Answers to Senator Cornyn's Questions

1. **Under what legal form is the Constitutional Accountability Center formed? Should the Constitutional Accountability Center, as an organization, have the right to petition Congress? To send a representative to testify before Congress? Should the Constitutional Accountability Center be allowed to spend from its general fund to lobby Congress or to testify before Congress? Should the Constitutional Accountability Center be allowed to criticize elected politicians? Should the Constitutional Accountability Center be allowed to criticize the Supreme Court? Should the Constitutional Accountability Center be allowed to criticize candidates for federal elective office within 60 days of an election? Outside of the 60 day window?**

Constitutional Accountability Center ("CAC") is a non-profit organization, set up pursuant to Section 501(c)(3) of the Internal Revenue Code. Like other tax-exempt 501(c)(3) organizations, in return for a tax exemption, CAC does not directly or indirectly participate, or intervene, in any campaign for elective office, either on behalf of or in opposition to any candidate, and does not engage in lobbying as a substantial part of its activities, as defined by law. As the Supreme Court's decision in *Regan v. Taxation With Representation*, 461 U.S. 540 (1983), recognizes, because 501(c)(3) organizations receive a valuable tax break from the government, Congress has the authority to limit political activity by 501(c)(3) organizations. Consistent with these established limits, CAC works in our courts, through our government, and with legal scholars to preserve the rights and freedoms of all Americans and to protect our judiciary from politics and special interests. In showcasing the progressive promise of the Constitution's text and history, CAC can and does testify before Congress, lobby within the limits prescribed by section 501(c)(3), and criticize Justices of the Supreme Court as well as members of the legislative and executive branches for failing to adhere to the Constitution's text and history.

2. **See the charts attached as Exhibit A, which track the amount of money raised and spent by all presidential candidates in every presidential election since 1976. The y-axis shows the total number of dollars raised and spent, in millions. The Bipartisan Campaign Reform Act of 2002 first affected presidential campaigns in 2004. As demonstrated in the attachment, the curve of the amount of money raised and spent by presidential candidate has bent considerably upward in the 2004 and 2008 campaigns. Has BCRA succeeded in decreasing the amount of money in politics, and the existence or appearance of corruption?**

The question whether the Bipartisan Campaign Reform Act ("BCRA") has decreased the amount of money in politics and the existence or appearance of corruption is a thorny, complex question. While the charts attached as Exhibit A document a significant rise in the amount of funds spent by presidential candidates in the last two elections, they alone do not provide any answer to the intensely factual question of BCRA's effects on political spending; indeed, the charts attached as Exhibit A do not even address all the federal elections to which BCRA applies. A full answer to this question goes well beyond my expertise, which is the Constitution's text and history and, relevant to the question of campaign finance laws, the Supreme Court's treatment of corporations from the founding era to the recent ruling in *Citizens United*.

3. **The provisions of the 2002 Campaign Finance Reform Act that the Court struck down equally banned electioneering communications by corporations and unions. Do you believe that any new restrictions placed on corporate speech should also apply to unions?**

The *Citizens United* ruling invalidated long-standing restrictions on political spending by corporations and unions, and Congress should consider whether new legislation aimed at political spending by both corporation and unions is warranted. However, in considering legislation in the wake of *Citizens United*, Congress should be sensitive to the fact that corporations and unions are not identical in all respects. Two specific differences between unions and corporations are particularly relevant. First, unions, more so than corporations, are composed of citizens banding together for a common cause. Members of unions often play an active role; by contrast, as my written testimony spells out, the vast majority of a corporation's so-called members do nothing more than invest their money in the corporation in the hopes of sharing in the company's profits. Because so many "members" of a corporation play a passive role, concerns that shareholders may lack notice of or opportunity to object to corporate political spending they disagree with may take on added force. Second, a well-developed body of law recognizes the constitutional rights of dissenting union members to refuse to pay for political spending they oppose; no similar body of law exists for shareholders. Beginning with the Supreme Court's 1977 decision in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), it has been settled law that union members have a constitutional right to object when unions use compulsory dues to pay for political or ideological spending with which union members may disagree. *Abood* dealt with the rights of public-sector employees, and later cases have extended its reasoning to include employees in private-sector unions as well. Thus, while union members have a right to insist that the union pay for political advertisements solely out of dues from members who support that spending, no similar protections currently exist for shareholders of a corporation.