding certain public officials or officeholders to be above the law, the solution then becomes to throw more law into the pot. And more laws to be ignored or unenforced do not serve the system; in fact, they diminish it.

So one of the poorest solutions, in our view, is the suggestion to turn campaign financing and ethics issues into an *I* and *R* mechanism, which in other states that employ it, turns the system over to well-financed, single- or limited-issues organizations. Turning decisions on the complex matter of campaign financing into simple yes or nos, following what in New Jersey, certainly, would be expensive media campaigns, will weaken, not improve the system.

Eliminating enlightened debate and the crafting of changes that the legislative process encourages may result in significantly disrupting, if not weakening, our democratic process.

Thank you.

SENATOR GORMLEY: Are there any questions? (no response)

Thank you for your testimony.

The next witness is Pamela Barsam-Brown, New Jersey Coalition Against Aircraft Noise.

**P A M E L A B A R S A M - B R O W N:** Good after, Senator Gormley. Thank you for having the hearing, and thank you for allowing me to come and speak.

You all have my testimony, and I think it will be self-explanatory. You've been sitting here for such a long time, I don't want to just sit and read my testimony.

**SENATOR GORMLEY:** Well, you've been sitting there a long time, also.

**MS. BARSAM-BROWN:** Well, that's all right.

**SENATOR GORMLEY:** You're being too fair. Now, make your points. (laughter)

**MS. BARSAM-BROWN:** I'll be happy to make the point.

**SENATOR GORMLEY:** Yes.

**MS. BARSAM-BROWN:** As the Executive Director of the New Jersey Coalition Against Aircraft Noise, we come here with a special perspective, and it is one that has allowed us to join in with the sense of direction that Common Cause has expressed today, as well, and that is that it's time for action. We, particularly, as an environmental group with just a bunch of citizens like me, sitting in my kitchen, working a telephone, and getting a fax machine for Christmas from my husband, have created a movement to bring about an environmental change. And in doing so, we've run up against enormous odds, and it isn't just the FAA and it isn't just the Port Authority,

but it's PAC funds and it's the manner in which enormous money gets pulled into a process of discussion and dialogue and it perverts it.

So I am here today to say on the part of my environmental group -- but I believe it really expresses a point of view and I expect to be involved in this in a larger way -- the point of view of all environmental groups, we do not have a level playing field. The citizens are not having a fair share of an opportunity to have their point of view fairly examined. And I've been in this for 10 years, so I can tell you that's the truth, and we just need you to step in and help us out and really create the perception that we do have a fair shake in this democratic process.

Thanks.

SENATOR GORMLEY: Thank you.

MS. BARSAM-BROWN: I assume you don't have any questions.  
Do you? (no response)

SENATOR GORMLEY: Thank you.

Sam Perilli, United Taxpayers of New Jersey.

**SAM PERILLI:** Senator, you and I have spoken many times over the radio with a lot of free air time, so I'm glad we're face to face now.

To those critics of initiative and referendum who say that it is indirect, just about every one of the initiative and referendum bills that has ever been offered -- proposed -- has always been indirect, so I think that issue can be put to bed.

My name is Sam Perilli. I'm the State Chairman of United Taxpayers of New Jersey, an organization that was formed over 25 years ago,

an organization that communicates and networks with over 200 taxpayer and civic associations throughout this State.

It's just amazing that you can come down here to Trenton and hear people talk about influence and hear people talk about being insulted that somebody would dare imply that influence and access are free. Even the bees agree with the United Taxpayers of New Jersey that we get killed legislatively before we can sting anybody, just like that bee that was killed over there before.

I come here to support SCR-24. To keep the voters of this State at bay I think was said best some years ago by the New Jersey Education Association -- the most powerful lobby in this State, that knows what money can do-- They said it's a lot easier to influence the 120 minds here in Trenton than to allow that debate to spill out into our homes and into our workplaces. Yes, the NJEA was very profound in that.

The fact that initiative and referendum has never seen the light of day should tell you -- if you already don't know -- what money buys in this State. Initiative and referendum in the form of SCR-24 is an equalizer, that's all it is. It is an effort to have the collective wisdom of the over 7 million people of this State. Excuse me, it couldn't be over 7 million. It would have to be limited to voters, so over 4 million people in this State, who don't have the time to call you, who are, quite frankly, sometimes afraid to get involved in a political system because their name might show up on one of your files. People are intimidated today. And anyone who's involved in any sort of local politics understands the intimidation of the average citizen in this State.

Senator Zane, who has left here, talked about Big Brother. We have to watch out for Big Brother. Gentlemen and ladies, Big Brother is here, and he's not on our side. He opposes the citizens from getting involved in a process, in an indirect process, in a process that this collective mind could have a few -- out of the over 4 million people -- good ideas, a few brilliant minds out there, instead of these people who come here to Trenton under the guise of professionalism, who are all very highly paid and very highly focused in on protecting their turf.

So I'm going to ask each and every one of you to support the notion that we have to take care of our Election Law Enforcement Commission. We support spending more money. We support any legislation that is going to strengthen that, absolutely. You will not find any taxpayer association that we network with opposing the spending of funds for that. You will not find it.

I ask you to consider getting this question on the ballot this November. Show that you can trust the people of this State. For the most part, these lobbyists who came here today were telling you, "We want your minds -- 120 of you. We don't want this thing to spill out. Leave it here in Trenton. Leave it amongst us."

I was looking out there for the tooth fairy. Because anybody who believes that money doesn't talk in government, believes in the tooth fairy. The people out here tomorrow, who are going to read these comments-- This is not testimony here. Nobody swore on a Bible. These are just comments from influence peddlers. I'm an influence peddler, but I'm proud of the people who I try to bring their message here to you today.

So I urge you, please-- I urge you, please, put this question on the ballot. At least let the voters of New Jersey decide whether they want to change the Constitution. Our Constitution does read that at that time -- I'm paraphrasing -- when the voters feel, when the citizens feel that there should be a change made in our Constitution, it should be done. It is inherent in the people. Unfortunately, only half the states in our country believe that the voters can be trusted. So I urge you--

I thank you for this opportunity. The money here on my lapel (indicating) will be donated to the Election Law Enforcement Commission as the first donation. I found a good place to put it. I want some influence there. (laughter)

Thank you.

SENATOR GORMLEY: Thank you.

That concludes the hearing.

**(HEARING CONCLUDED)**