AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

HEARING ON THE REGULATION OF 527 ORGANIZATIONS

HEARING

BEFORE THE

COMMITTEE ON HOUSE ADMINISTRATION HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, APRIL 20, 2005

Printed for the use of the Committee on House Administration

Available via the World Wide Web: http://www.access.gpo.gov/congress/house

U.S. GOVERNMENT PRINTING OFFICE

21–160 WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON HOUSE ADMINISTRATION

BOB NEY, Ohio, *Chairman*

VERNON J. EHLERS, Michigan
JOHN L. MICA, Florida
CANDICE S. MILLER, Michigan
JOHN T. DOOLITTLE, California
THOMAS M. REYNOLDS, New York

JUANITA MILLENDER-McDONALD, California
Ranking Minority Member
ROBERT A. BRADY, Pennsylvania
ZOE LOFGREN, California

PROFESSIONAL STAFF

PAUL VINOVICH, *Staff Director*
GEORGE SHEVLIN, *Minority Staff Director*

REGULATION OF 527 ORGANIZATIONS

WEDNESDAY, APRIL 20, 2005

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The committee met, pursuant to call, at 10 a.m., in Room 1310, Longworth House Office Building, Hon. Robert W. Ney (chairman of the committee) presiding.

Present: Representatives Ney, Ehlers, Doolittle, Reynolds, Miller, Millender-McDonald, Brady, and Lofgren.

Staff present: Paul Vinovich, Staff Director; Chris Otillio, Professional Staff; Jason Spence, Professional Staff; George Shevlin, Minority Staff Director; and Thomas Hicks, Minority Professional Staff.

The CHAIRMAN. The committee will come to order.

What we are going to do is begin with our opening statements, and that way we can get it out of the way, and when Mr. Shays and Mr. Pence come, we will be ready to go.

The committee is meeting today to examine the role of the so-called 527 groups in the most recent election cycle, and take a closer look at legislative proposals introduced in this Congress that could impact these groups. I think the Senate postponed their hearing today. As I said yesterday in the media, I think the House has taken a little bit broader look at the issue, and that is the purpose of this hearing.

Three years ago, Congress enacted the Bipartisan Campaign Reform Act, BCRA, which the President signed into law. I didn't support BCRA, and I along with my friend, Congressman Wynn, had an alternative proposal and I fought hard to defeat BCRA.

I opposed it because its sweeping provisions infringed upon fundamental first amendment freedoms of speech, expression, and association. Moreover, I believed that BCRA would do serious damage to our democratic process by shifting power and influence away from the political parties and directing it towards unaccountable, ideologically driven outside groups.

Well, guess what? Unfortunately, I was unsuccessful in my efforts to stop it.

In the McConnell versus FEC case, the Supreme Court upheld the constitutionality of most of BCRA's provisions. However, although the constitutional questions regarding BCRA have been largely resolved, at least for the moment, the question of whether BCRA is good policy is still open for discussion.

To accurately judge the effectiveness of BCRA, we have to first examine the promised benefits of the new campaign finance legisla-

tion and compare that against the actual results. Now, I don't intend to sit here and go through the entire bill line by line. I would, however, like to tell you that I am not proposing that we repeal BCRA. But I think we do have to sift out—and that is what the witnesses are here today for their proposals; one of the pieces of legislation addresses the 527 issue.

Proponents of BCRA predicted that soft money would be purged from the Federal electoral process and the overall impact of money on politics would be lessened. However, a cursory glance reveals that soft money in politics continues to thrive in the aftermath of BCRA's passage. According to Political Money Line, Federal 527 groups expended nearly $600 million during the 2004 election cycle. Organizations whose primary purpose was to function as shadow political party committees—and we know that so well in the State of Ohio—operated as such with the apparent stamp of approval of the relevant Federal officeholders and party officials, thus, they were able to solicit and spend soft money in support of the party's candidates and agenda. This has been done on both sides of the aisle, whether it is Swift Boats, or Soros, or whatever groups are out there.

This development should not have come as a surprise. As I stated on the House floor during the debate on this law, BCRA does not ban soft money under any definition or under any stretch of the imagination.

Those who allege that the continuing presence of soft money in the Federal election process is the fault of the FEC are incorrect, for it is not only the opponents of BCRA who pointed out the law would not eliminate soft money, but merely redirect it to less accountable channels. Reformers themselves acknowledged that soft money would still play a role through its use by independent groups.

For instance, one of the Members of the Senate, who was the author of a prominent section of BCRA, stated flatly during the Senate debate that BCRA "will not prohibit groups like the National Right to Life or the Sierra Club"—not to just pick on those two groups, but to mention them—"from disseminating electioneering communications. It will not prohibit such groups from accepting corporate or labor funds. It will not require such groups to create a PAC or other separate entity."

BCRA supporters also asserted that the new law would result in fewer negative advertisements being broadcast during the course of campaigns, and thus, usher in a new era of more honest, less negative, politics. Well, you should have been in the State of Ohio for the entire year as the soft money ads were blanketing the TVs.

But if anything, BCRA's passage has actually led to an increase in negative scorched-earth politicking, as we have never seen in the history of our country. The reason for this is twofold: Money is being diverted away from the political parties, which as broad-based organizations must moderate their messages to appeal to the largest audiences possible for their candidates and for their ideology, and it is instead being given to single-issue ideological groups whose stances are often dogmatic, whose communication strategies are often hard-edged, and who are not accountable to the voters.

It is now almost a universal political tactic for candidates and groups to file complaints against their opponents, alleging violations of a vague, complex, and difficult-to-understand campaign finance law. Thus, these laws encourage political actors to not only attack the policies and positions of their opponents, but to tar them as lawbreakers as well. So much for an age of more honest debate and fewer negative attacks and soft money out of the system.

The reformers also argue that upon BCRA's passage, public cynicism about the political process would abate because elections would now be free from the taint of soft money and the appearance of improper influence. Actually, I think the American people have become more cynical. They are told that a law will rid the political system of soft money, see that it does not, and then have to listen to the advocates of the law crow about what a success it is.

Finally, we were told that BCRA would enable the average person to have a greater influence on the political process. I hope we can correct some of the situations with the 527s, because I think what you are seeing—and we do it on both sides of the aisle—is a few billionaires in this country having a political playground at the expense of the average union person whose money is now dirty soft money, or the average person who works in a corporation. I think that is sad for the United States.

BCRA's complexities and ambiguities combined with its harsh penalties have increasingly made the Federal political process the exclusive province of the rich, the sophisticated, and the well-connected. I recommend to anybody thinking about entering into Federal politics today to challenge an incumbent Member of Congress. Hire a lawyer, an accountant, and a bail bondsman.

BCRA was supposed to enhance the voice of the average citizen, but instead it has increasingly frozen out the average citizen from the political process.

It is important that we be honest about the consequences, and the fact is that we are stuck with a complex and convoluted law that doesn't ban or even reduce soft money in the Federal political system, but does impose significant burdens on individuals and groups seeking to be involved in the process.

We are fortunate to have with us today, four distinguished colleagues of ours who will discuss their proposed legislative solutions to the problems we currently face. I intend to keep an open mind about the laws. Again, I want to say from the outset that I have no intentions of repealing or attempting to repeal this law. I think we are here today to try to address some of the problems that have occurred.

With that, I will yield to our ranking member.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman, and good morning to our colleagues. I want to thank the Chairman for holding this oversight hearing to consider proposals to impact the activities and roles of 527 organizations.

A little bit of historical perspective: 527s are named after a section of the Internal Revenue Code that specifies the tax treatment accorded political organizations and tax-exempt organizations which make political expenditures. Under section 527, all political organizations are tax-exempt for purposes of Federal tax law. Sec-

tion 527 was added to the Tax Code in 1975; thus, 527s have been legally constituted operating entities for nearly 30 years.

Congress has addressed 527s twice in the last 5 years. In 2000 we passed legislation requiring that all 527s that expect to have gross receipts of over $25,000 during a taxable year register with the Internal Revenue Service within 24 hours of their formation if they were not required to report to the FEC. These 527s are then subject to the public disclosure and review requirements of the IRS, and if they meet additional requirements, they are subject to the public disclosure and review requirements of the FEC as well.

In 2002 we passed legislation which was intended among other things to reduce unnecessary and duplicative Federal reporting by certain State and local political committees where the information was already required to be reported and to be publicly disclosed under State law. Thus, most State and local political organizations are exempt from registering, reporting their contributions and expenditures, and filing disclosure forms with the IRS.

The Supreme Court waded in on the issue in McConnell versus Federal Elections Commission. The Court clearly stated that placing limits on the raising of unregulated corporate, union, and large individual contributions donated by organizations and individuals with general or specific legislative objectives would not have the same application to broader citizen-based interest groups.

BCRA imposes numerous restrictions on the fund-raising abilities of political parties, of which the soft money ban is only the most prominent. Interest groups, however, remain free to raise soft money to fund voter registration, GOTV activities, mailers and broadcast advertising other than electioneering communications.

In January the Federal Election Commission implemented new rules requiring more 527s to register with the FEC; 527 groups, whose only purpose is to support or oppose a Federal candidate, may only do so with hard money. Citizens who give to the hard-money accounts of these 527 groups will be under the same contribution limits as if they were giving to the political committees of the Members of Congress.

527 groups will also not be able to finance their entire operation using soft money. They will now be required to use a mix of hard- and soft-money contributions of at least 50 percent of expenses of their activities paid with hard dollars subject to Federal limits.

We are all too familiar with 527 ads run by the Swift Boat Veterans and others on both sides of the political spectrum that aired during the 2004 Presidential election. While I disagreed with the content of the Swift Boat ads, I agree that private citizens have a right to say that. Many 527s don't run television ads. Their activities include publishing legislative report cards on the voting records of Members of Congress and conducting voter registration drives.

Because of the efforts of America Coming Together, Voices For Working Americans, and other similar groups, it has been reported that the 2004 elections saw the greatest increase in voter participation since 1968. Congress should encourage these citizen-based activities of informing the public and of getting more citizens involved in our democracy. While I may disagree with what someone

has said or done politically, I respect their right to do so and to say it.

I voted for the Bipartisan Campaign Reform Act of 2002 to sever the connection between Federal officeholders and raising of soft money. BCRA was necessary to cut the perceived corrupting link between officeholders, the formation and adoption of Federal policies and nonFederal money, so-called soft money.

After BCRA was challenged, the Supreme Court upheld 99 percent of the law, clearly demonstrating that it is constitutionally permissible to regulate or limit the money which Federal officeholders, Federal candidates, and their national political parties use for political speech. The Supreme Court recognized the government interest in stemming the corrupting influence such money can have on Federal policy, even though it imposes on free speech.

Mr. Chairman, you have stated that the Help America Vote Act of 2002 should not be amended but should be given a chance to work. BCRA was signed into law the same year and has only been given one election cycle to work. BCRA also should be given the same opportunity or chance to work.

Congress may choose to impose additional regulations on 527s if it can clearly demonstrate that the money raised and expended by these groups has the same potential corrosive influence on Federal policymakers. Since filing for tax-exempt status is purely voluntary, some of these groups may decide to morph into a different, less accountable form. This point was brought to light in the statement of FEC Commissioner Weintraub before the committee last spring, predicting that if the FEC adopted the proposed changes to the way 527 organizations are regulated, some entities spending funds and disclosing that spending through a 527 organization would, I believe, reorganize and continue substantially the same activities through 501(c)(4) or (6) organizations, which do not have the same disclosure obligations.

That was testimony before the Committee on House Administration, May 20, 2004.

I would like to include for the record a letter I signed with over 125 of my colleagues to the FEC last year, stating that when we voted for BCRA, we voted for more, not less, political involvement by ordinary citizens and the associations they form.

[The information follows:]

APRIL 7, 2004.

COMMISSIONERS,
Federal Election Commission,
Washington, DC,

Re NPRM regarding political committee status.

DEAR COMMISSIONERS: We are writing to express our concerns about the pending Notice of Proposed Rulemaking on "political committee status."

We take a particular interest in this regulatory initiative because it seeks to raise and address "soft money" issues very different from those that Congress resolved in the Bipartisan Campaign Reform Act of 2002. Yet while charting this different course, the proposed rules claim as their authority both BCRA and the Supreme Court's decision in McConnell v. FEC upholding the new law. We are troubled by the suggestion that these proposed rules follow the path we laid out, because they would lead to results that many of us voting for the new law did not consider or approve.

We support BCRA because we believe that the link between unregulated contributions and federal officeholders, candidates and their parties should be broken. We believe that the statute achieved this goal, striking a careful balance between need-

ed additional regulation of campaign finance, on the one hand, and the protection of speech and associational rights, on the other. And we believe that the proposed rules severely undermine that balance, with potentially severe consequences for vital speech on the central issues of the day.

Specifically, the proposed rules before the Commission would expand the reach of BCRA's limitations to independent organizations in a manner wholly unsupported by BCRA or the record of our deliberations on the new law. For example, Congress crafted a new term for certain election-influencing activities by political parties—so-called "Federal election activities"—as part of the BCRA approach to limiting party soft money. The proposed rules would appropriate this concept of "Federal election activities" for the very different purpose of regulating "issues" speech and other political activity of 501(c) and other organizations. Congress did not choose to vastly extend in this way the concept of "Federal election activities."

More generally, the rulemaking is concerned with new restrictions on "527" organizations, primarily through the adoption of new definitions of an "expenditure." Congress, of course, did not amend in BCRA the definition of "expenditure" or, for that matter, the definition of "political committee." Moreover, while BCRA reflects Congress's full awareness of the nature and activities of "527s", it did not consider comprehensive restrictions on these organizations like those in the proposed rules.

There has been absolutely no case made to Congress, or record established by the Commission, to support any notion that tax-exempt organizations and other independent groups threaten the legitimacy of our government when criticizing its policies. We believe instead that more, not less, political activity by ordinary citizens and the associations they form is needed in our country.

These and other issues go to the heart of how the federal campaign finance laws may affect for the worse a host of organizations engaged in speech on controversial political issues. The Congress took care to act with caution in this area; the Commission should do the same. As the Supreme Court noted in McConnell v. FEC:

Congress's "careful legislative adjustment of the federal election laws, in a 'cautious advance, step by step,' to account for the particular legal and economic attributes . . . warrants considerable deference."

124 S. Ct. 619, 645 (2003) (citing FEC v. National Right to Work Comm., 459 U.S. 197, 209 (1982)). This is a fair statement of Congress's intent to improve the enforcement of existing law, not to promote an aggressive expansion of the law in the near-term.

The FEC should also take into account the dangers of reviewing and resolving these issues quickly, on the eve of presidential and congressional elections and in a charged partisan environment. These are not conditions best suited to the task of thoughtful and credible rulemaking on critical issues.

The dangers associated with rushed judgment in a partisan crossfire became apparent in the recent weeks, when the FEC issued its Advisory Opinion on "allocation" issues to the "ABC" Committee. In that Opinion, the Commission made changes in existing law, in the middle of an election cycle, in response to a request from a sham committee formed solely to advance partisan objectives. The Commission should not rush more new rules with major impact, in this cycle, such as those now proposed.

Congress, when enacting BCRA, elected to defer the effective date to the next cycle. Even in establishing the day after the last general election, November 2, 2002 as the effective date, Congress fashioned, with great care, transitional rules to allow time for an appropriate and manageable change from one set of legal rules to another. The Commission would turn this approach on its head by promulgating significant and controversial new rules—rules that Congress did not consider or enact in its own "soft money" reform—in the thick of this election year.

The FEC should take the time necessary to assure that any changes it proposes are carefully considered and crafted, with minimum disruptive impact on ongoing activities by political committees, organizations and candidates.

For this reason, we ask that the Commission reconsider the nature and timing of the current rulemaking initiative.

Sincerely,

[In alphabetical order]

Abercrombie, Ackerman, Alexander, Allen, Andrews, Baca, Baldwin, Ballance, Becerra, Bell, Berkley, Berman, Berry, Bishop, T., Blumenauer, Boswell, Brady, Brown, C., Brown, S., Capps, Capuano, Cardin, Carson, J. Conyers, Costello, Crowley, Cummings, Davis, D., Davis, L., Davis, S., DeFazio, DeGette, Delahunt, Deutsch, Dicks, Dingell, Dooley, Doyle, and Emanuel.

Engel, Eshoo, Etheridge, Evans, Fattah, Filner, Frost, Gephardt, Grijalva, Hinchey, Hinojosa, Holt, Honda, Hoyer, Israel, Jackson-Lee,

Johnson, Jones, Kanjorski, Kennedy, Kilpatrick, Kucinich, Lampson, Langevin, Lantos, Larsen, Larson, Lee, Lewis, Lofgren, Lowey, Lynch, Majette, Markey, Matsui, McCarthy, McCollum, McDermott, McGovern, McNulty, Meek, Meeks, Menendez, Michaud, and Millender-McDonald.

Miller, Miller, Moran, Nadler, Napolitano, Olver, Ortiz, Owens, Pallone, Pascrell, Pastor, Pelosi, Pomeroy, Price, Rangel, Rodriguez, Ross, Rothman, Roybal-Allard, Rush, Ryan, Sanchez, Linda, Sanders, Sandlin, Schakowsky, Serrano, Slaughter, Solis, Stark, Strickland, Tauscher, Thompson, M., Tierney, Udall, M., Velázquez, Visclosky, Waters, Watson, Watt, Waxman, Weiner, Wexler, and Woolsey.

Ms. MILLENDER-MCDONALD. Lastly, I have requested letters from the Congressional Latino Caucus, the Congressional Asian Caucus, and the Congressional Black Caucus. All of these groups illustrate how these organizations increased voting turnout in 2004.

Mr. Chairman, I look forward to including these for the record and look forward to my colleagues' testimony this morning.

Thank you so much for this hearing.

The CHAIRMAN. I thank the gentlewoman.

[The statement of Ms. Millender-McDonald follows:]

Oversight Hearing on the Regulation of 527 Organizations

April 20, 2005
10:00 AM
1310 Longworth House Office Building

REP. JUANITA MILLENDER-MCDONALD'S OPENING STATEMENT

I want to thank the Chairman for holding this oversight hearing to consider proposals to impact the activities and roles of 527 organizations.

527s are named after a section of the Internal Revenue Code that specifies the tax treatment accorded political organizations and tax-exempt organizations which make political expenditures. Under Section 527, all political organizations are tax-exempt for purposes of federal tax law. Section 527 was added to the Tax Code in 1975, thus 527s have been legally constituted operating entities for nearly 30 years.

Congress has addressed 527s twice in the last five years.

In 2000, we passed legislation requiring that all 527s that expect to have gross receipts of over $25,000 during a taxable year, register with the Internal Revenue Service (IRS) within 24 hours of their formation, if they were not required to report to the FEC. These 527s are then subject to the public disclosure and review requirements of the IRS, and if they meet additional requirements, they are subject to the public disclosure and review requirements of the FEC as well.

In 2002, we passed legislation, which was intended, among other things, to reduce unnecessary and duplicative Federal reporting by certain State and local political committees, where the information was already required to be reported and to be publicly disclosed under State law. Thus, most state and local political organizations are exempt from registering, reporting their contributions and expenditures, and filing disclosure forms with the IRS.

The Supreme Court weighed in on the issue in McConnell v. Federal Election Commission. The Court clearly stated that placing limits on the raising of unregulated corporate, union, and large individual contributions, donated by organizations and individuals with general or specific legislative objectives, would not have the same application to broader, citizen-based interest groups:

> "...BCRA imposes numerous restrictions on the fundraising abilities of political parties, of which the soft-money ban is only the most prominent. Interest groups, however, remain free to raise soft money to fund voter registration, GOTV {Get-Out-The-Vote} activities, mailings, and broadcast advertising (other than electioneering communications)." *McConnell v. Federal Election Commission, 540 U.S. ____ (2003)(slip op. 80), {bracketed words added}.*

In January, the Federal Election Commission (FEC) implemented new rules requiring more 527s to register with the FEC. 527 Groups whose only purpose is to support or oppose a Federal candidate may only do so with "hard money". Citizens who give to the hard money accounts of these 527 groups will be under the same contribution limits as if they were giving to the political committees of Members of Congress. 527 groups will also not be able to finance their entire operation using "soft money". They will now be requirement to use a mix of hard and soft money contributions of at least 50% of the expenses of their activities paid with hard dollars subject to federal limits.

We are all too familiar with the 527 ads, run by Swift Boat Veterans that aired during the 2004 presidential election. While I disagree with the content of the ads, I agree that private citizens have a right to say it. Many 527s don't run television ads; their activities include publishing legislative report-cards on the voting records of Members of Congress, and conducting voter registration drives. Because of the efforts of America Coming Together, Voices for Working Families, and other similar civic groups, it has been reported that the 2004 elections saw the greatest increase in voter participation since 1968. Congress should encourage these citizen based activities of informing the public, or getting more citizens involved with our democracy. While I may disagree with what someone has to say or do politically, I respect their right to say it or do it.

I voted for the Bipartisan Campaign Reform Act of 2002 (BCRA) to sever the connection between Federal officeholders and the raising of soft money. BCRA was necessary to cut the perceived corrupting link between officer holders, the formation and adoption of federal policies, and non-federal money, so called "soft money". After BCRA was challenged, the Supreme Court upheld 99% of the law, clearly demonstrating that it is Constitutionally permissible to regulate or limit the money which Federal office holders, Federal candidates, and their national political parties use for "political Speech." The Supreme Court recognized the Government's interest in stemming the corrupting influence such money can have on Federal policy, even though it imposes on "free speech."

Mr. Chairman, you have stated that the Help America Vote Act of 2002 should not be amended but should be given a chance to work. BCRA was signed into law the same year and has only been given one election cycle to work. BCRA should be given the same opportunity.

Congress may choose to impose additional regulations on 527s, if it can be clearly demonstrated that the money raised and expended by these groups has the same potential corrosive influence on Federal policy makers. Since filing for tax-exempt status is purely voluntary, some of these groups may decide to morph into a different, less accountable

form. This point was brought to light in the statement by FEC Commissioner Weintraub before this Committee last spring, predicting that if the FEC adopted the proposed changes to the way 527 organizations are regulated:

> "…some entities currently spending funds and disclosing that spending through a 527 organization would, I believe, re-organize and continue substantially the same activities through 501(c)(4) or (6) organizations, which do not have the same disclosure obligations." *Testimony before the Committee on House Administration May 20, 2004*

I would like to include for the record a letter I signed with over 125 of my colleagues to the FEC last year stating that, when we voted for BCRA, we voted for more, not less political involvement by ordinary citizens and the associations they form. Lastly, I have requested letters from several groups to illustrate how these organizations increased voter turnout in 2004. I look forward to including these for the record.

Again, I want to thank the Chairman for calling this hearing, and I look forward to hearing from all the witnesses.

The CHAIRMAN. Mr. Ehlers.

