STATEMENT OF CHAIRMAN FRED THOMPSON
Hearing On Independent Counsel Act
March 17, 1999

WASHINGTON, DC -- The following is prepared opening statement of Governmental Affairs Committee Chairman Fred Thompson (R-TN) at a March 17 committee hearing on the Independent Counsel Act:

"Today we resume consideration of the Independent Counsel Act and whether the Congress should reauthorize it. I believe it is important that we be reminded again of the purpose behind the creation of this legislation. It has to do with the obvious conflict of interest that is presented when the Justice Department is called upon to investigate high-ranking Administration officials -- especially the President. It's based upon the idea that not only must justice be served, it must have the appearance of being served as well. The legislation was based upon the fear that under those circumstances the public would not have confidence in the outcome of such an investigation. It is the growing cynicism in American society, especially cynicism toward our institutions, and the need for public confidence in the administration of justice above all else, that was the moral force behind this legislation.

"At reauthorization hearings on May 14, 1993, Attorney General Reno in supporting the reauthorization of the Independent Counsel Act testified before this Committee and spoke of this "inherent conflict," when senior executive branch officials are to be investigated by the Attorney General who serves at the pleasure of the President. She said, "The Independent Counsel Act was designed to avoid even the appearance of impropriety in the consideration of allegations of misconduct by high-level executive branch officials and to prevent...the actual or perceived conflicts of interest. The Act thus served as a vehicle to further the public's perception of fairness in such matters and to avert even the most subtle influences that might appear in an investigation of highly placed executive officials."

"This concern about public perception and public confidence is even more real today than it was when the Attorney General spoke those words, even though the Justice Department now urges that we allow the statute to expire.

"So far in our hearings we have heard many criticisms of the Independent Counsel Act. Many of the criticisms had to do with the powers granted to the Independent Counsel and his or her use of those power. However, many criticisms have also been lodged against the "front-end" of the process. It is said that too many independent counsels have been appointed; that the statute basically provides a "hair trigger," which requires the Attorney General to call for an independent counsel in too many incidences; that the standard of "reasonable grounds to believe that further investigation is warranted" is too easily reached.

"It is pointed out that the Attorney General may not base a finding that no further investigation is warranted upon the lack of criminal intent, unless there is clear and convincing evidence of the lack of intent. The Deputy Attorney General, Eric Holder says that this standard basically requires "proof of a negative by clear and convincing evidence." Therefore, the deck is stacked

heavily toward calling for the appointment of an independent counsel -- apparently with the exception of when this standard is being applied to the President of the United States.

"That brings us to another problem with the statute. What happens when the Attorney General, who has total discretion in this matter, refuses to call for an independent counsel in the very kind of case the statute was designed for? What happens when this hair-trigger that has resulted in the appointment of so many independent counsels turns into a trigger lock when the President and the President's close associates are under investigation? What about public perception and public confidence then?

"Appointing an independent counsel when one is not deserved is serious enough, but at least it is under the supervision of a court and attorney's fees are paid if no indictment is returned. However, the failure to appoint an independent counsel when it is clearly called for, not only defeats the purpose of the statute, but enhances the very cynicism and loss of public confidence that motivated the creation of the statute in the first place.

"In anticipation of the 1996 Presidential elections and in order to obtain $ 62 million in public funding, the President and Vice President signed a certification that they would not raise or spend additional monies in their campaigns. The law providing candidates with these monies had a clear purpose of taking Presidential candidates out of the middle of the fundraising process. Candidates do not have to accept this public money, but once they do they are bound under law not to raise or spend additional money.

"However, the President, Vice President and others in the campaign then proceeded to go out and raise an additional $ 44 million to be spent on behalf of their campaign. They solicited the money in chunks as large as $ 325,000, far in excess of the $1,000 spending limitation, and then directed the spending of the money for the benefit of their campaign. They were able to obtain an opinion from their own in-house lawyers that this was alright as long as they funneled the money through the DNC.

"Their position was that they could totally defeat the intent of the statute by calling the contributions "soft money" which is supposed to be used for party building, running it through the DNC and buying Clinton-Gore television commercials as long as they avoided the use of certain words such as "Vote for Clinton-Gore." No candidate had ever before had the temerity to make this claim or attempted to circumvent this law in this manner, a law that had been on the books for twenty years. Furthermore, the FEC had taken a position that candidate coordination in such instances was improper. Nevertheless, the Attorney General determined that the law was "confusing," and made the additional determination that there was clear and convincing evidence that the President did not have criminal intent and refused to request an independent counsel. So much for the hair-trigger.