Mr. EHLERS. Thank you, Mr. Chairman. Just a few brief comments.

First of all, when we went through the passage of the current law on campaign finance, the Shays-Meehan law, I did not vote for it, even though I was in great sympathy with the aims of the authors of that bill. I did not vote for it, for a couple of reasons, even though I oppose the use of soft money and voted for a substitute that totally banned all soft money.

What concerned me was removing the parties, to a certain extent, from the political process. And I knew, I absolutely knew, that some alternative would spring up which would be less regulated than what we had before, and that is precisely what happened.

Now, I am well aware that there have been some activities of the FEC to regulate, but I think it is an abomination that the parties, particularly the minority party here in the House, immediately jumped on 527s as an alternative and totally defeated the intent of the Shays-Meehan act by their behavior with those units.

I sometimes sympathize with Mr. Doolittle's constant statement in this committee that let's just require everything to be reported; anyone can contribute any amount they wish, but all has to be reported.

I think that goes a bit far, but we have to have the controls. And what happened with the 527s the last 2 years I think was an abomination of the political process. Regardless of their good intent, regardless of their good efforts, regardless of their voter turnout, at the very least we want to make sure that all contributions given are reported accurately, that there are enforcement mechanisms to make certain that the laws and rules that we adopt are enforced and are kept in place.

With that, I will yield back. Thank you.

The CHAIRMAN. The gentlewoman from California.

Ms. LOFGREN. Mr. Chairman, thank you. I would ask unanimous consent that my statement be made part of the record.

The CHAIRMAN. Without objection.

Ms. LOFGREN. And I would just add a couple things. I did vote for Shays-Meehan, and I think in many respects it worked as hoped. We had the biggest turnout ever, I think, in the elections last year.

So the questions I have looking at these bills is what impact would they have to encourage voters to go to the polls? Will they up or depress turnout? Are they allowing average citizens to organize on the grassroots level and speak out on issues? Will they discourage nonpartisan activities like voter registration drives and get-out-the-vote efforts and will they level the playing field?

I will say I have very strong constitutional law questions about the efforts to rein in the so-called 527s. Clearly we are not required to give a tax break. That is not a constitutional issue. But all of the reasoning of the Court really relates to regulation of politicians to avoid corruption in the political system. I don't think that that line of thinking really extends to citizens who are organizing without the request or behest of elected officials or candidates. So I also will be looking very carefully at that. I have very strong doubts that we actually can legislate in that arena.

I yield back, and I thank the gentleman for recognizing me.
[The information follows:]

STATEMENT OF CONGRESSWOMAN ZOE LOFGREN

Chairman Ney, Ranking Member Millender-McDonald, thank you for holding this important hearing today.

Thank you also to my colleagues, Congressmen Wynn, Meehan, Shays and Pence for testifying before House Administration today. I have reviewed your testimony and I look forward to hearing from you in person today. I also want to ask for your forgiveness for having to step out of this hearing today. The Homeland Security Committee is considering a Cybersecurity bill this morning that I wrote with Congressman Mac Thornberry, so I will need to attend that hearing as well.

A little over three years ago, Congress passed and the President signed the Bipartisan Campaign Reform Act of 2002 (BCRA). This enactment of this bill was the culmination of years of work by many Members of Congress I and in particular Congressmen Shays and Meehan.

As you may recall, it took some time to get this bill considered in the House. It only came to the floor after Congressmen Shays and Meehan filed a discharge petition in support of the bill. I was the 22nd Member to sign the petition. Of course, this bill ultimately passed by a vote of 240-189 on February 13, 2002.

I strongly supported this reform effort and was proud to vote in support of this legislation along with 198 of my Democratic colleagues. I will note that my friends Congresswoman Millender-McDonald and Congressman Brady also voted for this bill.

Shays-Meehan had a clear purpose: it took members of Congress out of the business of asking lobbyists and special interest for large unregulated donations. There was something unseemly about a Senator or Congressman asking a donor for a $100,000, or $250,000 or even a million dollars—and BCRA outlawed that practice.

This legislation went into effect on November 6, 2002, had a major effect on the way that the 2004 elections were conducted. Both political parties were able to wean themselves off of soft money and were successful in raising funds through many small dollar contributions.

According to the Committee for the Study of the American Electorate, the 2004 elections say the greatest increase in voter participation since 1968. Voter turnout was over 60%. Turnout last year rose by 6.4 percentage points over 2000, the biggest election-to-election increase since 1952.

In 2000, 105 million people turned out to vote. In 2004, approximately 122.3 million voted.

Voters were motivated like never before to get involved and vote. This is a good thing for our democracy. This Committee and this Congress must not do anything that would discourage these trends.

Of course, I wish that more of these voters would have voted for Democratic candidates!

I have only begun to review the legislation today and I plan to analyze it to make sure it does nothing to discourage voter education and turnout efforts. I think all of us can agree that we want to see even more voter interest in the 2006 midterms and the 2008 Presidential elections.

Some of my questions are as follows:

Will these bills encourage voters to go to the polls or will they depress turnout?

Will they allow average citizens to organize on the grassroots level and speak out on issues?

Will they discourage non-partisan activities like voter registration drives and get out the vote efforts?

In the tradition of the original Shays/Meehan legislation, will these bills discourage large donations directly to candidates and political parties, thus reducing the legitimate concerns by the public about special access for large, super-donors?

Will these bills level the playing field so corporate, union and non-profit groups can compete fairly in elections?

Will donations continue to be transparent through reporting requirements?

I am all for campaign reform as long as it is true and authentic reform. I don't want to see a bill rammed through Congress that is reform in name only. In addition, this reform must not undermine the progress that has been made under BCRA.

As we begin the process of looking at these proposals, let's make sure that this reform effort does nothing to discourage voters and takes positive steps to improve our democracy.

The CHAIRMAN. The gentleman from New York.

Mr. REYNOLDS. Thank you, Mr. Chairman.

I look forward hearing the testimony in this hearing today. As you well know, I did not support Shays-Meehan, but it is the law of the land, and we have to see what has transpired that works well and what doesn't. I have heard all sorts of different things: Whether 527s were meant to be included; they weren't meant to be included. I think we have a number of different aspects or examples of where maybe some of that has gone awry, and this is an important hearing for us to begin to take a good self-examination of a law that is on the books and has been sustained by the courts, as to where we continue in the direction of campaign finance and any of its potential reforms.

Thank you.

The CHAIRMAN. The gentleman from Pennsylvania, do you have a statement?

Mr. BRADY. No, Mr. Chairman.

The gentlewoman from Michigan.

Mrs. MILLER. Thank you, Mr. Chairman. I want to thank you for holding this very, very important hearing on this subject.

During the past election cycle, it was certainly clear to everyone that 527 organizations had a tremendous and I think an unforeseen impact on the 2004 elections, and it is important that this committee does examine these issues.

In 2004, politically active individuals and organizations found a new avenue to influence our election process. Those who previously would have donated funds to political parties, which operate under strict disclosure requirements, are now funneling money to largely unregulated, unsupervised 527 groups. No clear rules govern these operations. It gives 527s a tremendous latitude in the political process.

So the question becomes, who exactly is supporting these 527s? And the answer is, no one really knows. Certainly one of the possibilities is that foreign citizens are actually supporting these 527s. For example, at the end of 2003 it became known that retired U.S. Air Force General Wesley Clark's campaign website was offering a link to Canada for Clark. Canada for Clark in turn advised Canadians that "nonAmericans can't, by law, give money to any particular candidate's campaign, but we can support prodemocracy progressive organizations like MoveOn.org which do their best to spread the ugly truth about Bush and to publicize the Democratic message. Click here to donate to MoveOn.org."

According to that same report, Clark's official campaign website was the top traffic referrer to CanadaforClark.com. After this was exposed, MoveOn.org announced they would not accept any more overseas contributions. However, they refused to say how much money they had already collected abroad or if they would return any of the funds that they had received; and, of course, because 527s are not required to disclose contribution to the FEC, we do not know yet how much of MoveOn.Org's receipts might have come from foreign citizens.

To a certain extent, 527 organizations themselves have taken the place of wealthy donors in the election process. For example, according to the minority leader's spokesperson, in recent published reports, the distinguished minority leader or her staff meets with representatives of MoveOn.org on a very regular basis. In an e-mail that MoveOn.org sent out to members earlier this year, they said "Now it is our party. We bought it, we own it, we are going to take it back."

What it comes down to is that no matter how many laws Congress passes or how many regulations the Federal Elections Commission hands down, people will find ways to contribute to candidates that they support. And when limits were placed on donations to individual candidates, people began directing funds to State and national party organizations. And when the government banned those contributions, the money began to flow to the 527s.

In 2004, the best I could tell—I tried to do a little research on this—federally focused 527s spent over $550 million. By contrast, George W. Bush and John Kerry combined to spend $655 million on their own campaigns. The numbers are strikingly similar. The only difference is the Presidential candidates had to disclose every contributor and expenditure to the FEC, and, the 527s had to do neither. Both political parties enjoyed the largesse of the 527s, and our election process and all Americans suffered as a result.

This certainly brings us to a crossroads. We can either force all groups that operate for political purposes in an election cycle to play by the same set of rules. Or we can remove the contribution limits and allow individuals to contribute their funds however they choose, to whomever they choose, but require full disclosure and let the voters decide what is appropriate. Whatever route we do choose to go, I think we must insist upon having strict disclosure requirements for any and all of these political organizations.

As a former chief elections officer from the great State of Michigan, I have been an advocate of many, many years of full transparency in our electoral process. Those who wish to exercise their free speech by contributing to a particular cause must also recognize that their speech will be heard by anyone who wants to listen. People who desire to find out who is paying for the cost of these campaign activities should be able to readily access that information.

The alternative is what we have now: groups who are operating literally under the cover of shadows in hopes of hoodwinking voters to support their candidate or their cause. I think if we fail to act now, the ugliness that we saw in 2004 will only intensify in 2006 and elections beyond. We must protect our democratic electoral process and prevent the distortion of our process by individuals who support these 527s and try to set the political agenda for our Nation.

Thank you, Mr. Chairman. I look forward to hearing from our colleagues.

The CHAIRMAN. I thank all the members.

I mentioned before we have four distinguished colleagues with us today, Members of the House, to discuss their proposals and dealing with the issue. We have Congressman Christopher Shays of

Connecticut, Marty Meehan of Massachusetts, Congressman Mike Pence of Indiana, and Congressman Albert Wynn of Maryland.

We will start with Mr. Shays.

Mr. SHAYS. Mr. Chairman, could I defer to my colleague Mr. Meehan?

The CHAIRMAN. We will start with Mr. Meehan.

STATEMENT OF THE HON. MARTIN T. MEEHAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. MEEHAN. Thank you, Mr. Chairman, Ranking Member Millender-McDonald, and members of the committee. Thank you for the opportunity to speak with you today about H.R. 513, the "527 Reform Act." I will speak briefly and then ask the committee, Mr. Chairman, with your permission, to insert my full testimony into the record.

Over the last few years, we have made enormous strides in reduce the corrupting influence of soft money. I am here today to emphasize the importance of continuing to move forward, not backward. The Bipartisan Campaign Reform Act, or BCRA, written by Congressman Shays and me, and, in the Senate, Senators Feingold and McCain, signed into law by President Bush in March of 2002, is working. The law has succeeded in its central purpose, severing the link between Federal candidates, Federal officials, and unlimited soft money contributions.

Despite some misperceptions, BCRA's intent was never to eliminate money from politics. The intent was to reduce the disproportionate corrupting influence of six- and seven-figure donations to Federal campaigns and to give ordinary citizens a greater say in the political process. BCRA has done exactly that.

This increased citizen involvement in the 2004 cycle was fueled by small dollar, Internet, and individual contributions; and that is a positive trend, a trend enabled by the end of the soft money system.

Unfortunately, during an election cycle when grassroots activities flourished, a small set of organizations were allowed to play by a different set of rules. 527 groups became the preferred vehicle for large donors to steer enormous amounts of soft money into Federal elections. 527s, by their definition, have the primary purpose of influencing Federal elections, and therefore are required to register with the Federal Elections Commission. Yet the FEC has refused to do its job and regulate them.

The 527 loophole was not created by BCRA in 2002. It was created by the Federal Election Commission years ago through its failure to enforce the Federal Election Campaign Act of 1974. With the FEC looking the other way in the 2004 cycle, record amounts of soft money was steered into 527s, a total of more than $400 million; $146 million, $146 million in soft money, came from just 25 wealthy individuals. Ten donors gave at least $4 million each, and two donors gave more than $20 million. The Swift Boat slander campaign against Senator Kerry was financed by two wealthy Texans who contributed $6 million each.

The danger in allowing 527s to continue to evade the law is the risk of bringing back the soft money system, where corporations, unions, and wealthy individuals could buy influence with million-

dollar checks. There is no common sense or legal basis to allow 527s to ignore the rules that apply to every other political committee.

There is a simple solution to the question of 527s that ensures fairness and prevents abuse of the law: Make them play by the same rules that everyone else has to.

In September, Congressman Shays and I filed suit against the Federal Elections Commission for failing to enforce the law. But it is essential that we resolve this problem in a timely manner. That is why we have introduced bipartisan, bicameral legislation that has a simple, straightforward purpose. The 527 Reform Act clarifies and reaffirms that 527 groups spending money to influence Federal elections must comply with the same laws that apply to every other political committee, including the soft money ban.

I would like to address some of the things that have been said about the 527 Reform Act. I am confident that when members look carefully at the issues, it will become clear that many of the concerns are groundless.

First, the 527 Reform Act is not intended to shut down 527 organizations; 527s have a constitutional right to organize and participate in elections. It simply shuts down the 527 soft money loophole.

Second, the bill explicitly exempts State and local candidates and their campaign committees, as well as any 527 organization involved exclusively in State or local elections.

Third, the 527 Reform Act simply does not apply to 501(c)(3)or 501(c)(4) organizations. We have made it explicit in the bill, and I will make it clear again today, we have no intentions to propose changing rules that apply to 501(c) organizations.

I have not heard a substantive argument that the 527 Reform Act will have an impact on 501(c)(3)s, but if our bill can be made even clearer on that issue, Mr. Chairman, or any other potential concerns relative to 501(c)s, we would love to work with you to try to tighten the language.

In closing, it is essential that legislation to close the 527 loophole not be used as a vehicle to backtrack on BCRA or undermine any existing campaign finance laws. We must not usher the return of the soft money system only 3 years after Congress put an end to it.

Again, Mr. Chairman, I thank you for this opportunity and look forward to working with you on this legislation.

The CHAIRMAN. I thank the gentleman.

[The statement of Mr. Meehan follows:]

Congressman Marty Meehan
Committee on House Administration
Testimony on the "527 Reform Act"
April 20, 2005

Chairman Ney, Ranking Member Millender-McDonald, members of the Committee, thank you for the opportunity to speak to you today about HR 513, the "527 Reform Act."

Over the last few years, we've made enormous strides reducing the corrupting influence of soft money in federal elections. I'm here today to emphasize the importance of continuing to move forward, not backward.

The campaign finance reform bill that Congressman Shays and I wrote and President Bush signed into law in March 2002 is working. The Bipartisan Campaign Reform Act of 2002 has succeeded in its central purpose -- severing the link between federal candidates and unlimited soft money contributions.

Despite some misperceptions, the intent of BCRA was never to eliminate money in politics. The intent was to reduce the disproportionate, corrupting influence of six- and seven-figure donations to federal campaigns, and to give ordinary citizens a greater say in the political process.

BCRA has done exactly that. In the 2004 cycle – fueled by small-dollar, individual, and Internet contributions – candidates and parties raised more in hard money than they raised in hard and soft money combined in the 2000 cycle.

Senator Kerry's presidential campaign raised ten times as much in donations of under $200 than Vice President Gore did in 2000. President Bush quadrupled his small donor base from 2000 to 2004.

The DNC added more than 2 ½ million new donors; the RNC, more than one million.

This increased citizen involvement is a positive trend – and it was enabled by the end of the soft money system.

Washington Post columnist David Broder was one of the leading skeptics of campaign finance reform. But after looking at the results, Mr. Broder wrote, "As one who is skeptical of the claimed virtues of the McCain-Feingold [Shays-

Meehan] campaign finance law, I am happy to concede that it has, in fact, passed its first test in the 2004 campaign with flying colors....[A] solid start has been made in expanding the financial base of both parties and using the resources to bring more people into the electorate. That is all to the good."

Unfortunately, during an election cycle when grassroots activity flourished, a small set of organizations were allowed to play by a different set of rules. 527 groups became the preferred vehicle for large donors to steer enormous sums of soft money into federal elections. Despite its clear mandate, the Federal Election Commission refused to enforce the law.

We are here today not because of any failure by Congress or the courts. We're here because the FEC has ignored thirty years of congressional actions and Supreme Court jurisprudence in allowing 527s to evade the law.

Ever since 1976, the Supreme Court has interpreted the Federal Election Campaign Act (FECA) to provide that if any organization spends $1,000 or more on "expenditures" and has a "major purpose" of influencing federal elections, it must register with the FEC as a political committee. And it must play by the same rules as all other political committees, including contribution limits, source prohibitions, and reporting requirements.

527s – by their very definition – have the primary purpose of influencing federal elections. Yet the FEC has refused to do its job and regulate them.

With the nation's election watchdog looking the other way, record amounts of soft money were steered into 527s in the 2004 cycle – a total of more than $400 million, according to the Campaign Finance Institute.

According to campaign finance scholar Tony Corrado, $146 million in soft money came from just 25 wealthy individuals. Ten donors gave at least $4 million each and two donors gave more than $20 million.

The "Swift Boat" slander campaign against Senator Kerry was financed by two wealthy Texans who contributed $6 million each.

The danger in allowing 527s to continue to evade the law is the risk of ushering back the corrupt soft money system, where corporations, unions, and wealthy individuals could buy influence with million-dollar checks – and where politicians

could shake down big donors for soft money donations to funnel into federal campaigns.

527s claim to be independent. But Michael Malbin of the Campaign Finance Institute has noted that the largest 527s were established and managed by individuals closely associated with the Democratic and Republican parties and presidential campaigns.

Even if we assume that 527 groups are entirely independent of federal candidates and parties, the Supreme Court has made clear that Congress can still require them to raise and spend hard money for their activities that affect federal elections.

There is no common sense reason or legal basis to allow 527s to ignore the rules that apply to all other political committees spending money to influence federal elections.

There's a simple solution to the question of 527s that ensures fairness and prevents abuse of the law – make them play by the same rules as everyone else.

In September, Congressman Shays and I filed suit against the FEC for failing to issue regulations on 527s. This is not the first instance in which the FEC has done more to undermine campaign law than enforce it.

The Supreme Court in the *McConnell* case made clear that FEC regulations had caused the soft money problem in the first place, forcing Congress to act in 2002. After BCRA passed, the FEC went to work writing regulations to undermine the statute and Congress's intent. Last fall, a federal district court struck down 15 of the FEC's 19 regulations that Congressman Shays and I had challenged – a clear and stinging rebuke against an agency that has renounced its responsibility to enforce the law.

We expect the court to side with the law and against the FEC on 527s as well. But it is essential that we resolve this problem in a timely manner. That is why we've introduced bipartisan, bicameral legislation that has a simple, straightforward purpose -- to clarify and reaffirm that 527 groups spending money to influence federal elections must comply with the same laws that apply to all other political committees.

Our bill has the support of a growing coalition of bipartisan House and Senate members, including the Senate sponsors of BCRA, Sens. McCain and Feingold, as

well as Senate Rules and Administration Chairman Trent Lott and Sen. Chuck Schumer, who heads the Democratic Senate Campaign Committee. The bill has nine bipartisan co-sponsors in the House.

The 527 Reform Act forces the FEC to do something it should have done long ago – require any 527 group involved in federal elections to register as a political committee.

It ensures that 527 groups running ads that refer to federal candidates pay for them with hard money.

It closes a loophole that was abused in 2004 by requiring that when 527s spend money on voter mobilization activities or public communications that affect both federal and non-federal elections, at least 50% of the costs must be paid for with hard money, and all nonfederal funds must be subject to an individual contribution limit of $25,000.

I'd like now to address some of the concerns that have been raised about the 527 Reform Act. I am confident that when members look carefully at the issues, it will become clear that many of these concerns are groundless.

First, the 527 Reform Act is not intended to "shut down" 527 organizations. 527s have a constitutional right to organize and to participate in elections. It simply shuts down the 527 soft money loophole.

Second, the bill explicitly exempts state and local candidates and their campaign committees. It exempts any 527 organization involved exclusively in state or local elections. In addition, no 527 with annual receipts of less than $25,000 is covered by this bill.

Third, the 527 Reform Act does not affect any groups other than 527 groups. It simply does not apply to 501(c)3 or 501(c)4 organizations. The difference between 527s and 501(c)s is clear in their very definition under the tax code. 527s are by definition "organized and operated primarily" for the purpose of influencing elections. Under their definition in the tax code, 501(c)4s cannot have a primary purpose of influencing elections while 501(c)3s cannot spend any money in elections.

We've made it explicit in the bill – and I'll make it clear again today – we have no intention to change the rules that apply to 501(c) organizations.

I have not heard a substantive argument that the 527 Reform Act will have an impact on 501(c)s. But if our bill can be made even clearer on this issue or on other potential concerns, we are more than willing to work with you to tighten the language.

I will close with a final point: It is essential that legislation to close the 527 loophole not be used as a vehicle to backtrack on BCRA or to undermine any existing campaign finance laws. We must not usher the return of the corrupt soft money system only three years after Congress put an end to it.

I'd like once again to thank Chairman Ney, Ranking Member Millender-McDonald, and the members of the Committee for the opportunity to discuss the 527 Reform Act.

I look forward to working with you to end abuses of the campaign finance system and restore greater confidence in the political process.

# # #

The CHAIRMAN. Mr. Shays.

STATEMENT OF THE HON. CHRISTOPHER SHAYS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. SHAYS. Thank you, Mr. Chairman. And to members of the committee, thank you for your concern about this very important issue. I recognize this is both personal and also, obviously, we care deeply about our country and we want a system that works. So, congratulations for having this hearing.

I want to be as clear as I can be that the campaign finance law that passed has worked tremendously well, and I don't think you can really dispute that. What it did is it enforced the 1907 law which banned the use of corporate treasury money. No corporate treasury money came into the process, to the political parties, or to individuals.

It enforced the 1947 Taft-Hartley Act that banned union dues money, and union dues money didn't come into the political process through the mechanism of our law.

And it enforced the 1974 law that said you can't have unlimited contributions by individuals to candidates.

It reinforced a very important element that Marty has mentioned, and that is we can't ask for corporate money, union dues money, "we" being Members of Congress, union dues money or unlimited funds. It achieved that objective.

We were told by the critics that we would hobble the political parties, that they would not be able to do what they needed to do, and that we would be seeing no money coming into this process. That flies in the face of the facts.

The facts are that about $1 billion was raised in 2000 and in the 2004 race, and that was a combination of hard and soft money, about $1 billion; $1.2 billion was raised just in hard money. In other words, no corporate money, no union dues money and unlimited funds. So we can just put that one way out the window. It just is a false charge that never happened.

What we also said was that this bill would force the parties to go in a different direction. We used to reach out to many people, and what we started to do is we started to just go for the big and most powerful, wealthy, corporation, unions and individuals, and we stopped reaching out, we stopped building a base.

But we went from hundreds of thousands of supporters to millions and millions and millions of supporters. I believe the Democratic list is almost 100 million. It is astonishing what has happened. So we have involved more people.

The one problem is when we gave this law to the FEC, after we won in court, after it was declared constitutional, the ban on corporate money, the ban on union dues money, the ban on unlimited sums, the ban on having Members seek this money after it was declared constitutional, the Federal Elections Commission writes regulations that basically gut it.

Then what they do is they say, well, we are going to split the difference between opponents and proponents. That was done when we passed the law. Their job was to implement the law. The Court

reinforced the 1974 law that said if you are involved in a campaign activity, you come under the campaign law.

But what did the Federal Elections Commission do? They decided they would allow 527s to operate outside the law. So in came the corporate money, in came the union dues money, in came the unlimited sums.

I would just say to you, Mr. Ehlers, you can say that there will be a loophole, but it really hurts when the Commission that is supposed to enforce the law doesn't enforce the law. You would not have had that loophole if they simply did one thing. You are under the law because you are trying to influence Federal elections.

Now, I congratulate Democrats for being the primary supporters of campaign finance reform and a whole group of minority Republicans who supported it. But I want to say, in reverse, the irony is Republicans agreed to abide by the law. They didn't move forward with the 527s, they didn't promote the 527s. There were four or five that came into play. And after hundreds of millions were spent, we saw one group that stepped in, the Swift Boats, and all of a sudden we find that this is a problem. That speaks volumes, and I mean no disrespect. Congratulate Democrats for passing this bill, congratulate Republicans once it passed for trying to live by it.

The bottom line is this. The bottom line is this: All you need to do is deal with the 527s. Out goes the corporate money, the union dues money, and the unregulated money, and in comes 527s that will do what the political parties have to do: reach out to more people.

The NRA, for example, has 4 million members. If it got $10 from each member through its political action committee, it would have $40 million to spend. We are not tripping, we are not preventing 527s from doing what they want to do.

I will say this, and I am impressed by this. MoveOn.org is going after me left and right. I have already had six calls telling me to calm myself, to stop terrible things I want to do. But they are using hard money. I have no complaint with that. I have complaints with what they say, but I have no complaints with their right to say it.

So in the end, do understand this in conclusion: The presentation by Pence and Wynn, both extraordinarily capable and wonderful colleagues, they totally ignore the 527s. So you will still have the corporate money, the union dues money, and the unlimited fund. It is still going to be there, because they totally and completely ignore it.

What they then do is they just say, well, the political parties can raise more money. They still have the regulations, they still have the law in place, they lift the caps. The political parties would be able to raise about $1.1 million; and the Senatorial candidates and the House candidates, you would see the local candidates would be able to raise $2 million; and one Member of Congress could raise that $3 million. They would be able to go right back into the system.

So I view their proposal, frankly, as continuing with their view that you shouldn't have regulation, you should let the marketplace do its thing. But that is the debate we had when we passed the

law, and they really would be undoing the law. I think what they should be doing is focusing on how they get 527s into the process.

Thank you.

[The statement of Mr. Shays follows:]

TESTIMONY OF CONGRESSMAN CHRISTOPHER SHAYS
527 REFORM ACT OF 2005
COMMITTEE ON HOUSE ADMINISTRATION
APRIL 20, 2005

Chairman Ney, Ranking Member Millender-McDonald, thank you for allowing me the opportunity to testify in support of H.R. 513, the 527 Reform Act. I also appreciate your holding this hearing on an issue that is crucial to the integrity of our elections.

On December 10, 2003, the Supreme Court upheld nearly all elements of the Bipartisan Campaign Reform Act (BCRA), agreeing with Congress that the law complies with the First Amendment.

We wrote this law to help end a campaign finance system in which corporate treasury and union dues money was drowning out the voice of individual Americans by banning unlimited -- and often undisclosed -- soft money contributions and to close the sham "issue ad" loophole.

I am particularly pleased to report on the success of the BCRA. The national parties raised $1.2 billion in hard money in 2004, more than they raised in combined hard and soft money in 2000. The parties were able to recruit more donors than ever before and increased the cash they raised overall. A few large donors were replaced by thousands of smaller donors. I think it's fair to say that BCRA played an important role in this upsurge in participation.

Hearing of BCRA's success may be more convincing coming from those who initially questioned the law, so I would note an opinion from David Broder's February 3 column, in which he stated, "As one who has been skeptical of the claimed virtues of the McCain-Feingold campaign finance law, I am happy to concede that it has, in fact, passed its first test in the 2004 campaign with flying colors."

As Supreme Court Justice Sandra Day O'Connnor predicted in upholding BCRA, money did, in fact, find a way back into the political system, in the form of 527 organizations. According to a report by the Committee for Economic Development, 97 527s raised $323.4 million. And according to the Campaign Finance Institute, $142 million of this funding came from just 25 individual donors. Among the 527s were: The Media Fund, Americans Coming Together, Swift Boat Veterans for Truth, and Progress for America.

Section 527 of the Internal Revenue Code provides tax-exempt status for political groups such as candidate campaigns, party committees, political action committees (PACs), and other political committees. Under current law, section 527 organizations need only disclose their receipts and expenditures to the Internal Revenue Service, not the FEC, even though many spend huge sums of money to influence federal races.

In other words, 527 groups by definition are in the business of influencing campaigns and have voluntarily sought the tax advantages conferred on such political groups. These groups cannot be allowed to shirk their responsibilities to comply with federal campaign finance laws when they are spending money to influence federal elections.

Some claimed the 527 organizations proved that BCRA didn't work. This is not so. The use of soft money by 527 groups to pay for ads attacking and promoting the 2004 presidential candidates was not legal. This is a requirement of longstanding federal campaign finance laws that go back to 1974. That law, as construed by the Supreme Court in *Buckley v. Valeo*, requires any group whose "major purpose" is to influence federal elections, and who spends $1,000 or more to do so, must register with the Federal Election Commission as a "political committee," and be subject to the contribution limits, source prohibitions and reporting requirements that apply to all political committees.

While everyone else participating in federal elections was spending money subject to federal contribution limits, the 527 groups were operating outside the law and collecting unlimited soft money to influence the federal races.

Your committee is hearing testimony on two very different solutions to this problem. Congressman Meehan and I, as well as our colleagues Senators McCain and Feingold, propose requiring 527 groups to register as political committees with the FEC and comply with federal campaign finance laws, unless they raise and spend money exclusively in connection with non-Federal candidate elections, or state or local ballot initiatives. I believe this is the proper course of action, and would make our successful law even more so. To ensure free and fair elections, it is essential that federal election law is fully implemented and fairly enforced. It is imperative that the FEC execute the will of Congress with respect to all campaign law, but they have consistently failed to do so.

This proposal would not shut down 527s, it would simply force them to live by the same rules by which all other political groups, such as our own campaign committees, are forced to live.

I think it is crucial to have the support of people like Senator Lott, who opposed BCRA but is a cosponsor of the Senate companion to H.R. 513. In our press conference to announce the bill's introduction, Senator Lott rightly referred to 527 money as "sewer money" and promised action from the Senate Rules Committee, which has already held one hearing on this issue.

On the other hand, Mr. Pence and Mr. Wynn propose rolling back several features of BCRA. Instead of regulating 527s, they would weaken the regulations for national parties to allow them to spend more.
this is the wrong approach to take. I will not support any efforts to undermine or weaken BCRA, and any efforts to do so may end our ability to deal with this unregulated soft money loophole. I also will not support any efforts to turn this bill into a Christmas tree of legislative proposals designed to alter the current system.

The FEC has for 30 years improperly interpreted FECA to allow 527 organizations to spend millions of dollars to influence federal elections without complying with federal campaign finance laws. It is clear Congress must correct this misinterpretation and close this flagrant loophole.

I would also like to note that due to concerns expressed by state election officials, we are considering modifying the bill to ensure 527s that do not impact federal elections are not affected by this legislation. As modified, the bill will *not* require a 527 group to register as a federal political committee if the group does not make public communications that promote or attack a federal candidate, and if the group meets certain standards to ensure its voter drive activities are only for state and local candidates.

In addition to Mr. Meehan, H.R. 513 is cosponsored by Congressmen Bass, Becerra, Boyd, Castle, Frank, Lewis, McNulty, and Simmons. I appreciate all of their support.

Once again, Mr. Chairman, I appreciate your holding this hearing today. I urge your support, and the Congress' support, of H.R. 513 and would be happy to take any questions.

The CHAIRMAN. Which gentleman would like to go first? Mr. Pence or Mr. Wynn?

Mr. Pence.

STATEMENT OF THE HON. MIKE PENCE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. PENCE. Thank you, Mr. Chairman. I want to thank my colleague Albert Wynn for his extraordinary leadership on this issue. It is an honor to work with him on the Pence-Wynn bill.

I also want to thank my friends Chris Shays and Marty Meehan, who are passionate advocates of a point of view about campaign finance that while I disagree with strongly, I respect their sincerity, Mr. Chairman, and respect them personally.

By way of full disclosure, I think it is only fair to say that I did oppose the bill that they continue to defend, and I take very strong issue with their statements on the record today. I think Mr. Meehan said BCRA is working. I think Mr. Shays just saidit has worked tremendously well.

Well, for millions of Americans who lived through what I like to refer to as the summer of 527s, there might be a different opinion. What we saw in the summer of 2004, as the natural consequence of bipartisan campaign finance reform and the heavy regulation of political parties and traditional third-party groups like the AFL–CIO, the NEA, National Right to Life and the National Rifle Association, was the major political parties and the most respected institutions in this country standing literally on the sidelines while these strange and opaque and new organizations—to most Americans—were taking up all the time on the playing field in American Presidential politics.

Now, Mr. Wynn and I understand that their response is as the title of this hearing suggests, more regulation, more regulation of the political economy in America; and we do take a dramatically different view. It is a view that I believe is borne of the best traditions of our Nation's founding. And while our proposal in the Pence-Wynn bill, which is essentially an effort to level the playing fields between major national political parties, outside groups and the 527s, while that is a little bit messier because it invites more competition in the political marketplace than simply clamping regulation down on the 527s, I think it is more consistent with what Thomas Jefferson said when he said, "I would rather be exposed to the inconveniences attending too much liberty than those attending too small a degree of it."

There are inconveniences in a wide-open, free-wheeling, political economy of ideas, and the Pence-Wynn bill is simply our modest effort to address the summer of 527s with more competition and more freedom for the two great political parties in this country, and also for the long-established third-party organizations that have millions of members, labor unions, teachers unions, right-to-life organizations, organizations committed to a woman's right to choose, and every other one imaginable.

I am from Indiana, Mr. Chairman, so I like basketball analogies. This one seems to me to be a good one. In terms of a basketball game, you can imagine a two-on-two game on a playground where one of the four players is dramatically taller than the others be-

cause he is permitted to stand up and the other three play on their knees. Now, it does seem to me that some of the proposals about regulating 527s is about getting that player on their knees.

Mr. Wynn and I come to this approach with a different view, and that is let the other players stand up and let the major political parties compete. We do that in a couple of different ways. I would like, before I close, to say what we do in Pence-Wynn and what we don't do, because I read this morning in one of the Washington, D.C. newspapers about my bill, and I didn't even recognize it; which, Mr. Chairman, may have happened to you in the past.

First, what Pence-Wynn does, the 527 Fairness Act, we remove the aggregate contribution limits on contributions to Federal committees; basically let Americans with hard dollars give whatever they want to give to whatever campaigns and parties they want to give, but hard dollars. There is no change in the rules about soft dollars in our proposal with regard to Federal campaigns.

We lift the spending limits on parties. We end this dance that goes on between what is coordinated and not coordinated funding. We say to the Democratic Party and the Republican Party, support the candidates that you believe need supporting with the resources, the hard dollars that you raise from your constituencies.

Thirdly, we allow State and local parties to spend nonFederal dollars, but State-regulated dollars, on voter registration and sample ballots. These are just good government initiatives right now that are regulated with State money. But BCRA I will say, I believe inadvertently, impacts voter registration expenditures on the State level and the mention of Federal candidates.

Lastly, we appeal the Wellstone amendment to BCRA, which I hasten to add, Mr. Chairman, the Wellstone amendment that we seek to repeal in Pence-Wynn was opposed by Senator McCain and Senator Feingold during the Senate debate.

If I can put it in plain English—and the experts will correct me on this—basically what they managed to do was everything that Mr. Shays points out. They managed in the bill to say to organizations, the AFL–CIO, the NRA and others, that you can only use individual dollars. But then the Wellstone amendment came in and said no, you can only use individual dollars, but you have to create a PAC. It pushed it into even a smaller box. Some political pundits said at the time the Wellstone amendment was a "poison pill," that groups on the left and right would end up opposing the bill if it passed.

Well, whatever the reason for opposition, Senator McCain, Senator Feingold, opposed forcing third-party groups to raise money inside of political action committees as the exclusive means for participating in the political process during the affected period.

Nevertheless, it became a part of the law, and all Pence-Wynn does is simply say, in effect historically, Senator McCain, Senator Feingold, on that point you were right, and we repeal the Wellstone amendment and simply go back to an America where—to reference Ms. Lofgren's testimony earlier today—where we are encouraging citizen participation. We are saying that organizations—not treasury funds, not soft money—but can use individual contributions to that organization to operate otherwise under BCRA during the affected period.

Lastly, what this bill does not do, what Pence-Wynn does not do, number one, we do not repeal any limits on individual contributions to national parties or committees. All the new limitations, the new hard-dollar limits are in effect.

Number two, we do not change any other major provision of BCRA. Candidly, it is not helpful to refer to Pence-Wynn as a gutting of BCRA when Mr. Wynn and I are really bringing measures that we believe are very modest, go not nearly so far as I would choose to go—which candidly, Mr. Chairman, would be the repeal of BCRA I would vote for. We are making some modest changes to promote greater liberty in the system.

What also Pence-Wynn does, it does not allow soft money to the national parties. I see a headline today that talks about the battles over soft money. We are simply saying in this bill that we do free up State parties to use State-regulated money for voter registration and sample ballots. But there is no discussion, no proposal in Pence-Wynn, that would allow soft money to any Federal campaign entity or political party.

Lastly, we don't have elements in this bill that attempt to regulate 527s. On that point, Mr. Shays is precisely correct. I believe the answer to challenges in a free system of politics is more freedom, not less freedom, and the Pence-Wynn bill brings that approach forward.

As Thomas Jefferson said, I would rather be exposed to the inconveniences attending too much liberty than those attending too small a degree of it. And I am grateful for the committee's consideration of our legislation.

The CHAIRMAN. Thank you.

[The statement of Mr. Pence follows:]

TESTIMONY OF THE HONORABLE MIKE PENCE
MEMBER OF CONGRESS

BEFORE THE

COMMITTEE ON HOUSE ADMINISTRATION
UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 20, 2005

CONCERNING

THE REGULATION OF 527 ORGANIZATIONS
and
THE 527 FAIRNESS ACT (H.R. 1316)

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today to discuss Campaign Finance Reform. I humbly sit facing you this morning, joined by my good friend Albert Wynn, in support of our own effort to make sense of, and ultimately repair, the campaign reality we each face every two years.

The Bipartisan Campaign Reform Act of 2002 is so rampant with regulations and penalties that hinder free speech, that it caused me to become the sole House plaintiff in the McConnell case before the United States Supreme Court.

Mr. Chairman, while I am not here to debate BCRA or advocate its repeal, I do believe it ushered in what I like to call the "Summer of 527s." Swiftboat Veterans and MoveOn.org dominated the 2004 airwaves leaving political parties, political action committees and the personal campaigns of George Bush and John Kerry with very little control over their philosophical messages.

And Americans are subject to future "Summers of 527s" so long as over-regulation of political parties meets no regulation of 527s. BCRA went too far in imposing severe constraints on the national political parties and weakened FEC regulated committees.

As a result, we find ourselves here today in a hearing titled the "Regulation of 527 Organizations." But I would humbly offer, Mr. Chairman, that this title leads us in the wrong direction. I believe we do not need to impose further regulations on 527s, but rather remove and repeal many of the regulations stifling political parties so that they can return to their rightful place in the political process.

Mr. Chairman, Congressman Wynn and I have introduced H.R. 1316, The 527 Fairness Act, so named because it levels the playing field between political parties, PACs, federal campaigns and 527s. Instead of pushing down the 527s as some have proposed, our bill aims to lift up the other players by injecting more freedom into the campaign system.

Mr. Chairman, this is how I think of it…in terms of a basketball game as any good Hoosier would. Imagine a two-on-two basketball game in a playground where one of the four players is dramatically taller than the other three. Instead of forcing the tall guy to play on his knees, the approach of Mr. Wynn and myself would be to allow the other three players to wear fancy sneakers with a little extra bounce in them. In other words, Mr. Chairman, let's not bring down the advantaged players in the campaign system by creating new federal regulations for them. Let's lift up the disadvantaged players in the campaign system by freeing up what they can do and when they can do it.

Let me quickly speak to what the 527 Fairness Act does and does not do. **The 527 Act DOES**:

1. **Remove the *aggregate* contribution limits** on contributions to federal committees and parties – so individuals don't have to *choose* between/among FEC regulated committees and parties;

2. **Remove the *spending* limits** now imposed on national political parties – the **only** entities with spending limits that were established in 1974; and

3. **Allow state and local parties** to spend non-federal dollars for voter registration and sample ballots. This is an issue dear to Mr. Wynn and I'm sure he'll expand on it in his testimony.

4. **Repeal the Wellstone Amendment to BCRA for electioneering communications by grassroots organizations**. The 527 Fairness Act of 2005 reinstates the Snowe-Jeffords provisions of the *original* BCRA. It will allow exempt organizations to receive and spend contributions from *individuals* for electioneering communications, the same thing that 527 committees are allowed to do under BCRA. But, it should be noted that our bill does NOT force legitimate grassroots organizations to establish a federal PAC in order to engage in political speech.

5. **Encourage Contributions to Federal PACs** by indexing PAC contributions and repealing 'prior approval' for PAC solicitations by trade associations.

The 527 Fairness Act DOES NOT:

1. Repeal the limits on individual contributions to national parties, committees;
2. Change any other major provision of BCRA;
3. Allow 'soft money' to the national political parties; or
4. Try to restore 'balance' to the system by regulating the §527s…in "hopes" that it will work out in 2006 the way Congress intended.

In closing, Mr. Chairman, greater government control of political speech is not the answer. More freedom is the answer.

And while this liberty may be a bit more chaotic and inconvenient for some in the political class, as Thomas Jefferson said, "I would rather be exposed to the inconveniences attending too much liberty than those attending too small a degree of it."

The answer to problems in politics in a free society is more freedom, not less.

The 527 Fairness Act is about answering the inequities of the "Summer of 527s" with the only antidote a free people should ever administer: more freedom.

What we seek is not reform of 527s. We seek fairness between 527s and the political parties, individuals and organizations that have played such a vital role in sustaining the vitality of our political life throughout American history.

Mr. Chairman, thank you again for the opportunity to appear today before the Committee on House Administration. I would be happy to answer any questions you may have for me.

The CHAIRMAN. Mr. Wynn.

STATEMENT OF THE HON. ALBERT R. WYNN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. WYNN. Thank you, Mr. Chairman, Ranking Member Millender-McDonald, members of the committee, I appreciate this opportunity to appear before you.

Let me begin by thanking my colleague Mr. Pence for his leadership, his common sense, and his vision in terms of developing this bill. I am pleased to join with him in sponsoring the 527 Fairness Act.

Most of us envision the national political party committees as dominant players in the American political process, supporting candidates and promoting a national political philosophy. However, following BCRA, the role of the national political committees was dramatically reduced.

Currently, the parties are subject to aggregate limits on their hard-money contributions from individual donors. On the other hand, 527 organizations can raise unlimited amounts of hard money as well as unlimited amounts of unregulated soft money in the form of corporate donations and contributions from labor unions.

Since the 527s were allowed to raise unregulated soft money, it was easier for them to raise and spend huge amounts of money on media and other campaign activities, and they emerged as a dominant force in the 2004 national elections.

To help restore the balance between the national parties and the 527 organizations, Congressman Pence and I have coauthored the 527 Fairness Act. This bill would allow national parties to more effectively raise hard money for campaign contributions to their candidates and to promote their parties' agenda.

Let me emphasize, as my colleague Mr. Pence said, this bill would not allow Federal candidates or parties to raise or spend soft money.

In support of the bill, I would like to make a couple of points. First, the bill does not address the operations of or the rules affecting 527s in any way. Instead, Congressman Pence and I decided that our bill should make it easier for the national party committees, such as the DNC, the RNC, the DSCC, the NRSC, the DCCC and the NRCC, to raise and spend hard money. Contrary to what my colleague Mr. Shays says, we are not gutting the BCRA bill. The indictment they made in BCRA was the corrosive effect of soft money. Our bill only deals with the raising and spending of hard money. We don't affect soft money.

Under current law, during the 2006 election, the next cycle, an individual would be allowed to contribute $26,700 to each national party committee. That is his aggregate limit. However, that person would be limited to a total of $61,400 to all Federal party committees and Federal PACs combined. This aggregate limit means that an individual must choose between national party committees and Federal PACs to determine which organizations he will support, because the aggregate limit does not allow that individual to contribute the maximum amount to each party committee and Federal PAC.

The 527 Fairness Act repeals the aggregate limits on contributions to party committees and Federal PACs. Thus, a donor could contribute the maximum of $26,700 to each of the national party committees and $5,000 to the Federal PACs; that is, leadership PACs, Black Caucus, Hispanic PAC or others, as he or she saw fit.

Second, the national State party committees are now limited in how much hard money they are allowed to contribute to their candidates. In the 2004 cycle, House campaigns were only able to receive up to $76,000 in combined contributions from their national and state Party committees, a maximum of $38,300 from each committee. Aggregate combination limits to Senate races are determined by a more complex formula determined by State population.

Our bill would repeal these limitations on House and Senate raises and allow the national and State party committees to contribute an unlimited amount of hard money to their Federal candidates.

Third, BCRA's reach extended down to restrictions on local and State party committees. These committees were created to foster the basic voter registration, voter education and mobilization activities, such as creating and distributing sample ballots. Last year, local parties were forced to create Federal PACs to raise hard money in order to accomplish this if they included a Federal candidate on the sample ballot.