"As was stated by Philip Heymann, who was Deputy Attorney General until February 1994, 'the Justice Department's interpretation of the campaign act is not only legally wrong but also disastrous as a matter of policy. It means that there are no limits on how much influence and access private parties, corporations, labor unions and foreign nationals can buy with campaign contributions.'

"Neither the American public nor the news media is yet focused upon the effect that the Attorney General's rationale will have on next year's campaign. Because of her interpretation of the law, there are literally no limitations, foreign or domestic on contributions to benefit the Presidential and other federal campaigns.

"Even if no campaign finance laws were violated, the certifying of essentially false information in order to obtain federal funding is evidence of violation of Title 18 USC 371, which prohibits conspiracies to defraud the government. As far as we know, this statute was not even considered as the basis to seek appointment of an independent counsel..

"Some have noted, that indeed, if we allow the Independent Counsel statute to expire, the conflict of interest will still exist but the Attorney General would still have the statutory authority to call in a special counsel in high-level conflict of interest cases. However, the Attorney General has ample discretionary authority now for conflict of interest situations. First of all, she has the discretionary authority under the Independent Counsel Law. She has used it in the past when close associates of the President have been under investigation. It was used in Filegate, Whitewater (because of James McDougal's association with the President as well as that of former Governor Jim Guy Tucker) and the Bernie Nussbaum case, who had been White House Counsel. None of these people were covered persons and yet an Independent Counsel was called for because of their relationship to the President.

"And yet in this Committee's campaign finance hearings we saw several individuals, some of whom have been later indicted, who raised millions of dollars for the President's campaign, much of it foreign money and who were close associates of the President or the Vice President. John Huang was hired at the DNC because the President, along with James Riady, urged DNC officials to hire him. He made at least 67 visits to the White House while he was working at the Department of Commerce.

"Charlie Trie was a close friend and political supporter of the President since the late '70s. He laundered money from Ng Lap Seng and he visited the White House 31 times in 1994 and 1995 alone. Mr. Ng visited the White House 10 times. Trie was by far the largest contributor to the President's legal expense trust. According to the New York Times, he reportedly met with Chinese officials and asked for $1 million for American campaigns.

"Mr. Wiriadinata contributed $450,000 illegally and told the President, 'James Riady sent me.' Additional illegal money came from Riady's Lippo companies.

"Maria Hsia, who facilitated the infamous Buddhist Temple Fundraiser had been a long term political associate of the Vice President. All of these people presumably are the subject of on-going criminal investigations and all of them have direct ties to covered persons. In this case, unlike the others mentioned above, an independent counsel was not sought.

"Furthermore, the Attorney General has the further discretionary authority to have an independent counsel appointed under her regulatory authority in a conflict of interest situation even if the facts do not meet the normal statutory threshold for the appointment of an independent counsel. Moreover, the Attorney General has the discretionary statutory authority to bring in a 'special counsel' as many Attorneys General have done in the past.

"The Attorney General has utilized none of these discretionary provisions even though there could not be more apparent conflict of interest or more potential damage to the public's perception with regard to the administration of justice in this country. We must ask ourselves why we should think that discretionary authority would be used to bring in someone from the outside in the future to investigate allegations against a President if, in fact, such authority has not been used up until now.

"And now we see that some of the donors, such as Mr. Trie and Ms. Hsia, have been indicted, but the courts have thrown out counts of both of these indictments. This does nothing to enhance the public's confidence. Also, interesting, unlike other illegal donation cases, none of the recipients of illegal funds in this case have been indicted, only donors.

"We may conclude that, on balance, it is best to let the Independent Counsel Law expire and allow the authority to revert back to the Justice Department. However, as we can see, such a prospect raises the question as to what to do about the conflict of interest and public perception problem that remains when an Attorney General insists on keeping in-house a matter involving the President. I would suggest it is going to require much more effort on the part of Congress both in the confirmation process and with regard to its oversight responsibilities. And I think it is ultimately going to require more vigilance by the American people."