According to a local party chair in my State, this restriction places a great burden and a cumbersome burden on State and local parties. To relieve the State and local committees of this burden, we included a narrow provision in our bill to allow local and State party committees to spend soft money on sample ballots, only if the sample ballot listed all of the candidates for Federal office, regardless of party affiliation.

Next, the current contribution limits for national parties, State parties, and individual campaigns are indexed to inflation. In order to assure continued fairness for all Federal political action committees, this bill would index all Federal PAC contribution limits to inflation rates.

Let me conclude, Mr. Chairman. In terms of public policy, we believe that the party committees provide more transparency, more accountability, and more diversity than the 527s through their connections to both grassroots party membership and elected party officials. In order to have a level playing field, party committees should be allowed to raise and spend hard money for political campaigns, without unnecessary restrictions on aggregate contributions and spending.

I hope you and the committee members will consider the bill favorably. Thank you for allowing me this opportunity.

[The statement of Mr. Wynn follows:]

TESTIMONY BEFORE THE

HOUSE ADMINISTRATION COMMITTEE

"REGULATION OF 527 ORGANIZATIONS"

BY:

CONGRESSMAN ALBERT R. WYNN

MARYLAND, 4TH CONGRESSIONAL DISTRICT

APRIL 20, 2005

1310 LONGWORTH HOUSE OFFICE BUILDING

Most of us envision the national political party committees as dominant players in the American political process, supporting candidates and promoting a national political philosophy. However, following the Bipartisan Campaign Reform Act, the role of the national party committees was dramatically reduced. Currently, the parties are subjected to aggregate limits on their "hard money" contributions from individual donors. On the other hand, 527 organizations can raise unlimited amounts of hard money as well as unlimited amounts of unregulated "soft" money in the form of corporate donations and contributions from labor unions. Since the 527s were allowed to raise unregulated soft money, it was easier for them to raise and spend huge amounts of money on media and other campaign activity and they emerged as a dominant force in the 2004 national elections.

To help restore the balance between the national parties and 527 organizations, Congressman Pence and I coauthored the 527 Fairness Act. The bill would allow national political parties to more effectively raise hard money campaign contributions for their candidates and to promote their party's agenda. Let me emphasize – this bill would not allow federal candidates or parties to raise or spend soft money. In support of this bill, I'd like to make the following points:

First, this bill does not affect any of the operations of, or the rules affecting 527 organizations. Instead, Congressman Pence and I decided that our bill should make it easier for national party committees, such as the DNC, RNC, DSCC, NRSC, DCCC, and NRCC to raise and spend hard money. Under current law, during the 2004 elections, an individual was allowed to contribute $26,700 to each national party committee. However, that person was limited to

contributing a total of $61,400 to all federal party committees and federal PACs. This "aggregate limit" means that an individual must choose between the national party committees and federal PACs to determine which organizations he will support because the aggregate limit does not allow that individual to contribute the maximum amount to each party committee. The 527 Fairness Act repeals the aggregate limits on contributions to the party committees. Thus, a donor could contribute the maximum of $26,700 to each of the national party committees.

Second, the national and state party committees are now limited in how much hard money they are allowed to contribute to their candidates. In the 2004 election cycle, House campaigns were able to receive up to $76,600 in combined contributions from their national and state party committees – up to $38,300 from each committee. Aggregate contribution limits to Senate races are determined by a state's population. This bill would repeal these limitations on House and Senate races and allow the national and state party committees to contribute an unlimited amount of hard money to their federal candidates.

Third, BCRA's reach extended to restrictions on local and state party committees. These committees were created to foster the basic voter education and mobilization activities, such as creating and distributing sample ballots. Last year, local parties were forced to create federal PACs and raise hard money in order to accomplish this. According to a local party chair in my state, this restriction places a great burden on the state and other local party committees. To relieve the state and local committees of this burden, we included a narrow provision in this bill to allow local and state party committees to spend soft money on sample ballots only if the sample ballots list all of the candidates for federal office regardless of party affiliation.

Fourth, this bill would also restore the original provision in the Bipartisan Campaign Reform Act to allow nonprofit groups, such as social welfare/grassroots organizations, labor unions, and trade associations to use hard money for electioneering communications. This would allow legitimate grassroots organizations to engage in political speech without having to form a federal PAC so long as they do not call for voters to vote for or against a particular candidate.

Fifth, current contribution limits for national parties, state parties, and individual campaigns are indexed to inflation. In order to assure continued fairness for all federal political action committees, this bill would index all federal PAC contribution limits to inflation rates.

The Party committees provide more transparency, accountability, and diversity than 527s through their connection to both grassroots party membership and elected party officials. In order to have a level playing field, party committees should be allowed to raise and spend hard money for political campaigns without unnecessary restrictions on aggregate contributions and spending. Therefore, I ask that the Committee support the 527 Fairness Act.

The CHAIRMAN. I thank all the members today. I have a couple questions, and then everybody can ask questions. Of course, you are on a panel.

I want to go back to the letter that has been placed in the record, which I was also going to place in the record, Mr. Meehan is not on this letter to the FEC, and neither is Mr. Wynn.

I guess I am addressing this to my colleague, Mr. Shays. This is where—and this is no criticism of you—but this is where I think the House is very divided——

Mr. SHAYS. Sir, I don't know what letter you are looking at.

The CHAIRMAN. I am sorry. This is the one to the FEC by 128 Democrat Members.

Mr. SHAYS. Okay.

The CHAIRMAN. It was April of 2004. I will get you a copy. The letter, which Mr. Wynn and Mr. Meehan didn't sign, but which 128 BCRA-supporting members did sign, was sent to the FEC urging them not to regulate 527 groups in a manner similar to what yours and Mr. Meehan's current bill would propose. This was signed by, like I said, 128 members.

> [T]he proposed regulation would lead to results that many of us voting for the new law did not consider or approve and would expand the reach of BCRA's limitations to independent organizations in a manner wholly unsupported by BCRA or the record of our new deliberations on the law. And while BCRA reflects Congress's full awareness of the nature of the activities of 527s, it didn't consider comprehensive restrictions on these organizations.

At the end of the day, frankly, Mr. Shays, this whole thing is irrelevant because we have to look at what your bill is doing. I think there is some confusion about whether or not the FEC should have regulated 527s. Then Members who voted for it say, "Well, wait a minute, the FEC shouldn't do that." So clearly these members, when they voted for it, wanted 527s not to be regulated by the FEC.

If we could reverse time and go back to the vote on BCRA and magically have the regulation of 527s placed in that law, that would have been ideal. We can't go back to that day.

Some of the confusion occurs when Members sign letters like this, and then realize, "We voted for this bill and we didn't intend to have these regulated by the FEC." I think, that is where some of the confusion comes into play.

Mr. SHAYS. I was pretty clear, but I am going to emphasize it again. Congratulations to Democrats primarily leading the charge on campaign finance reform, but frankly, a plague on their house, once it is implemented, to basically gut it. And I can't be any clearer than that. And congratulations—I wish my fellow Republicans, the majority who supported the law—they didn't—but I congratulate them for once the law was in place to say we need to live by it. Democrats only stepped in once you saw this counterforce, frankly, and I am speaking in generalities, I admit, but they only stepped in when the Swift Boat ads came in. There was a puny amount of money in contrast to the amount that had already been spent.

My point to both sides is that is going to happen. That is why you needed to step in, because the Democrats thought they had a big advantage, all these 527s, and now all of a sudden you have this counterforce that comes in and then there is interest in changing it.

When we passed the law, we had no doubts. The law is clear: The Federal Elections Commission is to bring anyone under the law that is involved with trying to influence a Federal election. I can't be clearer than that. But you can't make six commissioners do what they have got to do, even if the law requires, unless you go to court. We have taken them to court already on one issue, on their implementation of the regulations. And 14 of their regulations were thrown out, out of 19, because they didn't want to abide by the law that passed.

I make the same claim here. The succinct answer is I regret my colleagues signed that letter, because basically what they do by doing that is allow for corporate money, union dues, money in unlimited sums, to come in the back door through 527s. They should have written a letter that said enforce the law and make sure 527s are under it. Simple. Case closed.

The CHAIRMAN. That is why I wonder what would have happened if the law had said we will be regulating 527s. I wonder if we would have had their vote. I am wondering if the whole thought wasn't, "Okay, we limit these people, but not the 527s".

And I want to ask one other question about the strength of the political parties. I believe that with Mr. Wynn and Mr. Pence, we are looking at having strength in political parties. I personally don't fear 527s. Frankly, there was a deal in our State, and anybody that would get around George Soros in my district, it is a political death sentence. There was an issue to let drug dealers run up and down the streets in Ohio. It was beaten back significantly with no money. Ohio is not the type of State where letting people run around the streets with that issue is going to pass. It is not a fear of all this 527 money. The 527 money was all over the State and people have a right to their opinions on issues. And it is not that George Bush lost the State of Ohio.

I think Mr. Shays makes a valid point. Nobody was saying anything about 527s. Then up came the Swift Boat ads with a small amount of money, and the whole country got electric about 527s. Somebody else got "gored," not in a pun of the first candidate, but somebody else got hit. And as a result of that 527s became a household word.

I don't think it is about ideology, but I do think—Mr. Shays, when you look at the bill of Mr. Pence and Mr. Wynn, I do think it will give strength back to the political parties. I am bothered by some flaws that cut down both party lines, whether it be George Soros or whoever put the money into the Swift Boat ads. Whether you are limiting union workers because it was soft money, or limiting people that work in a corporation, or a couple of rich people, or one Republican and one Democrat, it doesn't make sense. Eventually there will be a Republican George Soros who will come around or a couple of rich people can really just put in what they want and play around with our system. I just don't think it is a level playing field.

Taking into account that we would need something of a regulatory nature with your bill to correct the situation, what would be wrong with Pence and Wynn propping up the political parties of our country?

Mr. SHAYS. Let me first respond by saying one of the reasons that we wanted to enforce the 1947 law was that union dues are forced contributions for collective bargaining. My wife was a member of the teachers union in Connecticut. Her money was given to a Democratic Governor who was running against the candidate she supported. What would have been okay is for that union to say, contribute to a political action committee that allows us to contribute to the candidate of our choice. That would have been voluntary.

Mr. Pence's description is of a basketball player on his knees and one standing up and playing, and he wants the rules fair. My view is different. The only ones who got to play in the game were the millionaires. And if you weren't a millionaire, you didn't get to the floor.

To respond to the question, the Pence-Wynn bill doesn't deal with 527s at all. So clearly that would allow the union dues money and the corporate money and unlimited funds to continue.

With regard to the second part of your question, what they do—and I don't think they intended to do—they didn't release the limits. They raised the limits to what you can contribute to the political parties from 61,400 in a cycle to $1 million. And they would allow one individual to do that. The RNC could get 53,400; the NRCC could get 53,400; the NRSC could get 53,400; and each political party could get 20,000. That adds up to actually 160,200. And one candidate could go to a wealthy person and say please contribute, because it is legal under their law. And then what they allow is they allow unlimited amounts to every candidate.

So instead of this total limit of 101,400 that a wealthy person could contribute, they would allow $1,974,000 to go to every candidate, Senate and House. And this is the thing that really blows me away is we have no restrictions about transferring the funds. So I could go to one individual and say give that money to the parties and to all those candidates, and then I could just ask them to make sure it is sent to one place, no restriction under their proposal. So I think it guts our bill.

Mr. WYNN. Mr. Chairman, I think he has distorted this bill. Right now under the current system, George Soros—just to pick a name, not to pick on the individual—can give millions to MoveOn.org. He can only give $26,700 to the DNC. That is all he can give to the DNC. That is all he can give to the DCCC. That is all he can give to the DSCC. And all we are saying is at that point, he is limited. He can only give $61,400 in total. He has to pick and choose who he wants to give his money to. That means he can't give anything to the CBC PAC, can't give anything to the Hispanic PAC, can't give anything to the other leadership PACs, because he is limited on an aggregate basis to $61,400 to all Federal committees and PACs.

What we are saying is keep the individual limits, the 5,000 for Federal PACs, the 26,700 for party committees, but just let him give to as many as he would like. We are talking about thousands,

rather than the millions that are being spent under the current system. He can still only give me or to any other candidate $2,000 per cycle. That limit still exists. The difference is he can give to more candidates, but he can only give me 2,000 in hard money, only give the DNC 27,600 in hard money, et cetera, et cetera.

This is a dramatic change from what my colleague is describing, dramatically different from what my colleague is describing. It helps the political parties. It helps the Federal PACs, but doesn't open the doors. And I think that is a reasonable compromise to strengthen the role of the parties when you consider the millions that are being given now, with the paltry thousands that are given to the political parties. It seems reasonable to lift the aggregate limits, not the individual limits.

Mr. PENCE. I can't add to the clarity of Mr. Wynn's explanation of what our bill does and doesn't do. But it would be specifically important to reinforce. Pence-Wynn repeals the aggregate limits. It ends the choice people make between supporting one arm of their political party and not the senatorial committee versus a congressional committee, and allows them to reach those existing statutory maximums under the law in each of those areas.

I wanted to speak, Mr. Chairman, to Mr. Shays' comment. I have been a Democrat and now I am a Republican. I have been active in both political parties, which may make it in some gossip column tomorrow.

The CHAIRMAN. Not here on the Hill.

Mr. PENCE. I mean, not this week I was a Democrat.

Mr. SHAYS. It is called "a born again Republican."

Mr. PENCE. I was a youth Democratic party leader in 1975 in Bartholomew County, Indiana, and became a Republican around my college years when I became enthralled with the ideals and the leadership of Ronald Reagan. Many millions of Americans followed me on this path. My experience in both political parties makes me a fan of political parties. They are accountable to their constituency. They are accountable to the public. Election Day, voters know where to find you if they are not happy with what your group has been up to lately.

And as a lot of this debate focuses on the choice between money going into political parties versus money going into wholly unaccountable organizations like 527s that never face voters. Their candidates never face voters, presumably. They can dissolve the organization tomorrow and be gone and reconstitute tomorrow under a different name. It does seem to me we would want to—which is all Pence-Wynn does, to level the playing field, at a minimum, between the existing 527 organizations and the major political parties, which in my judgment have so well served this Nation over its——

Mr. SHAYS. One quick response. I want to point out under the Pence-Wynn bill, Soros could give $1,160,200 to the political parties, and, under their bill, to the candidates $1,974,000, for a total of $3.1 million. That is what Soros could do. He has a lot more money than that, obviously.

But let me make this last point. The political parties raised last year $1.2 billion. I want to say billions, not millions. These parties aren't hurting. They raised $200-plus million more than they did

when they could use hard and soft money. I am hard-pressed to know how the parties have suffered.

The CHAIRMAN. Mr. Soros gave $3 million. That would be $19 million less than he gave to ACT, if you look at it that way. I am not worried about $3 million to the Democrat or Republican Party. That doesn't bother me. But he can give $19 million more to ACT.

Mr. SHAYS. They don't correct that, and we do.

Mr. PENCE. Mr. Chairman, without referring to any one particular American, my bias toward liberty, and yours and everyone on this panel, makes me uncomfortable in using examples; but it does strike me that using Mr. Meehan's number of $400 million being spent by 527s exclusively, if memory serves, in the Presidential contest as compared to—again using Mr. Shays' numbers that I am certain are correct because I trust his veracity and competence—if a political party in this country raised a billion dollars to support every candidate all across the country in 535-some-odd different jurisdictions at virtually every level, it is not exactly a comparison; and it demonstrates the enormous impact that the 527s had in the last political debate.

I say again, BCRA is not working and we have to use the principles of liberty to put our political parties and third-party organizations on the right and the left back on a level playing field. And that is what Pence-Wynn does.

The CHAIRMAN. I am going to move on with the other members. You look at our own state, which was nuclear this past year. And if you look at, what actually happened in the State of Ohio, you'll see that all of this money, which the State had never seen before, helped our economy a little bit as 50,000-some people that came from around the States and lived there for 6 to 7 months.

But I think what happened with this huge amount of outside money is that the 527 organizations, as opposed to the Democrat Party, in the State of Ohio, ran the show. There were no grassroots organizations like they used to have for a Presidential candidate in the state. And so I think with the money, huge amount of money in the system, you saw a weakened political party, frankly, which hindered their ability to register people to vote. And it was all done by a couple of people's money versus the party structure. I think it is a weakening of the structure. We saw it in Ohio, and I think it will happen across the Nation.

The gentlelady from California.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman. Mr. Chairman, by no means were the political parties weakened, they flourished tremendously in this Presidential election of 2004, raising a record $1.2 billion—that is in "b"—and attracting millions of new smaller donors. So they did not sit by the sidelines as some of my colleagues have mentioned today; they were out there raising big money like all other groups.

I would also say to my colleague, Ms. Miller, there is transparency with 527s. They have to disclose their donors so it is unlike the 501(c)(4)s that perhaps Mr. Pence and Mr. Wynn are talking about, where they don't have to disclose their donors at all.

As I hear Mr. Shays speak about BCRA and ordinary citizens getting involved in the political process and he stated that we have involved more people, what is wrong with that? What is wrong

with involving more ordinary people, rather, in this political process?

I can say to you that my district, by the Christian Science Monitor, is the most diverse district in this Nation. I was fortunate to meet with various groups who had been left out of this political process, who had no thoughts of thinking that they would have any say in this debate in this Presidential election. And yet those 527s came into our communities and were there for a year, stayed with these folks, gave them the education that they needed to make sound decisions.

I don't see anything wrong with that. I don't see anything wrong with young African Americans, who, for the first time, really get to know what the Voting Rights Act of 1965 really meant to them, and now engaging upon the reauthorization of that Voting Rights Act. I don't see anything wrong with young folks who, for the first time, went out and got small donations, and there was an infusion of small donations as well as the Soros infusion of money that got these young folks involved on college campuses.

Now, we do recognize that the Supreme Court upheld the notion of any rich person, any individual who can and who will and can use their money to go out and do ads solely on their own, they don't need the 527s to do that. And the Supreme Court in 1975 upheld that.

What we are saying is why are we now trying to effectively abolish the independent constituency organizations at the expense of these political parties and to bring back these political parties' raising of hard dollars and soft dollars through the efforts of Mr. Pence and Mr. Wynn's bill and to cut down the 527s that we have come to know that provide the activities and the political muscle that this democracy has put forth here for them to do?

Independent 527 organizations ensure that we heard from those folks and from the people who have been left out of this political process for decades. And I know that, because I was with them.

Now questions to you, first of all, Mr. Shays. Doesn't your bill treat nonpartisan voter registration in getting-out-to-vote activities the same as it does partisan activities?

Mr. SHAYS. I think it may, and it shouldn't. We have to distinguish between the partisan and something that is not partisan.

Ms. MILLENDER-MCDONALD. Indeed, you must.

Mr. SHAYS. I think that is a valid concern.

Ms. MILLENDER-MCDONALD. So given that, then, why should an organization have to use a Federal PAC for nonpartisan activities?

Mr. SHAYS. If it is nonpartisan. And the question is what constitutes nonpartisan and partisan. For instance, if you have a get-out-the-vote and just encourage people to vote, that is not partisan. But if your purpose is to get out and vote for a particular vote, it is partisan.

Ms. MILLENDER-MCDONALD. That is correct. And 527s can't do that.

Mr. SHAYS. And there should be a distinction. The challenge I think I am hearing from you on 527s is you seem to speak well of the campaign finance law and the fact that the political parties haven't been weakened. And I agree with that, but I think you are

ignoring the fact that you are allowing corporate money and union dues money and unlimited sums to go to 527s.

And if you don't deal with that issue, if you saw $400 million spent this last time, the next time around if you in a sense legitimatize this by failing to act against it and say to the FEC that the will of Congress is not to deal with this issue, I think you will see billions go right to these 527s. And I would plead with you to understand that, just as the political parties were able to raise significant dollars without needing soft money, these 527s can do the same thing, and MoveOn.org is doing that. They are using hard money now. So let them reach out and get more contributors.

I don't want to see 527s not play a role, and a major role, but I want them to play by the same rules that everyone else has to pay.

Ms. MILLENDER-MCDONALD. Aren't they implementing your bill precisely, Mr. Shays?

Mr. SHAYS. 527s is a total abrogation——

Ms. MILLENDER-MCDONALD. You do not tell them to restrict their fundings to only certain donors. You just said to implement 527s and participate in the political process.

Mr. SHAYS. We said the 527s—we said that any organization that is involved in political Federal activity comes under the law. The Federal Elections Commission decided that 527s would not come under the law. They made this arbitrary decision. And therefore, you have the 527s engaged in Federal elections, partisan elections, not playing by any of the rules. They are totally outside; corporate money, union dues money, unlimited sums.

Ms. MILLENDER-MCDONALD. Partisan elections, but not particular candidates?

Mr. SHAYS. Oh, no. The swift Boat ad was clearly directed against your candidate. I thought it was frankly an effective ad, but it should have been run with hard money, not soft money. There shouldn't have been unlimited sums.

Ms. MILLENDER-MCDONALD. There was still implementation of the bill that you put out there.

Mr. SHAYS. 527s totally ignored our bill, totally and completely. Didn't abide by it. They were out there on their own.

Ms. MILLENDER-MCDONALD. This bill prohibits State and local PACs set up by individuals and independent groups from spending even $1,000 on registering voters and getting them to the polls. They do do things in a nonpartisan manner.

Mr. SHAYS. Political action committees is hard money. They can spend it any way they want. It is the soft money, the corporate money and union dues money and unlimited sums that we are focused on. We want political action committee money because that is limited contributions of $5,000 or less.

Ms. MILLENDER-MCDONALD. Seems to me like your bill also is an intrusion substantially on the State regulations of their own elections.

Mr. SHAYS. We can't and we don't attempt to interfere with their own elections for State and local candidates. Where you and I have an agreement is when they seek not—when they seek to have a get-out-the-vote that is neither—not promoting a Federal can-

didate. We need to be clear in our law that they would not be impacted.

Ms. MILLENDER-MCDONALD. But you are not that clear on that, though.

Mr. SHAYS. We need to be clear.

Ms. MILLENDER-MCDONALD. Why would you bring forth anything that is still convoluted here?

Mr. SHAYS. The reason why you have a hearing is to look at a bill and say, where is there a need to make it clear? I am conceding to you that is one area that needs to be clear.

Ms. MILLENDER-MCDONALD. So this is what we are doing, kind of going through the exercise of looking at this.

Mr. SHAYS. Right. You are going through a process. And I think Marty acknowledged it in his statement. I didn't.

Ms. MILLENDER-MCDONALD. Mr. Pence and Mr. Wynn, what you are asking for is to really roll back all of this of the BCRA and to come in with 501(c)(4)s, it seems to me, with your bill and to raise the limits on what the political parties can accept in terms of funding. But what you are doing is opening up 501(c)(4)s which do not have to report their donors to anyone.

Am I correct on that? No? Yes? Can I hear someone.

Mr. PENCE. I am happy to speak to that. I know that what our provisions are with regard to the 501(c) organizations and you are going to have a panel—the gentlelady from California will have a panel in a few minutes of legal experts a lot smarter than me. But BCRA did make the advance that organizations like the AFL–CIO or the National Education Association would have to use individual money from members to engage in the acceptable political speech during the affected period of the 30 to 60 days.

All we are asking for is that that not—that the law that then stepped in through the Wellstone amendment, to making all that happen within a PAC in the form of separate segregated funds not be required in the law. The current law, I am sure some of our experts can explain to you, the current law or the interpretation of the laws, if we repeal Wellstone as to the requirements of those organizations, would be largely as it was prior to BCRA.

I would encourage my colleague—Mr. Wynn has done some extraordinary work on the issue of what BCRA did to State-level voter registration efforts. And inasmuch as you have admirably raised that issue in the context of 527s, I wanted to encourage my colleague, who has been a champion on voter registration on this issue, to speak to that.

Ms. MILLENDER-MCDONALD. Mr. Pence, it was $1.2 billion that were used by these record-breaking amounts of hard money used in this 2004 election. Why do we need legislation to unleash still more hard money? Why do we need that? Isn't enough money being spent in these elections?

Mr. PENCE. Well, I don't think Congress has any business deciding how much money is enough money to be spent.

Ms. MILLENDER-MCDONALD. You are talking about that in your 527s.

Mr. PENCE. I am speaking philosophically. All we do in our bill is lift the aggregate limits, the current limits that are in effect,

hard-dollar limits to candidates, and then the $26,000 limits to parties all remain in effect.

But I am just someone who believes that in a country that spends hundreds of billions of dollars selling soap during "Desperate Housewives" can afford a few billion dollars of the free people's money in having a vigorous debate over the men and women that will lead the Nation at every level.

That being said, I think, candidly, most Americans, even many outside of Ohio, would agree that that summer of 527s was a peculiar time for proud Democrats proud Republicans and proud Bush and Kerry supporters. Many millions of Americans felt the political parties and organizations they had been associated with throughout their lives and professional careers were standing on the sidelines watching 527s dominate the American political debate.

Ms. MILLENDER-MCDONALD. It is amazing you say that and you are talking about the American people dominating the political process. Isn't that what we want?

Mr. PENCE. If you exclusively define the American people as the people that contributed to the 527s, then your point would be well taken. I think the American people would also want to be defined by the major political parties that they are associated with, the organizations like National Right to Life, the NEA, AFL–CIO.

Ms. MILLENDER-MCDONALD. Mr. Pence, come on. You and I know both that a lot of Americans do not feel good in either one of these political parties. Forty percent of Americans are not even voting because they do not feel attached to either one of these parties. So they really do not feel—they feel better being independent, out there debating the issues.

And why would we restrict these rights as they exercise those through those 527 organizations? Why are we trying to restrict these folks?

Mr. PENCE. I wouldn't know. Our bill actually includes no restrictions on the 527s. It is actually a point that Mr. Shays made that is completely correct.

Ms. MILLENDER-MCDONALD. They will stay as they are and you will raise the limit on the national parties?

Mr. PENCE. Yes. As a point of clarification, the Pence-Wynn bill addresses that summer of 527s by greater freedom to political parties in the existing third-party groups, not less freedom for 527s.

Ms. MILLENDER-MCDONALD. Once you allow that to open up, then those small-time 527s, irrespective of what you say these big guys put in, they will be left by the wayside; because then the money will go back to these national political committees, and this what we were trying to circumvent in this BCRA bill.

Mr. WYNN. If I could just make a couple of observations. When we started with BCRA, the indictment was soft money. Everybody thought hard money was fine. It is your money and individual contributions; you should be able to spend it in the political process. We don't deal with that issue at all. We don't deal with soft money. We don't bring soft money back into the system. We are dealing only with hard money to the political parties. We don't make that great a change. You are still only allowed to give the DNC 26,7. And the same thing with RNC. And this is what happens.

Ms. MILLENDER-MCDONALD. But I think Mr. Shays' bill is trying to make it 50/50, where you give both hard money and soft money, which then becomes a difficult problem.

Mr. WYNN. I am very concerned about the parties and the hard money that used to be called good money. And we want to say that the political parties ought to be able to take more of that good money.

I want to make one quick point. What really happens is people under this limit, this aggregate limit of $61,400, tend to give to the DNC or give to the DSCC and not the DCCC, because you have the DNC raising 394 million with the DCCC only raising $93 million. What happens when you have a hard aggregate limit of $61,000, people have to choose between giving to the DNC, the DSC, the DCCC or the CBC PAC, your leadership PAC, or whatever the case may be. You are not limited. That is not right, because it is the citizens' individual hard money. You ought to be able to give to your PAC, my PAC, the DSCC, the DCCC, the DNC, the Congressional HISPANIC PAC if that is what they want to, and on and on.

We are not changing the amounts they can give, but only expanding it to people they can give it to. And I go back to the fundamental and underlying premise; we are talking about hard money and individual contributions. And we do nothing to the individuals who want to contribute to 527s. We don't touch them at all under the Pence-Wynn bill.

Ms. MILLENDER-MCDONALD. But you are bringing in 501(c)(4)s.

Mr. WYNN. To allow 501(c)(4)s to participate without having to form a Federal PAC, the bureaucracy and the paperwork involved in the Federal PAC. They are still limited to just hard dollars. And please correct me if I am mistaken on that. It is still hard dollars, but just a hard-dollar account as opposed to the reporting requirements connected to setting up a Federal PAC. That is unduly burdensome, but it doesn't make any further fundamental changes. And you still are not allowed to advocate the defeat or the election of an individual. You are allowed to comment on that individual's record.

Ms. MILLENDER-MCDONALD. Mr. Wynn, wasn't the purpose of this Shays-Meehan legislation to get rid of a lot of hard dollars—soft money?

Mr. WYNN. It was to get rid of soft money out of the political process as to the parties and to individual Federal candidates. And we don't do anything about that or change any of that in the Pence-Wynn bill. We do not touch the soft money issue at all.

Ms. MILLENDER-MCDONALD. Just increase the hard dollars?

Mr. WYNN. Just increase the hard dollars by lifting the aggregate limits on hard dollars.

Mr. SHAYS. May I voice one quick concern with a comment that 501(c)(4)s would not be under PACs; that the political action committees have to report like everyone else to the Federal Election Commission, and they have to make sure they are abiding by the laws. And I raise a concern about that. And the only concern I raise is, if you allow one individual to effectively contribute $3.1 million—and admittedly it is not more to any one group than is allowed now, but collectively to so many—you have effectively cre-

ated hard money that almost is the equivalent of soft money, because it is $3 million and you can still transfer from one to another. And those transfers will occur.

The CHAIRMAN. Mr. Doolittle.

Mr. DOOLITTLE. Mr. Chairman, I find this whole hearing disheartening in that here is where we are; we are in the regulatory state. Our Supreme Court, sadly, has upheld this amendment to the Federal Election Campaign Act known as McCain-Feingold or Shays-Meehan, and what was a bad law has only been made worse. No personal offense meant to anyone, but that is just my opinion.

Apparently the only form of speech that can be regulated by the government in any significant way is political speech, which clearly, in the reading of our history in the Federalist Papers, was the highest form of speech that was deserving of the greatest of protection. And we are going to sit here in the committees of Congress and make minute adjustments, what is that absurd figure $26,400, and next year it will be $27,300.

I must say that all that has happened in my own personal experience is we spend a lot more on counting the lawyers' fees. We don't make a major move without checking with an attorney first. That has raised our expenses. We are taking these limited hard dollars that we have and we are spending more on professional services to try and help us stay within the law. I don't think it is just Mr. Shays' law or proposed law, but the Senate one as well. There is some new standard that these groups can't be involved in any partisan activity for a year out. Now we have a new term. I don't know, it is 60 days or 90 days, a year over here. I can't keep these numbers straight in my head. And what is unfortunate is if we make a mistake, we could be held liable for a crime. Didn't used to be a crime and now it is a crime. And I just find it appalling.

I can only hope, like certain bad Supreme Court decisions of the past, that it will be flat-out overruled someday. I would like to reintroduce my bill to deregulate everything and just require reporting. It never bothered me that a corporation could contribute money to a Federal candidate. I never bought into that Teddy Roosevelt-era law that started us down this whole slippery path. It would never bother me if a labor union gave money directly to a candidate, as long as I can give to anybody I want to give, or to the political party I believe can give to anybody and in any amount that we want to give.

So here we are down the slippery slope and I find it depressing. Let me ask the panel here what happens? Suppose we tighten up on the 527s? Doesn't that mean that somehow this may move out another rung to a less accountable structure to do basically the same thing? That seems to me that is likely to be the case. Anybody disagree with that?

Mr. SHAYS. Well, I would just respond Mr. Doolittle, you are wonderfully consistent and passionate for your position. And I need to tell you, I respect you for that. There is no doubt where you stand and you have been very consistent on that. I would just suggest that if you have campaign finance law, it would be helpful that the Federal Elections Commission then enforce it.

Mr. DOOLITTLE. In my bill I did accept it in part of ensuring we have the disclosure. What about the answer to my question? If we

tighten up on 527s, does this problem go away or are we still going to see it manifested?

Mr. SHAYS. I think what happens is there becomes efforts to try to introduce a loophole. And my view is that the Federal Elections Commission would have the capability to kind of nail it down. But, you know, but it would take a period of time. The 1974 act worked well for years and years and years. It only had a challenge when the Federal Elections Commission introduced—they introduced the concept of soft money. They created that loophole. Not only do they not enforce the law, they helped gut it.

Mr. DOOLITTLE. As I recall, the Congress itself responded and passed a law guaranteeing that, because the political parties were being starved of enough money. Didn't that happen in the mid- to late seventies? That was a congressional act, I believe.

Mr. SHAYS. I am not sure about that. But one thing I can tell you, the political parties are alive and well. They raised $1.2 billion last year under BCRA. It was always determined to be McCain-Feingold if it was constitutional. And if it was unconstitutional, it was going to be Shays-Meehan. So McCain-Feingold is what we call it.

Mr. PENCE. I think the gentleman from California raises a practical and important question, because to the extent that we accept the direction of my friend from Connecticut and our colleagues in the Senate, we are taking one more step down the road of regulation of political speech and discourse in America. And we will eventually find ourselves on the doorstep of the individual.

Now, the Supreme Court of the United States has said that is a barrier we can never cross. We can never tell an individual what they can individually do or say in the public. And I know Chris Shays' heart, not as well as some of his close friends and family, but this is a good man sitting next to me. He would never intend for the Federal Government to grow straight up to the front porch of the average American, but this is the route we are on. We are headed to that front doorstep where our Federal Government is going to be in a position to regulate the speech of individual Americans. I believe this with all of my heart. And it is the reason why enshrined in the Constitution was the principle that this institution, Congress, shall make no law abridging the freedom of speech. I believe our founders understood the inherent danger of consolidated government power and its tendency to erode the rights of individuals. So it gave Congress—and I know the Supreme Court certified this. I was sitting next to Chris on the day of the Court challenge, and I believe you were on the other side of me.

But the Supreme Court of the United States opened up the first amendment for debate. And I hope for the day that we go back to the principle that Congress, through all of its agencies and its own acts, shall make no law abridging the freedom of speech, and we bathe our campaign finance system in full and immediate disclosure, follow the hard-dollar route of individuals, and then allow freedom to reign.

Mr. DOOLITTLE. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Mr. Brady.

Mr. BRADY. Thank you, Mr. Chairman.

Mr. Doolittle, you might find this hard to believe, but I wholeheartedly agree with you. I didn't know what a 527 was until we passed the Shays-Meehan bill. I don't think a lot of people knew what it was either until they figured out how to work it. And I, as chairman of a party in the city of Philadelphia, am completely confused. I had to spend for two attorneys to interpret this bill, and no attorney could give me an answer. Not one attorney could tell me what I could or could not do, what was within or without the law. All they said was it had to be tested. And if I was to be the test case, I would be facing criminal punishment. What an embarrassment that would be, to go to jail for taking hard or soft money or distributing hard or soft money. So I am confused on that.

But I do agree with Mr. Pence and Mr. Wynn. I do appreciate you looking out for the local parties and looking out for sample ballots because that is the grassroot operative, the local parties, the local politics that drive this great big city, government, and now Nation. And I believe they should be heard and be allowed to contribute, how they need to contribute and to what amount they need to contribute to.

What effect does this have on our local parties and labor organizations when there is a Federal election, which happens more than twice, sometimes more than twice, more than every 2 years because sometimes you have the Senator in there and every 2 years we run? What do we allow or what do they allow or what are the local parties allowed and labor unions allowed to do when there is a Federal election? And on the Federal election, there are local elections. There are State and local offices. If I am on the ballot, that makes it a Federal election. All these other organizations under this 513, or even under this Shays-Meehan or McCain-Feingold, what are we allowed to do because our name was on the election? Does that mean we are limited on supporting our mayor candidates or Governor candidates or local office candidates?

No one can give me an answer. I had to figure out how to put out a ballot in my town, figure out how I could pay for a ballot, hard, soft, whatever, because my name was on it as a Federal candidate. And that needs to be cleared up, because I am not going to test any of these attorneys that can't give me an answer. Maybe the next panel can, and I don't want to be the test case taking a trip to Federal prison. We aren't clear on any of this. And ongoing, it is being changed as we bring another court case or bring another appeal or attorney that we have to pay for out of our hard money that we are losing, that we have to pay to give us an opinion, and we haven't gotten a clear opinion yet. I don't break laws and I want to follow the laws. I would like to know what the heck the law is.

Mr. WYNN. Probably the next panel has much greater expertise than I.

Mr. BRADY. I have been through panels of legal people and none of them gave me an answer. I am waiting for the next panel.

Mr. WYNN. I would like to say by way of intent, what we are trying to do is say we have a similar background in terms of working with sample ballots, that the sample ballots is like the backbone. And if you have a sample ballot, you have local candidates, State reps, county council, and your Federal candidates. And the State party or the county party or maybe the city party or the ward orga-

nization is putting this ballot out. And under current law, as I understand it, subject to the panel's correction, they would have to have a Federal PAC in order to finance that portion of the sample ballot that is reflective of your presence or the Presidential or any other Federal candidate, U.S. Senate candidate, that might be on that ballot. And for small city, county, and some State parties, that is burdensome, to have a separate political Federal PAC to do that.

This bill would say if you are giving out a sample ballot that has all of the candidates on the sample ballot, regardless of affiliation, and maybe you highlight the party you want or circle it or whatever you do, that they could do that with soft money, the money they already have, their money, and that would be allowable. It wouldn't be a ballot you could put out using soft money as a Federal candidate, but your name or picture could be on that ballot, and they could pay for it using their soft-money funds, so long—as I said—any candidate that was running was on it, although you might be the candidate that might be highlighted or the preferred candidate.

That is my interpretation of what my bill is trying to do.

Mr. BRADY. I don't like that interpretation. Couldn't be a partisan ballot? I couldn't put a ballot out there that said—I am a Democrat. I am a partisan guy. I want to put a ballot out that—and my party dictates if I put a ballot out on a Republican candidate—no disrespect—that I could be in violation of my party rules. Now, I can't put a ballot out that just has partisan, pure Democrats running against—either in a primary or in a general election—against Republican candidates? I couldn't do that?

Mr. WYNN. Under current law you have to have a Federal PAC to do that for your share.

Mr. BRADY. My share?

Mr. WYNN. Your share.

Mr. BRADY. How about candidates? How about a mayor? You have to juggle this?

Mr. WYNN. Right. What we try to do is open a very narrow exception. And our styles may be different in terms of what we do, in terms of sample ballots, where you have the official sample ballot and then you highlight or circle the Democrats or the Republicans, as the case may be. You hand it out but all names are on it.

We tried to carve out something that was narrow enough to help us. I would assure I would support what you just described, which is the ability of the local party to put out a sample ballot and fund it with local funds or State funds that included Federal candidates. I would be happy if the committee expanded that and it is common sense.

Mr. BRADY. In Philadelphia, you put out a 4:00 ballot, a 6:00 ballot.

The CHAIRMAN. There is one other issue—and I could be wrong, but I called the FEC myself this year—and it is shocking. It deals with hard money, not soft money. But I was told that if it is 120 days before the election and a State rep candidate asks "Bob Ney, can I use your picture and a quote from you to support my candidacy?" and I were to say "yes" but I don't pay for it with hard dollars from my campaign committee, I would have violated the

law. I told this to a Member the other day who said," You got to be kidding me," and went running.

Think about this for just a second. If a candidate comes to any of us and says, "Can I use your picture, or can I use a little quote," and it goes into their brochure—nothing to do with soft money—we have to pay for that, or a portion of it. Now, I am told that is the law of the land. So you start to think about it. Now I am——

Ms. MILLENDER-MCDONALD. State candidate or a Federal candidate?

The CHAIRMAN. County commissioners, city council. If the candidate doesn't seek your permission but kind of knows you would support them, then they can do it. And if you coordinate with them it is legal. But then, of course, somebody is going to go to the FEC and say, I know you coordinated with them, didn't you? You winked and you nodded. I have to sit there and do eye signals and say it is okay to do it.

Do you know what this means? Any State Senator in your district, Democrat or Republican in my district, can go help candidates all they want, but the local candidate is going to turn around and say, "Why you won't help me up the ladder? Other people helped you to get where you are, but you won't help me. My State Senator helps me." I think that is another thing. I think it is absolutely against the nature of the Constitution; we cannot use our name to say I think you are a good candidate.

Ms. MILLENDER-MCDONALD. This is why, Mr. Chairman, that these bills to me are rather short-sighted at this point, because it really does not do anything, unlike Mr. Doolittle. You get rid of 527s, there is going to be another run of the mill of groups. These things are so convoluted that we are busy trying to go through this stuff and now you are coming with more convoluted laws.

I really do think, gentlemen, we should keep our powder dry and let this stuff percolate for a little while and not bother with it. I don't know the 527s. I have never dealt with them. I know the results were my constituents were more informed and more involved. They came to me with different things that someone had educated them on. And for that reason I appreciate whoever-it-was 527s.

And I have never talked with MoveOn.org and none of these 527s and, of course, I can't get involved with them. But I am saying at this point, we should allow them to continue that freedom of expression, the first amendment rights that is given them, like Mr. Pence said, and allow these groups to flourish.

Mr. BRADY. I don't know whether there are some labor experts out there, but a labor PAC, Federal versus nonFederal, a local labor PAC versus a Federal PAC. The differences you just mentioned about your wife being a teacher; if you allow or force a local labor PAC to have to get a Federal PAC for every contribution, or for any contribution, or make them have a Federal PAC to conform with the law, then you have people that are putting the money all over the country that they don't even know the name, let alone supporting an opponent.

And the difference between that is the local labor PAC know their local people. And if they have a Federal PAC, they have to get sanctions. They have to get agreements by their Federal people, and it is harder, and they start losing that touch, that local touch

that they could have by distributing and funding candidates that they like. And they are not partisan completely.

I am still a member of a labor organization that supports not only just Democrats but support good people, and they have that ability to do how they want, where they want, and the amount that they want to do, depending upon on how much they have been served or how much they think they are going to get served.

When you go to a Federal PAC, they lose that complete close hands on, touching hands on appeal, and they also lose the respect of the people that they are supporting because it comes out of Federal PACs in Washington and people start losing their local touch even if—and candidates know they have the support of the local people. They still say thank you to the Federal PACs, and they don't want to lose that, and I think we should preserve that for our local labor people also.

The CHAIRMAN. I have one final question, and if anybody else has anything——

Mr. PENCE. Mr. Chairman, if I may, I would point out that the gentleman from Pennsylvania's attention to section 6 of the Pence-Wynn bill, not only do they—which by repealing Wellstone that we would allow labor organizations and other outside groups greater flexibility in using individual dollars to participate politically, but we have a small provision that has to do with prior approval that corporations and labor organizations have to acquire before they can communicate with their members on specific issues.

So our bill is truly a bipartisan bill and Mr. Wynn has done an extraordinary job trying to help me understand that round of American politics and public life that I don't appreciate. But we have been trying to bring more freedom into this process for all outside organizations, including labor unions. But section 6 may be of interest to you.

Ms. MILLENDER-MCDONALD. Mr. Chairman, your bill is a bipartisan bill, but hard money does advantage one of our political parties. And we know that. When you bring in hard dollars, it does advantage the Republican Party as opposed to the Democratic Party, it has been shown by data.

Mr. PENCE. And that, again, the gentlelady's point. I can't help but feel that you and I are not terribly far apart. And one of the concerns about BCRA and one of the reasons I opposed it was my belief that, much consistent with what Mr. Doolittle said, that the antidote and challenges in the political economy of a free society is more freedom, we ought to allow the resources to flow in the direction of the candidates and ideas of their choice as long as there is complete disclosure of the source of those revenues, and that information is made available to the public in a timely way.

So I am not here really to defend the broad scope of BCRA that eliminated soft money, but it is important for me and Mr. Wynn to make sure the committee understands that nothing in our bill brings soft money back to Federal candidates or parties. We do, however, say to local parties with regard to sample ballots and voter registration that you may utilize State-regulated dollars in ways that make reference to Federal candidates without violating the law.

The CHAIRMAN. Mr. Wynn, and then Mr. Shays.

Mr. WYNN. It is interesting in terms of who is advantaged by hard money. According to the FEC, the DNC raised $394 million. The RNC raised $392 million. The DSCC raised $88 million. The NRSC raised $78 million. Our deficit was with the DCCC which raised $93 million compared to the NRCC which raised $185 million.

So I think it is not necessarily that hard money benefits the Republican Party. It seems that the fact that you have these aggregate limits suggests that the money is going toward other committee parties and not the DCCC.

Ms. MILLENDER-MCDONALD. You must be speaking from a quarterly basis not——

Mr. WYNN. 2003, 2004 report.

Mr. DOOLITTLE. Would you yield for just a moment?

Ms. MILLENDER-MCDONALD. Yes.

Mr. DOOLITTLE. I think, Mr. Wynn, you will find that while the NRCC raised considerably more money, they did that in large part because of a direct mail program which was extremely expensive. I suspect that a good deal of that advantage would be lost after you calculated in the cost of raising that money. But on paper—so I am saying it looks more significant than it really is, even in the case of the twoHouse-based partisan organizations, the DCCC and the NRCC.

Mr. SHAYS. If I could, I would like to submit for the record an article David Broder wrote on Thursday, February 3, in which he had said he had been a skeptic and opposed McCain-Feingold. And then in this one paragraph he said, "The 2002 law, which insiders refer to as BCRA, did not, as many critics fear, weaken political parties or stifle political debate. Instead, it played a supportive role in the greatest upsurge in the number of small contributions."

[The information follows:]

A WIN FOR CAMPAIGN REFORM

As one who has been skeptical of the claimed virtues of the McCain-Feingold campaign finance law, I am happy to concede that it has, in fact, passed its first test in the 2004 campaign with flying colors.

The 2002 law, which insiders refer to as BCRA (for Bipartisan Campaign Reform Act, pronounced bick-rah), did not, as many of us critics feared, weaken political parties or stifle political debate. Instead it played at least a supportive role in the greatest upsurge ever recorded in the number of small contributors.

Those conclusions were, in effect, forced on me by listening to a bevy of experts present their evidence at a recent forum sponsored by the nonpartisan Campaign Finance Institute in Washington.

Michael Malbin, the institute's executive director, reminded listeners at the outset that, when it was passed in 2002, BCRA, which he called "the most important change in a generation" in campaign finance regulation, had drawn vehement criticism.

While some argued that it did too little to stem the flow of money into politics, Malbin said, the main complaint was that "it did too much." Its ban on unlimited "soft money" contributions to the parties would weaken their role, critics said, and its restrictions on outside groups' ads during campaign time would harm free speech.

The prediction about the parties turned out to be flat wrong. As Anthony Corrado of Colby College showed, the national party committees together raised $1.2 billion in hard money (regulated contributions) in the 2004 election cycle, $140 million more than they had raised in hard and soft money combined for the 2000 contest.

The were helped by a boost in the maximum permitted hard-money contribution but even more by a vast increase in the number of small donors. Republicans had

been working away at that goal for years, but they still were able to expand their donor base in 2004 by 1.8 million.

For Democrats, the change was dramatic. From a dependence on soft money for more than half the budget in 2000, said Jackson "Jay" Dunn, the DNC's national finance director, Democrats switched to a reliance on small donors. They expanded their list of direct-mail prospects from 1 million to 100 million and their Internet contacts from 70,000 to 1 million.

While Republicans held an overall fundraising advantage, Democrats narrowed the gap to the smallest in two decades and, for the first time, the Democratic National Committee actually outraised the Republican National Committee.

But there were significant differences in the way the two sides spent their money. Democrats emphasized TV ads, filling in for John Kerry during times in the campaign when their nominee was running low on funds. Republicans put the bulk of their funds into grass-roots organizing.

Jack Oliver, a principal fundraiser for the Bush campaign and the RNC, said that difference paid off for the president in closely contested states such as Ohio. There and elsewhere, he said, local volunteers recruited by the Bush campaign proved more adept at turning out voters than the out-of-state workers hired by independent groups to whom the Democrats "outsource" much of their precinct work.

Despite these differences, all three of the experts—Corrado, Dunn and Oliver—agreed that the emphasis in coming campaign cycles will be on face-to-face contact with voters.

Corrado complimented the Democrats for recruiting 233,000 volunteers who made 11 million phone calls. But he said he was even more impressed by the way those in the Bush campaign linked candidate appearances and scheduling decisions to voter mobilization efforts.

Because they knew that the president, the vice president and the first lady could draw crowds, they offered seats and standing room at their events as rewards for people who had volunteered time on the campaign. And the Bush-Cheny rally attendees were recruited on the spot to go back out to the precincts and work on their neighbors.

BCRA, the experts said, clearly did not eliminate the influence of big-money contributions. Some of the gifts to independent advocacy groups—the so-called 527s—dwarfed in size any sums ever given to the parties in past soft-money contributions. That issue remains to be resolved.

Oliver and others cautioned that the new campaign finance system must still be tested in a cycle when there is no close presidential contest to stir public interest. But a solid start has been made in expanding the financial base of both parties and using the resources to bring more people into the electorate. That is all to the good.

Mr. SHAYS. Which leads me to this point. We sometimes bring in God in issues and sometimes bring in freedom of speech in these issues, I want to argue as profusely as I could that I believe the campaign finance reform protected freedom of speech. And the Court acknowledged the fact that it guaranteed—and our law was based on the fact of guaranteeing that the wealthy don't drown out the voice of those who have no money. And if we equate dollars with freedom of speech, we are saying that those who have more money have freedom of speech.

The whole intent and the whole reality of the campaign finance law was to move the political parties to more people, less larger contributions. And if you don't deal with 527s, you will now create an incredible loophole that will allow unlimited individual money, unlimited corporate money, unlimited union dues money, to go into these 527s at the expense of all other groups, and you can't do it. And if you take out the 501(c)(4)s and say they can get soft money contributions, corporate union dues, you are just creating the problem and making it worse.

Mr. SHAYS. So, I would also just say, Mr. Brady, I believe very strongly that unions should participate and corporations, but they do it through a political action committee so that their members do it voluntarily and it is not forced. The corporate folks are not forced, the union guys are not forced, and it is done through a po-

litical action committee. I think that is the way you do it, and that is the way you build a stronger base of activities.

So, I am for freedom of speech. I just don't want the wealthy to drown out the poor.

The CHAIRMAN. Mr. Doolittle.

Mr. DOOLITTLE. Well, Mr. Chairman, I am for freedom of speech.

Mr. Shays, I know this goes right to the heart of our disagreement, but first of all, we are not creating any loophole. It was your law that created the present loophole. It specifically did not address 527s. Now you are asking us to come in and address 527s. It was quite clear 527s were never included within the law, they are expressly not included within the law, and the law never would have become law had they been included in the law. Now you are asking us to do that, and we are on the slippery slope of regulation.

I personally am in favor of doing it, but I don't feel good about doing it, and I don't believe for a minute it will do anything of any lasting consequence. We will simply have a new level farther out that will be doing the activities of 527s, that they are doing today, and as Mr. Pence said, eventually I guess the courts are going to decide they can regulate, the government can regulate everything, and they will be knocking than on the door of the individual.

But I don't see that the present law did anything about balancing wealthy people. The only people that can give unlimited amounts of money are wealthy people. Everybody else is regulated by your law. George Soros is a mega-billionaire. Right now, even if we passed the 527, he could give all the money that is his own to candidates that he wants to. If we pass your 527 law, then there will be some additional regulation that kicks in.

But I find it frustrating, and I found it frustrating during the debate over the law that passed, this talk that somehow we are taking the money out of politics. That is utter nonsense; was utter nonsense, is utter nonsense and will always be utter nonsense. Money will flow downhill like water does, and it will flow any way, around any obstacle it has to, to get to its intended point.

To sit here and pretend that we have contained the influence of money or special interest with political parties, everybody sort of knows what a Democrat is or a Republican or an American Independent or Peace and Freedom. We have a few smaller parties. When you get into 527s and these little groups, whatever the successors to 527s are, we don't have any idea what it is. Far from disempowering special interests, this law that we presently have has turbocharged special interests, and that is going to continue to be the case until and unless we repeal your law, we repeal the preceding law, and we strip away every last vestige of this until it is truly deregulated.

I will stipulate for an FEC to allow us to file reports for how much money we are contributing. But I think that would give full effect to the first amendment, which says Congress shall make no law abridging the freedom of speech.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Pence.

Mr. PENCE. A very small point. The provision of the Pence-Wynn bill that repeals the Wellstone amendment would not permit soft

money to go into 501 organizations. All we would do is return to the original language of the Bipartisan Campaign Reform Act or permit individual funds, organizations, labor unions, the National Education Association, National Right to Life, NRA, to raise money from individuals that they could then use in otherwise appropriate ways during the affected period.

The question as to the limitation of it, I will let the lawyers' panel answer about what the internal effects of the current law are on 501s, but it would not constitute corporate money, in my judgment. Neither would it constitute allowing unlimited labor union money in. But BCRA in its original draft allowed individual members to participate in that, and that is the intention of Pence-Wynn.

It is so important to me to say, Mr. Chairman, and I am so grateful for this thorough hearing, that particularly with the headlines today that say that we differ on soft money, apart from the issue of whether or not State and local parties can mention candidates in sample ballots, candidates for Federal office, there is no soft money implications in Pence-Wynn at all. Ours is simply an effort to level the playing field using hard dollars and individual contributions, is specifically what we would empower in the 501s.

Mr. SHAYS. Could I also thank you for giving us such time, you have been very generous, and all the members have. And to say one little concern with the next panel that follows, they are all esteemed individuals, but all three, I think, oppose the campaign finance law. So, Mr. Brady, I am a little concerned that you may get a view that will appeal to you, but won't have that different side of the equation.

The CHAIRMAN. I will note on this topic that we did invite people that had both opinions. Unfortunately, two or three of the people simply could not make it. I did want to mention that for the next panel, we had what we consider balance, but unfortunately, and it is not their fault, two or three of the people couldn't make it.

I have one final question that I want to ask you directly, because you authored BCRA, and because I have been reading about this recently. Do you believe BCRA requires the regulation of blogs and other Web sites that engage in online political speech?

Mr. SHAYS. No, I don't believe it does.

The CHAIRMAN. Thank you. I want to thank our colleagues. You did a wonderful job and it was a healthy debate. Thank you.

We will move on to the second panel. I want to thank the panel. In our second panel today we are fortunate to have with us a number of leading scholars and practitioners in the field of campaign finance law; Cleta Mitchell, a partner in the law firm of Foley & Lardner; Bob Bauer, a partner in the law firm of Perkins Coie; and Larry Gold, Associate General Counsel of the AFL–CIO.

STATEMENTS OF CLETA MITCHELL, PARTNER, FOLEY & LARDNER; BOB BAUER, PARTNER, PERKINS COIE; AND LARRY GOLD, GENERAL COUNSEL, AFL–CIO

The CHAIRMAN. I want to thank you for being here. We will start with Ms. Mitchell.

STATEMENT OF CLETA MITCHELL

Ms. MITCHELL. Thank you, Mr. Chairman, members of the committee. I, first of all, want to say that I believe that this committee under your leadership, Mr. Chairman, has done the best job of anybody in Congress over the last several years of looking at these issues and considering them carefully. We really appreciate your leadership.

I appeared before this committee in June of 2001, and Mr. Shays is correct, I did appear in opposition to BCRA. I opposed it then, but it is now the law of the land. But the fact is that in my testimony in 2001, I referred to a situation, I drew an analogy. I said that I was reminded of a situation a number of years ago when Jim Jones took his People's Temple from San Francisco to Guyana and got hundreds of people one day to drink poisonous Kool-Aid in a mass suicide, and I have always wondered why someone didn't look up and say, "Hey, what is in this Kool-Aid?"

I remember at the time that then ranking member Steny Hoyer took me to task and assured me that BCRA, Shays-Meehan, had been thoroughly studied, was well understood by the Members of Congress, and certainly Congress would not be considering, enacting, a piece of legislation with which it was not thoroughly familiar.

Well, I don't want to say I warned you, but the fact is I think that many Members of Congress really did not understand the true implications of BCRA. And I would caution you today to not allow the very same people who brought you BCRA to now bring you a whole new regulatory regime with the assurances that they know what is in it and just to trust them, because I have already heard, sitting here today, at least two different amendments that they are prepared to offer of things that they had not thought about when they drafted it.

I would also like to point out one other thing from my testimony from several years ago, which was that I introduced as part of my testimony into the record a report that I had done entitled "Who is Buying Campaign Finance Reform?" it talked about tracing the funding of the campaign finance reform movement.

But Chapter 7 of that report, which was in the committee's record, was a look ahead at what would happen if BCRA became law or if McCain-Feingold-Shays-Meehan became BCRA. The title of that chapter was, "Okay, Fine. Let George Soros Replace the DNC."

Congressman Doolittle is exactly right, that the 527s were not a creation of the Federal Election Commission. The FEC was not responsible for this "loophole." It was clear that they were not intended to be covered. I think the Chairman was someone who was concerned about the possible implications.

Having said all of that, let me turn to the pending legislation. I do think it is a mistake for the Congress to go into a completely new regulatory regime, because, I promise you, you will be back here in 2 years trying to fix the things that the Shays-Meehan authors are telling you today are completely simple and easy to understand.

I would urge the committee to actually, if it does anything, to do something that is simple and easy to understand, that we know ex-

actly what the implications are, we know exactly what it means, and that is to enact the 527 Fairness Act of 2005, the Pence-Wynn bill, House Resolution 1316.

Let me just briefly go through the bill—I don't have time to go through all the provisions, although the bill is pretty simple, it is pretty quick. The legislation does a couple of important things.

It does strengthen the political parties. Again, I come back to the things that Congressman Wynn and Congressman Pence said repeatedly. It does not, it does not, raise the hard dollar limits. What it does allow, and I think that one of the points that was not alluded to at any length in the earlier panel, is something that is one of the most important pieces of Pence-Wynn, and that is the repeal of the limits on the coordinated spending that political party committees can spend on behalf of their candidates.

Because political parties raise only hard dollars now, this bill would let the political parties make the decision as to how much they want to spend on behalf of any of their candidates. It would enable parties to recruit people who aren't independently wealthy, because the party committees could say we will be able to help you, and then the parties would be able to spend the money where they choose to help their candidates.

One of the things that happened in BCRA was that Shays-Meehan and McCain-Feingold put into place a provision that would have required the political parties to choose between making independent expenditures on behalf of their candidates or making coordinated expenditures. One of the very few provisions that was struck down by the Supreme Court in the McConnell case was that particular provision. The Supreme Court said that the parties should not have to choose between making independent verus making coordinated expenditures.

Therefore, what we have in the last cycle was this charade that has grown up where the parties have to set aside money and give it to independent expenditure units, over whom they can have no control, and no control over the message because that might be deemed to be coordinated. So we have this fiction of people going into and out of separate doors or building partitions inside campaign headquarters where party people may be so they can pretend that this side over here is independent and this side over here is coordinated with the candidates. Why not get rid of that? The party coordinated spending limits are an anachronism, they were put in place in the 1970s.

The Supreme Court said about the other spending limits that were also included when the court in Buckley struck down spending limits that being free to engage in unlimited political expression subject to a ceiling on expenditures, is like being free to drive an automobile as far and as often as one desires on single tank of gasoline. The court was right then. I would urge the committee to enact Pence-Wynn and repeal the coordinated expenditures limits by political parties.

I see my time is up. I think the other provision of Pence-Wynn have been addressed fairly thoroughly in the first panel, but I did want to address the coordinated spending limits, because I think that is a very important aspect of Pence-Wynn.

I will be glad to answer questions when my time arrives.

The CHAIRMAN. Thank you.
[The statement of Ms. Mitchell follows:]

TESTIMONY OF CLETA MITCHELL, ESQ.
FOLEY & LARDNER LLP
CAMPAIGN FINANCE LAW ATTORNEY
BEFORE HOUSE ADMINISTRATION COMMITTEE
APRIL 20, 2005

HR 1316 – 527 Fairness Act of 2005

Mr. Chairman, Members of the House Administration Committee. Thank you for the opportunity to appear before you today to offer my thoughts on the proposals introduced in the 109th Congress regarding changes to the federal campaign finance law. I want to commend this Committee for taking time to thoughtfully and carefully consider the issue of campaign finance – AGAIN. This Committee under your leadership, Mr. Chairman, has given this issue more thoughtful and careful consideration than any other committee of the Congress and we appreciate your ongoing concern about the impact of various proposals and, most importantly, your sensitivity to the First Amendment of the Constitution implicated by various proposals for regulation of political speech.

When I last appeared before this Committee, on June 14, 2001, when you were considering Shays-Meehan before it ultimately was enacted as the Bipartisan Campaign Reform Act of 2002, I drew an analogy for the Committee. Quoting from my testimony four years ago, I said then, "I am reminded of the situation a number of years ago when Jim Jones took his People's Temple from San Francisco to Guyana – and got hundreds of people one day to drink poisonous Kool-Aid in a mass suicide. I've always wondered why *someone* didn't look up and say, "Hey, what's in this Kool Aid?"

I urged the Committee and the Congress at the time to be VERY careful – and to study carefully campaign finance regulation and to say, "What's in this campaign finance Kool-Aid?" And as I recall, then ranking member Rep. Steny Hoyer took exception to my analogy and stated quite emphatically that the Congress had studied and studied the issue and knew very well what was in the legislation and that it was time for Congress to pass the bill into law.

With all due respect, I do not believe that many members of Congress really understood the implications of what is now the law of the land…and had they known and truly understood it, perhaps it would not have been enacted. But it was. Many of us watched in dismay as the Republican controlled Congress passed BCRA, the Republican president signed it…and most distressing of all, that the

Supreme Court upheld it *virtually* in its entirety. I will turn momentarily to one of the very few provisions of BCRA that the Court did not uphold, and which form the basis of the proposal by Rep. Pence and Rep. Wynn.

Today, we are here and we find ourselves before the Committee reviewing proposals to take more legislative action in the campaign finance arena, to address what some people have called "unintended consequences" of BCRA.

Some, such as Rep. Shays and Rep. Meehan, have introduced a bill similar to the one introduced in the Senate which would approach the issue of the 527s and their future in the campaign finance regime in the same way they approached BCRA: with the purpose of *more* federal regulation of political speech and association, *more* subjecting of citizens and citizens groups to federal regulation rather than state, local or none and *more* complicated provisions…with unintended consequences that no one will know until we have completed yet another election cycle.

I urge the Committee today to adopt a different approach: One that will untangle some of the problems created by BCRA and other problems not created, but exacerbated, by BCRA – and which do require legislative relief. Adopt the approach offered by Rep. Pence and Rep. Wynn in the 527 Fairness Act of 2005.

The Committee should not allow the same forces who brought us BCRA and *its* aftermath to now dictate another set of far-reaching regulations but little-understood consequences of political speech and activity by the American people.

Case in point: In my prior testimony in 2001, I introduced into the record a report which I had prepared and published a few months earlier entitled Who's Buying Campaign Finance Reform? which traced the funding and wealth of the campaign finance reform movement. In that report, I included a chapter which looked forward at the political and campaign finance landscape should BCRA become law. The title of that chapter? "Ok, Fine, Let George Soros Replace the DNC".

For the authors of BCRA to now come forward and ask Congress to once again 'trust them' as to the consequences of yet another complex piece of

campaign finance legislation is the ultimate chutzpah. Congress should be very leery of letting these same forces write this round of legislation.

Rather, Congress should look to new people and new approaches. Simple. A bill that allows everyone to know when it is passed exactly what it will do and not be 'surprised' again by its ultimate consequences.

In that regard, I am here to support and endorse HR 1361, the 527 Fairness Act of 2005 by Rep. Pence and Rep. Wynn – because it is simple and it addresses specific problems in the law. And, notwithstanding my opposition to BCRA when it was passed by Congress in 2002, it is now the law and I do not believe Congress has any stomach for its repeal or rollback. Thus, it is important to note that the proposal by Reps. Pence & Wynn makes some needed and important changes in the law, but does *nothing* to eliminate, change or unwind the key principles of BCRA.

With that in mind, let me turn to the key provisions of Pence-Wynn and why I believe that this is the right approach for Congress to take and why these changes in the law are so important and necessary.

The stated reason for passing any legislation now is to "address the problems of the 527s…" The Pence-Wynn bill does that, hence, its title, "the 527 Fairness Act of 2005". But HR 1361 does so in a way that does no further harm to the First Amendment.

HR 1361 is aimed at strengthening political parties *vis a vis* the 527s, restoring basic communications capabilities to citizens organizations and grassroots groups just as the 527s had during the 2004 campaigns, and gets rid of thirty years worth of micromanagement by the FEC of trade associations' ability to establish and run their PACs, a change that is long overdue. All of these changes are simple, but essential to restore fairness and balance in the system.

I. The first and truly *most* important provisions of Pence-Wynn are those which strengthen the political parties. There are three such provisions in the bill:

1. Elimination of the coordinated spending limits by political parties in support of their nominees for federal office;
2. Elimination of the *aggregate* contribution limits for hard dollars contributed by individuals;
3. Authorization for state parties to spend state-regulated dollars for voter registration and sample ballots, rather than requiring state parties to spend federally regulated dollars for such activities.

1. Elimination of the political party committees' coordinated spending limits. This is an anachronism which Congress should eliminate. Spending limits for the political parties were established in the 1974 amendments when FECA (Federal Election Campaign Act of 1971) was substantially amended following Watergate and which brought us the basic regulatory scheme we live under today. Spending limits were imposed not only for the political parties but for candidates as well. The Supreme Court in *Buckley v. Valeo,* 424 U.S. 1 (1976) struck down as unconstitutional the expenditure limits on candidates' campaign committees, saying, " Being free to engage in unlimited political expression subject to a ceiling on expenditures is like being free to drive an automobile as far and as often as one desires on a single tank of gasoline."

However, the issue of the political parties' coordinated spending limits were not before the Court in *Buckley* and were not presented to the Court for twenty years thereafter. In 1996 (*Colorado I*), the Supreme Court determined that the government could not constitutionally limit independent expenditures by political parties for their candidates. However, the Court was split over the question of whether coordinated expenditures could be constitutionally limited and remanded the case for development of a factual record. Both the trial court and the Tenth Circuit Court of Appeals subsequently ruled that coordinated spending limits on political parties were unconstitutional. However, when the case known as Colorado II was decided by the Supreme Court in 2001, the Court ruled that Congress could impose limits on coordinated party expenditures – but largely because parties could still engage in unlimited spending 'independent' of their candidates.

BCRA's authors tried to reverse the ruling of the Supreme Court in Colorado I by requiring political party committees to choose between making coordinated or making independent expenditures on behalf of their candidates. However, the Supreme Court in *McConnell v. FEC*, *invalidated* that provision of

BCRA, one of only three provisions struck down by the Supreme Court in the *McConnell* case.

The *McConnell* court determined that forcing political party committees to choose between independent and coordinated expenditures was / is unconstitutional. Thus, the current state of play is this: A party committee can make expenditures subject to a statutory limit: in 2006, the limit for House candidates will be slightly more than last year's limit of $76,600 which is the combined national *and* state party committee coordinated spending limit for House candidates from states with more than one House district. Expenditures *above* that amount must be made by the party committee 'independent' of its nominees and candidates. What is the result?

- Parties and candidates must establish unnatural and largely artificially defined 'firewalls' in order for parties to make expenditures that can be arguably 'independent'. We've read articles in the last cycle about people going into and out of separate doors of the same building to create an illusion of 'independence'.

- Parties create separate IE units whose job is to develop and spend the IE budgets, separate from the parties' overall plans for the cycle and lacking formal supervision by the party leaders

- The IE units have less accountability and oversight from the party leadership, particularly elected officials who chair the party committees – for fear of having the communications deemed to have been 'coordinated' with the candidates

- There is less accountability for the message. Independent expenditures tend to be more harsh and more 'negative' -- the opposite result intended

- Parties can more actively and legitimately recruit non-wealthy candidates for Congress… the parties can budget and spend whatever hard dollars they can raise to help the non-wealthy candidates – and can do so in cooperation *with* the candidate and his/her campaign

It is time for Congress to void this legal fiction. The party committees exist to raise funds and votes in support of their candidates – that is what they are

supposed to do. They ought to be able to do so in concert with their candidates. It is simply not possible for parties to corrupt their candidates and vice versa . . . which used to be a legal standard against which these things were judged and still ought to be.

Every penny spent by a party committee should be coordinated with a candidate in order to temper the message, allow a consistent party campaign theme and insure accountability of the content of the expenditure and the dollars spent.

Congress has already recognized the importance of allowing party committees coordinated spending limits to be lifted in the case of the Millionaire's Amendment: when a wealthy, self-financed candidate triggers a certain level of his/her own spending, the party's coordinated spending limits are removed.

This is not insignificant: when the stakes are such that the party needs to be able to make expenditures to support or help one of its candidates, Congress has already agreed that the party should be allowed to do just that, without having to establish separate consultants, separate doors to the campaign or party headquarters and the endless list of silly and expensive lengths to which parties and candidates must now go to avoid 'coordination'.

Individual wealthy donors today can spend unlimited amounts of their own money attacking or supporting any candidate for office. Political parties can do that as well – but political parties should not be forced by law to feign independence from their own nominees in order to be able to do what George Soros or Peter Lewis can do.

2. Removal of the aggregate contribution limits imposed on individual donors. This does not change any of the contribution limits from an individual donor to any federal political candidate, party committee or the federal account of a state party. Rather, this would allow those individuals who are capable of doing so to give to as many federal candidates and party committees as he or she desires. I have attached two charts to my testimony which demonstrates at a glance two things: Exhibit A depicts the very complicated formula of aggregate contribution limits established by BCRA. Exhibit B depicts elimination of the complicated *aggregate* limits while leaving in place the hard dollar limits on contributions to each recipient candidate, party committee or PAC.

Removing the aggregate limits would have two effects:

*first, the national party committees would no longer be competing with each other to raise their hard dollars. Now, an individual cannot give the maximum allowed by law each year to both the NRCC and the NRSC, much less to the RNC as well. The three national committees of each party are competing *internally* with one another rather than competing with the other party for the maximum contributions from their wealthy donors. The only people who give these large contributions are those of both parties who have the means to do so, the allegiance to the party and personally believe strongly enough in the mission and purpose of the party and its candidates to make those contributions. It simply makes no sense to require the party committees to compete with each other for these limited hard dollars.

* second, this would provide an incentive for donors to support the party committees rather than private 527 committees. It would allow the party committees to compete with wealthy individuals and private entities and *encourage* donors to stay within the party structure, rather than providing incentives to seek ways *outside* the political parties as a means of augmenting the parties' ability to support their candidates.

* third, the current law is far too complicated to expect ready compliance. In my work with various members of Congress and staff, I find that most cannot explain the current law (which is why I prepared the charts to depict the current law and proposed change). The campaign finance laws should be simple in order to encourage compliance. The aggregate contribution limits are far from simple – and I defy any member of this Committee or 99% of the members of Congress to be able to explain without a 'cheat sheet' what the law actually says.

This change in the law would not affect multitudes of individuals nationwide. But it would change the incentive structure and allow the party committees to work in tandem rather than at odds to identify and pursue those donors who can and would contribute to and through the parties to support the party's candidates and issues – rather than the current situation where the law encourages intra-party competition for the same hard dollars.

These are <u>not</u> soft dollars. These are hard dollars – and there should be no reason why an individual should be able to spend his or her money in unlimited

amounts on ads or other purposes attacking or supporting the party or candidate of his/her choice, but that same wealthy individual cannot contribute within the legal limits to each candidate or party committee he / she chooses.

II. Restore the free speech rights of grassroots organizations and citizens groups by repealing the Wellstone Amendment. The Senate added to McCain-Feingold on the Senate floor an amendment offered by Sen. Wellstone that requires citizens' organizations to establish federal PACs in order to be able to

engage in electioneering communications. That was not the original intent of the authors and, in fact, most of the supporters of McCain-Feingold opposed the Wellstone Amendment. It was adopted and upheld by the Supreme Court. This is one of the most egregious provisions of BCRA – and it was not part of the bills as drawn by the reformers.

HR 1361 proposes the repeal of the Wellstone amendment – restoring the language of what was originally known as Snowe-Jeffords and expanding it to include all grassroots organizations, not just 501c(4) social welfare groups. I have also been in discussions about this provision with various representatives of grassroots organizations and at their suggestion, I have attached as Exhibit C to my testimony some additional proposed language to clarify *in the statute* that membership dues from individuals can be used for this purpose.

It should not be the case (but it currently IS the law) that one individual can spend $1 million dollars of his/her own money to make communications about a candidate or political party before an election but one million people joining together and giving $1 each cannot make a similar communication through a membership organization. There is something badly wrong with a system that rewards the wealthy and gags everyone else in the country not wealthy enough to pay from their own pockets for radio or television ads.

And rather than trying to gag even more kinds of groups of citizens, why not allow membership organizations to use their dues money *from individuals only* to speak on their members' behalf.

More freedom, not less, should be the objective.
Less government regulation, not more, should be the goal.

III. Repeal the arcane restrictions on trade associations' ability to raise money for their PACs, and index PAC contributions. The 1974 amendments which spawned political action committees included restrictions that simply don't belong in federal statute: the requirement that a corporation can only grant permission to one trade association PAC per year to solicit the corporation's executives and management employees *and* an arcane system for obtaining that approval. It is a system that makes little sense and is very cumbersome to make work in real life.

And indexing PAC contributions will insure that in coming years, people who band together making small contributions to PACs will still be competitive with the contributions of wealthy individuals – the premise of political action committees in the first place.

In sum, HR 1361 takes some simple but important steps in keeping with these principles:

1. The political parties should be restored to their rightful role in the federal campaign framework – and the ridiculous limitations on political parties' capacity to support their own candidates should be repealed, creating stronger parties and greater accountability.

2. Individuals with small amounts of money should be able to associate within organizations and committees of their choosing to make their collective voices heard *through* their organizations – enabling large numbers of small donors to compete in the political process with the small number of wealthy individuals.

3. Wealthy individuals should be encouraged, not discouraged from, contributing to the political parties.

None of these proposals eliminate any key provision of BCRA. Federal officeholders and parties must still function within the same hard dollars established under BCRA—no soft money, no changes in the basic framework of BCRA.

But these are adjustments that need to be made in the law to restore fairness and equity in the process. I thank you for your consideration of and support for HR 1361, the 527 Fairness Act of 2005. Thank you.

E.. .bit A – Current Law

2005-2006 Aggregate Individual Donor Limits

(For individuals)

$101,400
Total aggregate limit on Individual Federal Contributions per two-year election cycle: Nov. 3, 2004.- Nov. 7, 2006

Total Federal Contributions to:
Presidential races
Senatorial races
Congressional races
National Parties
State / Local Parties (federal accounts)
Federal PACs

$61,400
Aggregate limit on individual contributions to non-candidate committees (*i.e.* national, State and local parties and federal PACs) per two-year election cycle. Contributions may be divided among such committees in *any dollar combination*, so long as no more than $61,400 is contributed within two years and no more than $40,000 of that amount goes to committees that are not national parties (state& local parties / federal PACs).

$40,000
Total limit on individual contributions to Federal candidates per two-year election cycle. The biennial limit tracks the biennium in which the recipient-candidate is in cycle. In short, a contribution to a candidate running in 2008, goes against the individual's 2007-08 biennial limit, irrespective of the date it was made

Election examples:
General
Primary
Special

National Party Committees
NRSC
NRCC
RNC
DNC
DCCC
NDSC

$61,400
to all national parties in a two-year cycle. But no more than **$26,700** to any one party committee in a calendar year.

Of which no more than $40,000 can be contributions to ALL State or local parties fed'l accts and/or federal PACs per cycle.

Recipient limits:
$5000 p/ year - PAC
$10,000 per party committee per year (federal accounts)

PAC examples:
leadership and non-connected PACs

$2,100
limit on contributions per Federal candidate per election.

Ex .oit B

2005-2006 Aggregate Donor Limits Eliminated

(recipient limits remain)

~~**$101,400**~~
~~Total aggregate limit on Individual Federal Contributions per two-year election cycle: Nov. 3, 2004 - Nov. 7, 2006~~

Total Federal Contributions to:
Presidential races
Senatorial races
Congressional races
National Parties
State / Local Parties (federal accounts)
Federal PACs

~~**$61,400**~~
~~Aggregate limit on individual contributions to non-candidate committees (*i.e.* national, State and local parties and federal PACs) per two-year election cycle. Contributions may be divided among such committees in *any dollar combination*, so long as no more than $61,400 is contributed within two years and no more than $40,000 of that amount goes to committees that are not national parties (state& local parties / federal PACs).~~

~~**$40,000**~~
~~Total limit on individual contributions to Federal candidates per two-year election cycle. The biennial limit tracks the biennium in which the recipient candidate is in cycle. In short, a contribution to a candidate running in 2008, goes against the individual's 2007-08 biennial limit, irrespective of the date it was made~~

Election examples:
General
Primary
Special

National Party Committees
NRSC
NRCC
RNC
DNC
DCCC
NDSC

~~**$61,400**~~
~~to all national parties in a two-year cycle.~~ But no more than **$26,700** to any one party committee in a calendar year.

~~**Of which no more than $40,000**~~ ~~can be contributions to ALL State or local parties fed'l accts and/or federal PACs per cycle.~~

Recipient limits:
$5000 p/ year - PAC
$10,000 per party committee per year (federal accounts)

PAC examples:
leadership and non-connected PACs

$2,100
limit on contributions per Federal candidate per election.

Exhibit C – Language to insure membership dues from individuals can be used for electioneering communications.

Amendment to 2 U.S.C. § 441b(c)(2):

Insert the following before the period at the end of the first sentence,

", including either donations, membership dues from individuals, or, in the case of an organization that has a national federation structure or has several levels, such as national, state, regional and local affiliates, transfers or payments of membership dues from individual members made by one affiliate, under the organization's terms of affiliation to another affiliate of the organization."

Insert the following language before the period at the end of the second sentence:

", unless the funds are membership dues from individuals transferred or paid as described in this paragraph."

STATEMENT OF BOB BAUER

Mr. BAUER. Thank you, Mr. Chairman, and to members of the committee, for inviting us to testify. I would like to open, first of all, by saying I am confident my colleagues here and I on this panel could constitute ourselves as a bipartisan law firm to provide clearances to Congressman Brady on the questions that he had, except that he should know that it will not come cheaply.

Mr. BRADY. I know that.

Mr. BAUER. But you won't be a test case. You will just be poorer for being safer.

In any event, what I would like to do is very briefly summarize my testimony here within the time allotted and ask that the full statement be incorporated into the record.

A number of reasons have been given for the bill before the committee at the moment to regulate 527s, and I would like to distinguish between and among those reasons which I think have in common only that they are all bad reasons.

First of all, it is denied on the part of those who support this bill that they are seeking to limit money in politics, but they are, in fact, precisely seeking to do that. There is no other explanation for the continuous reference to the amount of money spent by 527 organizations, or for that matter, we hear is also said of 501(c)s. If the amount of money these organizations spent were not a rationale for this bill, why are those figures continuously being cited as they were repeatedly today?

There is a view that if these organizations are spending in money and if they are, in fact, influencing elections, their activities ought to be restricted by this Congress.

Secondly, there is an argument that everybody should play by the same rules; that if political committees and party committees raise and spend money to influence elections, so too should these 527s.

I think that Congresswoman Millender-McDonald expressed extremely well the point of view that we have to distinguish between and among groups by who they are and what functions in our political process they discharge. Placing restrictions on groups that seek to express themselves on issues or to conduct issue-based voter mobilization drives is not an appropriate action of this Congress. It depresses activity our citizens should be able to freely engage in without confronting the kinds of complexities we have heard discussed today by, among others, Congressman Brady.

It is being said that this is a result of the FEC's enforcement failure. This is simply incorrect. The issues presented by BCRA are complex, as Congressman Doolittle has said repeatedly here today, and I think quite correctly. The FEC wrestles with a question which is both complex as a matter of regulatory law and complex as a matter of constitutional law. The decisions that they reached were hard-fought decisions. It is a mistake to say that they defaulted on their duties. I view this as a talking point that has been substituted in this debate for reasoned discussion of the issues.

Last, but not least, it is said this is good public policy without partisan impact. This is a bill with partisan impact. As I say in my testimony, no campaign finance reform is ever neutral. It typically works at some particular time in history to one side or the other.

The Democrats understood this in the 1970s and were, in fact, rebuked for it from time to time, including, by the way, ironically by The New York Times in 1971.

It is true, I believe, of the Republican Party today that there is a desire to take advantage of this debate to move regulation in the direction of partisan advantage.

There are good reasons, and I am going to summarize them very rapidly with 1 minute 37 seconds to go, why this bill ought not to pass.

Number one, it goes without saying that there are significant rights of association. Again, I go to the Democratic ranking member because I could not say it better, and those rights of association are significantly threatened by this bill.

Number two, the passage of this bill will enlarge the sphere of regulation and add to the mind-numbing complexity that the members of this committee have discussed this morning. Congressman Pence rightly worries about moving regulation closer to individuals. It will move regulation closer to 501(c)s. It will enhance the role of the Federal Election Commission, which will be called upon as an instrumentality of the government to continue to issue opinions, I might add, like the one you cited, Mr. Chair, that makes contacts within 120 days between groups and members subject to the coordination rules, and render even endorsement ads illegal.

It will adversely affect State and local regulatory activity or make it so some complicated that State and local parties, like Congressman Brady expressed the concern about, are unable to discern what they can legally and not legally do.

It will invite, as I said, continuous FEC involvement in controversy. It will place restrictions on voter drive activities by dramatically increasing the amount of hard money that allocating committees, registered political committees, have to spend to get out the vote and register voters.

So, in summary, let me say that these bills, as I conclude in my testimony, that is to say S. 271 and its House counterpart, are not needed by any coherent rationale, have been argued on weak grounds, are technically deficient, are likely to invite still more unneeded regulation in the future, are threatening to State and local activity of a particularly lawful nature, are inappropriately partisan and are dangerous to party health and development.

Thank you very much.

The CHAIRMAN. Thank you.

[The statement of Mr. Bauer follows:]

Testimony of Robert F. Bauer*

Before the

Committee on House Administration

Hearing on the Regulation of 527 Organizations

April 20, 2005

I appreciate the Committee's invitation to testify on this important question of whether the Congress should act now, two years after the first cycle of experience with BCRA, to enact new legislation regulating "527s." I believe it to be a very bad idea, and there are numerous reasons why.

Some of them have to do with policy, still others craftsmanship: that is to say, we should not do this, and if it were done, in the way proposed, it would be done badly.

In my remarks, I will refer to the most recently circulated version of S. 271, which, I assume, will be incorporated into the House version, H.R. 513.

Policy: Some of the Bad Reasons Given For Regulating 527s

The field of campaign finance reform is overgrown with regulation and proposals for still more. The Supreme Court's decision in *Buckley v. Valeo* counseled that this is a field full of constitutional traps of one kind or another, and that we should be careful, in the interest of protecting speech and association, to avoid them. And each phase of regulation, complicating an already complicated area of the law, imposes new and significant costs on the regulated community: it adds new uncertainties about what the law allows and what it prohibits, and it requires the dedication of fresh resources to the retention of lawyers. The regulation of political activity, touching the most vital rights and interests of Americans, is not and should not be viewed as a routine task.

BCRA is a complex law, and we have had two years to absorb it. There is no basis for revisiting today the decision that Congress made to largely leave to one side 527s and to simply limit their transactions with parties and federal officeholders and candidates. No one is suggesting that 527s have contributed to the corruption of the political process, in the sense

---

* Partner, Perkins Coie LLP, and Chair of its Political Law Group. The views expressed herein are solely those of the author, and do not necessarily represent the views of any client or other member of the firm.

that the monies they raised and spent skewed public policy in favor of monied or special interests.

Limiting Money. So what is the basis for proceeding now? It appears to be that these organizations made themselves felt in the last election, spending significant sums of money in the aggregate to influence issues of interest to the American public. We see, as we did in the testimony in the Senate in early March, reference to how much money 527s spent to express views on these issues. The Government does not, however, have a constitutionally recognized interest in limiting how much money is spent by organizations on issues, even issues with the potential of affecting how voters perceive the relative merits of candidates and parties.

Making Everyone Play By the Same Rules. Then there is the argument that if 527s influence elections, they should have to be play by the same rules as other organizations that do the same, such as political parties. This emphasis on "playing by the same rules" begs the question: why should they play by the same rules? A number of different types of organizations influence voter choice. The media is an example. We do not have the media "play by the same rules," though there are undoubtedly some who believe that they should.

The rules should apply only to specified types of activities: to monies spent by organizations in the business of coordinating activities with candidates, or expressly advocating their election or defeat, or making contributions to their campaign committees. The 527s targeted by this bill do not do any of this. The ones that the sponsors wish to restrict, by application of the campaign finance rules, conduct issue-based activities—communicating with the public on issues, and rallying voters on the same basis.

The sponsors have said that the 527s who engage in these activities have acknowledged their political purposes by registering for disclosure purposes with the IRS. This also misstates their legal position. They have organized as 527s, filing as such with the Government, because the Internal Revenue Service directed them to this location for the conduct of the kind of activities they are engaged in. The choice these organizations made has no bearing at all on whether they conceded themselves to be—or are—"political committees" under the Federal Election Campaign Act.

A parenthetical remark: In his testimony before the Senate, Senator McCain suggested that I was being inconsistent—though he was hinting at some graver vice—in defending 527s now, when, in 1999, on behalf of a client, I pursued enforcement by the Justice Department against one in particular. I am somewhat pleased that any position I took would command his attention, even attention of a critical kind, or that he would take it to bear in some way on the issues now pending before the Congress. But as he surely knows, the 527 in question was controlled by a federal officeholder, which is precisely what distinguishes it from the 527s under attack today and which even under BCRA would today be impermissible. No one is arguing here that 527s controlled by officeholders are unregulated and the pending bill has nothing to with those kinds of 527s, already prohibited for all intents and purposes by BCRA.

The FEC's "Enforcement Failure." It is also argued that the law already applies to these committees but that they ignore it and the FEC will not enforce it. This is an egregious misstatement. The FEC may suffer from its share of problems in functioning as many would like, but the issues presented by 527 activity--as a matter of statutory and constitutional law--are complex, and there are entirely reasonable differences of opinion among the Commissioners about their authority and the most sensible approach to be taken. For example, the sponsors point to the "major purpose" test as a decisive ground for applying the law to 527s, but as Commissioner Mason correctly pointed out before the Senate, this test is not in the statute and its legal standing is far from settled. The FEC has done what it could here—in my view, far more than it should have or by law was entitled to do. The claim that Congress must step in because the FEC defaulted at its post is a canard.

Political Advantage. It is, sad to say, inevitable that changes in political regulation are appealing to those who believe that it serves their political interests. This was the case with Democrats in the 1970s; and it is true of Republicans today. To allow legal issues to become an opportunity for the one party to steal a march on the other is most unfortunate. If done now again, in the wake of BCRA, it will be sure to happen again in future cycles.

Policy: Some of the Good Reasons for Not Enacting the Proposed New Regulation of "527s"

The Right of Association. The Court in *McConnell v. FEC* sustained a statutory attack on political parties, and in doing so affirmed the declining place of associational rights in the overall scheme of constitutional protections. S. 271 (H.R. 513) now deals a deadly blow to associational rights exercised outside the sphere of political party activity. 527 activity is associational activity: think what one will of the motives and techniques of veterans and others whose 527 activity became notorious in the last cycle, but it is not to be denied that from the Media Fund, to ACT, to Swift Boat Veterans, the activities and organizational efforts in question represented the ardent interests of politically committed Americans sharing a common goal. That wealthy people made much of this possible with large donations is beside the point. To subject this activity to federal restrictions will serve only to limit and diminish it.

Unduly Enlarging the Sphere of Political Regulation. The sponsors claim that they have carved out 501(c)s. But that is, of course, not their intention, as demonstrated by the position that they took before the FEC where they lobbied hard for rules that would reach them. Their choice now, to omit them from the four corners of the bill, is a tactical one. The long-term strategic goal is the same, which is to impose regulatory controls on all "election-influencing activity," including that of 501(c)s that also conduct issue advocacy and issue-based voter mobilization drives. This bill increases the likelihood of this extension to (c) activity by establishing, in the proposed bill, that the Government has an interest in regulating public communications about federal candidates and parties made by organizations other than political parties and registered political committees. Once this interest is established here, it can be extended effortlessly to 501(c)s—and it will be, at some time in the future.

Adversely Affecting State and Local Regulatory Activity. The bill provides an exemption, but a conditioned one, for state and local elections activity. The conditions include the avoidance of voter drive activities promoting or opposing political parties; limitations on the involvement of federal candidates and parties in voter drive activities at the state and local level, above and beyond those imposed by BCRA; and limitations on the geographic scope of operation of State and local PACs that seek to remain within the exemption. All in all, we have here the makings of active but wholly unnecessary and inappropriate federal government involvement in regulating state and local political activity.

This is one problem, and another is the impenetrability of key terms used to define the bill's aims and purposes. What does it mean to "promote, support, attack or oppose" a political party? The bill does not say. What does it mean that federal candidates or national party officials cannot "materially participate" in voter drives of state and local PACs? The bill does not say. The answer is being left to contentious rulemakings, enforcement actions, and litigation.

Damaging to Party Association and Development. As noted, the bill conditions various exemptions for State and local PACs, including those controlled by officeholders or candidates, on avoiding in their voter drive activities the promotion of their party, or opposition to another. This provision is unhelpful to the project of building stronger, more cohesive parties, particularly at the State and local level. It builds upon the anti-party program of BCRA and exacerbates its harmful effects.

Invites FEC Controversy. The bill introduces additional potential instability by conferring on the FEC—the very agency regularly denounced by the sponsors—to provide key definitions and supporting interpretations through implementing rules. The bill sets two timetables for this process: 60 and 180 days, for the 527 and allocating committee portions, respectively. This is a prescription for what we have seen in the post-BCRA rulemaking process: confusion, controversy, litigation and endless revision. This is unfair to the regulated community, assures a numbing complexity before this all ends (if it does), and will all occur outside the public view at some cost to public understanding and transparency. The sponsors should define their terms and build and defend their position now, not leave it to an agency that they have alleged to be incompetent and pledged to abolish.

Indeterminate Restrictions on "Allocating Committees." The bill at once proposes minimums for the share of hard money paid by allocating committees, for mixed purpose activities, while at the same time inviting the FEC to raise all minimums and perhaps also reduce the minimums for the payment for overhead. As a result, with the passage of the bill, the law becomes less rather than more clear: various issues will be referred to the FEC for further decision-making. This is also a bad idea.

Inappropriate Restrictions on Fundraising by Allocating Committees for Mixed Purpose Activities

The bill establishes the concept of a "qualified nonfederal account" for mixed purpose activities, but only individuals may contribute to that account and then only in amounts of

$25,000 per calendar year. Federal officeholders and others who may not raise "soft money" under BCRA may not assist allocating committees with raising this kind of money. This is an example of the conceptual conflicts—like the one that affects the border between federal activity, on the one hand, and state and local activity, on the other—that afflict the bill. Is this limit a hard money limit or a soft money limit? Since the limit restricts who may give and how much, it certainly would seem to be a hard money limit, set by federal law. If so, why should there be restrictions on who can help to raise it? The bill's drafts seem wedded to restrictions of every stripe, even if they are fraught with this sort of internal inconsistency.

Conclusion

S. 271/H.R. 513 is:

(1) Not needed by any coherent, well-supported policy rationale;
(2) Argued on weak grounds;
(3) Technically deficient;
(4) Likely to invite still more unneeded regulation of more groups in the future;
(5) Threatening to lawful state and local activity
(6) An inappropriate response to partisan skirmishing in the last election and certain to raise concerns about favoring one partisan interest over another; and
(7) Bad for party health and development

So it is a bad idea and I urge the Committee to set it aside.

The CHAIRMAN. Mr. Gold.

STATEMENT OF LARRY GOLD

Mr. GOLD. Thank you, Mr. Chairman. I appreciate the opportunity to testify today on behalf of the AFL–CIO, the national labor federation whose 13 million members in 57 national and international unions work in innumerable occupations throughout the 50 States and have a great stake in both the rules that govern how we engage in politics and what we do under those rules.

Over many years, unions have come to look at governmental restrictions on political participation very warily and to appreciate the genius of the First Amendment as a guarantor of both individual liberty and group self-realization in the political sphere, because we trust the common sense and independent judgment of ordinary people to make up their own minds without arbitrary controls over what and who they can hear, read or engage with.

The labor movement was actively engaged in the legislative consideration of BCRA in 2001 and 2002, and we pressed at the Supreme Court our deep-seated objections to having that statute criminalize certain union broadcast speech and redefine certain coordination with Federal candidates and political parties.

Congressman Shays is incorrect that I or the AFL–CIO just out and out opposed BCRA. We supported the restrictions on the soft money contributions to national political parties, but we feared that if the novel speech and coordination restrictions were codified and held to be constitutional, then the path would be laid for much broader restrictions, either in the interest of further protecting incumbents as a class, at the insistence of a lobby of self-styled campaign finance "reformers" whose regulatory agenda has no bounds, or in the particular service of a political party, that unlike the situation in 2001 and 2002, but the situation today, firmly controlled the Executive Branch, House and Senate at the same time; and now, all three could be coming to pass.

We believe that Federal election law should foster, through relatively less regulation, the political activities of membership groups, at least insofar as they derive their income from individual dues and contributions, regardless of whether their status is a union, an unincorporated association or a nonprofit corporation.

We also believe that the law must recognize the fundamental distinction between contributions to politicians and political parties on the one hand, and speech, activism, advocacy and mobilization that occur independently of politicians and parties on the other hand, even if they do influence their official conduct and/or legislative and electoral fortunes.

Contributions plainly have directly corrupting potential and their deregulation favors those enjoying the greatest means to give directly, without necessarily reflecting proportion of popular support. But civic engagement cannot corrupt officeholders. It us undertaken by the powerful and powerless with unpredictable impact, and it is what the First Amendment most fundamentally protects.

For decades, independent non-Federal section 527 organizations, whether freestanding or sponsored by tax-exempt section 501(c) groups like unions, trade associations and advocacy organizations, have involved citizens in public life and increased voter participa-

tion, again, since long before the recent efforts to turn an obscure, three-digit Internal Revenue Code designation into a four-letter word.

Since the 527 amendments in 2000, before BCRA, all of these 527 entities have publicly disclosed their income and spending. Congressman Miller, I believe, is incorrect to say that they are not transparent. They are. There is nothing secret or shadowy or unaccountable about 527 organizations. In fact, many of them are the separate segregated political funds that section 501(c) groups create and control due to explicit requirements of Federal tax law and explicit advice of the IRS since 1975, as old as the modern Federal Election Campaign Act itself, that establishing and using these accounts for electoral activity is necessary in order for the section 501(c) group to remain tax exempt.

So, unions and trade associations and advocacy groups do use these accounts for non-Federal contributions, for independent advocacy, for voter mobilization, registration, get-out-the-vote, for donations to allied organizations and for other purposes.

In all that has been written about the 527 issue in the last year-and-a-half or so, there has been virtually no complaint about how section 501(c) groups use their section 527 funds, and yet H.R. 513, the so-called 527 Reform Act, treats those 527 accounts just as harshly as it does the independent, non-connected section 527 groups. In fact, we believe Congress should reject any new restraints on any of these groups.

Let me just summarize quickly what we think the bill would do and why it is undesirable. H.R. 513 would sharply curtail the ability of individuals and groups to associate in their pursuit of political and policy goals, even completely independently of candidates and parties, posing no risk of corruption and with full public disclosure of the receipts and spending, because it outlaws many non-Federal section 527 organizations.

The bill would force unions and advocacy groups and trade associations and nonprofit corporations to finance substantially more of their communications about Federal officeholders and voter mobilization, either through Federal PACs or through taxable general treasury spending.

It would mandate for the first time that independent groups use hard money merely for references to Federal candidates and political parties in their public communications and in voter registration and GOTV activities, going far beyond current law.

It would skew Federal election law in favor of business corporations over unions and other nonprofit groups because businesses can typically continue to spend for political purposes in tax-neutral ways while nonprofits, which are denied the use of their 527 accounts, will be taxed at the highest corporate tax rate.

Finally, it would override State laws almost everywhere to turn State and local PACs into Federal PACs if they spend over $1,000 to publicly comment on the office conduct of Federal officeholders, having nothing to do necessarily with any election, or undertake most partisan or nonpartisan voter registration or get-out-the-vote activities.

My written testimony explains these consequences and others in more detail, and I appreciate again the opportunity to appear today.

[The statement of Mr. Gold follows:]

TESTIMONY OF LAURENCE E. GOLD*
BEFORE THE COMMITTEE ON
HOUSE ADMINISTRATION
APRIL 20, 2005

I appreciate the opportunity to testify before the Committee on current legislative proposals to further regulate or deregulate the American electoral process. I appear on behalf of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the national labor federation whose 13 million members in 57 national and international unions work in innumerable occupations throughout the 50 states. The AFL-CIO is one of the largest and most diverse membership organizations in our nation, and on behalf of all working families it maintains an acute interest and an active role in shaping public policy, seeking just and progressive legislation, and influencing – in the best sense of open and democratic participation – the selection of public officeholders.

Before this Congress, the AFL-CIO has a full plate of legislative concerns, from protecting Social Security to enhancing domestic manufacturing to increasing the minimum wage. These are perennial issues that go to the substance of what government does and what our society stands for. The labor movement's strength in pursuing this agenda derives from the involvement of its members and their families, their ability to join together, speak out and persuade their fellow citizens, and their commitment to securing government at all levels that embodies the principles they embrace.

For the labor movement, achieving that kind of government has always been a daunting struggle. American labor history is a saga of worker activism fighting powerful forces of organized capital and inhospitable laws that have defined various forms of collective self-help and public expression as civil offenses and even crimes. Over many years, unions have come to look at governmental controls on political participation very warily, and to appreciate the genius of the First Amendment as a guarantor of both individual liberty and group self-realization, grounded in faith in the common sense and independent judgment of ordinary people to make up their own minds without arbitrary controls over what and who they can hear, read or engage with.

The AFL-CIO has been actively involved for years in campaign finance regulatory issues because we recognize the huge stake of workers and other citizens in the rules adopted by elected officials and the regulators they select as to how citizens and organizations can participate in the political process – that is, the crafting of legislation and the conduct of elections. Unions and workers realize that their ability to have a voice in that process is as important as how they apply that voice; so, the labor movement was actively engaged in the legislative consideration of the Bipartisan Campaign Reform Act (BCRA) in 2001 and 2002, and we pressed to the Supreme Court our profound and deep-seated objections to how that statute criminalized certain union broadcast speech and redefined so-called "coordination" with federal candidates and political parties.

---

* Mr. Gold appears in his capacity as Associate General Counsel of the AFL-CIO. He is also Of Counsel to the law firm Lichtman, Trister & Ross, PLLC.

In that litigation we were aligned with what many observers – and many within Labor's own ranks – considered to be strange bedfellows, because numerous of our fellow litigants reflected the conservative side of the political spectrum and have routinely opposed our positions on the principal issues of the day. But we have no regrets over engaging in that battle, despite the grave disappointment of the narrow 5-4 Supreme Court majority in *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003).

In enacting BCRA, Congress for the first time in the modern era enacted a law that prevents a union from undertaking certain public communications if they "refer" in any manner, and regardless of purpose or need, to a human being who is a federal candidate in an upcoming federal primary, convention or general election. And, Congress simultaneously rejected Federal Elections Commission (FEC) regulations, with troubling instructions about how to rewrite them, that struck a reasonable balance in defining a most difficult and important matter – the circumstances under which engagement with a federal candidate by a private citizen or organization, including a union, that entails that individual or group also engaging with the public, amounts to an "in-kind contribution" to that candidate subject to source prohibitions and amount limits.

These aspects of BCRA struck the AFL-CIO, and many others across the political spectrum, as misguided and overreaching efforts to control private associational conduct and speech that Congress had no warrant to interfere with – and it seemed to us that Congress, as a class of elected incumbents who enjoyed all the inherent electoral advantages of that status, had a huge self-interest in limiting the ability of private groups to voice criticism of them and their official conduct. We feared that if these novel restrictions were codified and held to be constitutional, then the path would be laid for further such restrictions, either in the interest of further protecting incumbents as a class; at the insistence of the lobby of self-styled campaign finance "reformers" whose regulatory agenda has no bounds; or in the particular service of a political party that – unlike the situation in 2001 and 2002, but the situation today – firmly controlled the Executive Branch, the House and the Senate at the same time.

The AFL-CIO took no solace during the BCRA debates in various estimations and assurances that restrictions on independent speech and associational activity would fall more burdensomely on our adversaries than on ourselves and our allies. We believe that approach to the regulation of political activity is gravely flawed in principle: we cannot accede to suppression of our rights because the suppression of others we dislike might be even more severe.

Moreover, as a practical matter, neither we nor others are such seers as to be able to predict the relative impact of such restrictions even in a current election cycle, let alone in years ahead. So, while partisans may be tempted to change the rules out of such calculations, we are confident only of the law of unforeseen and even confounding consequences in the regulation of political activity. It is best, then, to let all voices be heard and to encourage free associational activity.

During the BCRA debate and the ensuing litigation, we also realized that the issues at stake concerned not only the relative rights of unions and business corporations, which federal campaign finance law has sought in some measure to equate, but also the relative rights of other grassroots and membership organizations that are treated under FECA as "corporations" as well. It is our abiding view that federal election law should foster, through relatively less regulation, the political activities of membership groups, at least insofar as they derive their income from individual dues and contributions, regardless whether their status is a union, a non-profit corporation or an unincorporated association.

We also believe that the law must recognize a fundamental distinction between the transfer of cash or in-kind services from private sources to politicians and the political parties that nominate and support them, on the one hand, and speech, activism, advocacy and mobilization that occurs independently of politicians and parties – albeit "influential" of their official conduct and their legislative and electoral fortunes. The former – the class of contributions – plainly has directly corrupting potential, and its deregulation favors those enjoying the greatest means to give without necessarily reflecting proportional popular support. However, the latter – the class of civic engagement – cannot "corrupt" officeholders, is undertaken by the powerful and the powerless alike in unpredictable shares and popular impact, and is what the First Amendment most fundamentally protects.

All this is a rather long but I think necessary predicate to the topic at hand – namely, with just one election cycle of experience with BCRA, should Congress again entertain major statutory changes in the Federal Election Campaign Act (FECA)? And, if so, what should they be?

This hearing arises because, inevitably, there was a redistribution of political activity in BCRA's wake. This was both prompted by BCRA's new prohibitions and driven by happenstance during the 2004 election cycle, including a competitive presidential election involving *this* particular president and the two main national parties operating at *that* particular time, a general sense that narrow congressional majorities might be either flipped or fortified, the galvanizing issues of war and economic uncertainty, and a renewed sense of opportunity for grassroots endeavors that could mobilize people to participate in state and local electoral processes as never before.

One of the political channels that was pursued to an unprecedented degree was the independent, non-connected, non-federal Section 527 organization, and this channel helped produce a level of voter participation unmatched in a generation. But these groups were not novel ventures. Well before the "reform" lobby, some editorial writers and some segments – but by no means all – of the governing national party endeavored to turn an obscure three-digit Internal Revenue Code designation into a four-letter word, like-minded persons with shared goals had combined in these legally sanctioned vehicles in order to participate in the political process.

In fact, and of great import to the matters now before this Committee, many longstanding non-federal "527" entities are separate segregated political funds that Section 501(c) non-profit organizations themselves create and control due to the explicit incentives of federal tax law and the explicit advice of the IRS since 1975 that establishing and using such Section 527 funds for electoral activity is necessary in order for a tax-exempt Section 501(c) organization to remain tax-exempt; that is, to avoid a tax that other Section 527 organizations – including national, state, and local political parties, and federal, state, and local candidates – do not incur. The IRS recently reiterated these concepts in issuing Revenue Ruling 2004-06 in January 2004 to provide some guidance as to how they should choose to finance certain public communications from their 501(c) and 527 accounts.

Accordingly, the AFL-CIO and many national and other unions, which are Section 501(c)(5) organizations, as well as Section 501(c)(6) trade associations and Section 501(c)(4) advocacy groups of many political stripes have long maintained Section 527 accounts that "primarily" engage in what Section 527 terms "exempt function" activity – that is, receiving and spending money in order to influence who fills elective and non-elective governmental and party positions. This activity includes contributions, independent advocacy, voter mobilization, donations to allied organizations, and other endeavors.

For a Section 501(c) organization, whether or not to use its 527 account for a particular matter is often subject to somewhat informed guesswork due to the imprecise scope of Section 527 itself. But these political accounts are very important and useful outlets for Section 501(c) organizations so that they and their members may fully and affordably participate in public life.

For years, however, unlike federal political committees and unlike other non-federal political committees operating in many states – all of which too are Section 527 organizations, of course – many of these Section 527 organizations (whether independent or Section 501(c)-sponsored), like much of the rest of the non-profit sector, undertook their activities without having to disclose the sources of their income and the recipients of their spending.

Congress, at the behest of Senator McCain and others, changed all that in June 2000 – nearly two years *before* BCRA, and in response to concerns expressed by some that these Section 527 groups were "stealth PACs," that is, political groups from which the law required no disclosure. Congress enacted a major new disclosure law, Pub. L. 106-230, that compelled them to register and file reports modeled on the FECA reporting scheme for federal PACs, but Congress deliberately imposed no further restrictions on how these organizations actually could raise and spend their money. Throughout the subsequent intense and thorough ventilation of campaign finance problems that produced BCRA, there was further concern or change required of the operations of these familiar and now very transparent organizations. In fact, shortly after BCRA was enacted, Congress in November 2002 revisited the 2000 disclosure law and *relieved* many such

groups of duplicative reporting obligations to the Internal Revenue Service (IRS) because they already disclosed their finances to one or more states. See Pub. L. 107-276.

During 2004, however, when these 527 organizations were next active, there arose a tremendous hue and cry, again principally from the "reform" lobby, which now contended that, in fact, these groups had been unlawful for 30 years - - ignoring that Congress had just legislated in 2000 and 2002 as if the contrary were true, and that no court or FEC decision had so held in all those years, including, of course, the Supreme Court in *McConnell*. As various Section 527 groups became more and more successful in attracting donations and volunteers, they came under increasing attack from the "reformers" and the groups' political adversaries.

Unfair and hyperbolic as these attacks have been, the point should not be lost that in all that has been written about the "527" issue in the last year and a half, and in all the verbal bombast that has emanated from opponents of the independent 527 groups, there has been virtually no complaint or case attempted against how Section 501(c) groups use their Section 527 funds. Yet H.R. 513, "The 527 Reform Act of 2005" ("The 527 Bill"), as I elaborate below, treats those Section 527 accounts with the same leaden hand as it does independent, non-connected Section 527 groups.

The 527 Bill would take to an unprecedented new level the seemingly endless campaign by some to impose federal PAC constraints – contribution source prohibitions and limits, registration and reporting, and subjection to FEC audits and enforcement – on any activity that might somehow "influence" a federal election. The capacity to influence, however, is a highly elastic concept and in itself can never suffice to warrant statutory restriction. Policy, legislation and elections do not come in neat and separate boxes, and their respective pursuits most assuredly affect each other – sometimes by design, sometimes not, and sometimes as intended, sometimes not. Importantly, the Internal Revenue Code recognizes this, by according, variously, Section 501(c) or Section 527 status to organizations that "primarily" engage in particular kinds of activities, and not precluding them from undertaking activities that are the primary aspect of another non-profit status (with the single exception of an absolute ban on charitable and educational Section 501(c)(3) groups engaging in electoral activity because contributions to them are, uniquely in the non-profit sector, tax-deductible).

That electoral and legislative concerns overlap hardly needs illustration, but here is a current example. More than 18 months before the next federal general election, we are in the midst of a great national debate over the future of Social Security. Could its content and outcome influence that election? President Bush thinks so; as reported by the *Washington Post* on March 23, "[f]lanked by Republican Sens. Pete V. Domenici (N.M.) and John McCain (Ariz.), Bush invited Democrats 'to come to the table' to help devise a solution to shore up Social Security's finances. 'I believe there will be bad political consequences for people who are unwilling to sit down and talk about the issue,' he said."

Whether the President's estimation of the public's eventual judgment proves right or wrong, who could dispute the broader point that the Social Security battle could influence how people vote in November 2006 – and in primaries that start next spring – and that many participants in this battle are mindful of that and take that possibility into tactical account? Should that debate, then, be waged only by federal PACs? And, should Members of Congress – almost all of whom are "candidates" at all times under the FECA definition -- that collaborate with private groups in order to advance their Social Security legislative goals be subject to federal election law coordination rules? Surely not, but that is because common sense tells us that we cannot over-characterize and then restrict political activity as federal election-related activity without unduly infringing on basic rights and the public interest in active democratic engagement.

A related and equally uncontainable notion that inspires the 527 Bill is that independent spending can unduly influence officeholders, so it must be constrained. Under this view, federal officeholders that know about efforts by independent groups will be grateful to them, and thereby amenable to using their official positions to reward them. This rationale arises far afield from the core anti-corruption focus of BCRA on soft money that was passed directly from private sources to federal candidates and political parties. Like the vague notion of "influence" itself, concern over potential legislator gratitude for observed external behavior cannot justify restrictions on speech and association, for it is susceptible to no limiting principle once the line of independent activity has been rejected as a bar to regulation.

Contrast this, again, with federal officeholders who work directly with individuals, groups and lobbyists to advance common legislative and policy goals that demonstrably and even designedly redound to their electoral benefit. Indeed, the sponsors of H.R. 513 are working hand in hand with the "reform" lobby that regularly extols their sponsors' virtues, announces the sponsors' next moves on their websites, and represents them in litigation against the FEC to invalidate the rules promulgated under the legislation that they last sponsored. Why is that not "influence" of a more direct and undesirable sort than the *uncoordinated* private speech and association that proponents of the 527 Bill condemn and seek to outlaw? And if such collaboration is acceptable and even desirable, how can the *absence* of collaboration exert more, and undue, influence?

The argument in favor of "cracking down" on Section 527 groups is usually also expressed with disdain for the speech of some of them: for example, the "attack ads" by The Media Fund and Swift Boat Veterans for Truth, which are castigated as "negative" and coarsening of the political process. Plainly, legislation to silence such groups is not serving the goal of preventing corruption or anything like it. Rather, the goal is to prevent disfavored speech, pure and simple. But this is an illegitimate legislative quest under the First Amendment, and it is doomed to failure in any event: after all, neither the "stand by your ad" candidate disclaimer requirements added by BCRA nor the other advertising disclaimer requirements in FECA caused the 2004 election-cycle advertisements by the hard-money funded federal candidates and national parties to "go positive." Yet it is these candidates who would legislate away others' "negative" commentary about themselves if they passed the 527 Bill.

Another flawed argument that is advanced for the 527 Bill is that the same hard-money rules should apply to non-federal Section 527 groups as apply to federal candidates and political parties. This facile appeal makes a false equation. A federal candidate campaign is devoted exclusively to winning a federal election, a candidate is susceptible to corruption, and society has a direct stake in preventing the corruption of public officeholders. But an independent 527 group need only be "primarily" concerned with influencing elections of any kind, it cannot corrupt candidates or parties from which it acts independently, and in no materially relevant manner can the group itself be "corrupted," for it exercises no governmental authority whatsoever.

The AFL-CIO strongly opposes the 527 Bill, H.R. 513, both because it is predicated on these misconceived premises and goals and because it would adversely affect our democracy in significant ways. The 527 Bill has nothing to do with limiting the flow of money or in-kind services to candidates or parties – the class of contributions, which is susceptible to corruption. Rather, it attacks the class of civic engagement, substantially enlarging upon BCRA's ban on certain union- and corporate-funded broadcasts by targeting individuals and groups – no longer limited to unions and corporations – that band together in the 527 organizational form in order to influence politics and policy, or to register voters or get them out to vote, while operating completely independently of candidates and parties and publicly disclosing their receipts and spending.

The 527 Bill goes far beyond BCRA in preventing these activities from happening *anywhere, almost any time and by any means* by a 527 unless it's carried out by the most stringently regulated creature of federal election law – the federal PAC. And, in doing so, the 527 Bill both restricts the political activities of Section 501(c) organizations in significant new ways and plainly lays the groundwork for the next stage of "reforming" how Section 501(c) groups may operate.

In sum, the bill would:

- Sharply curtail the ability of individuals and groups to associate in the pursuit of political and policy goals, even completely independently of candidates and parties, and with full public disclosure of their receipts and spending, by outlawing many non-federal Section 527 organizations;

- Force tax-exempt Section 501(c) organizations – unions, advocacy groups, non-profit corporations and trade associations – to finance substantially more of their communications about federal officeholders and voter mobilization either through federal PACs or through *taxable* general treasury spending;

- Mandate for the first time that independent groups use hard money for mere "references" to federal candidates and political parties in public communications, and in voter registration and get-out-the-vote activities –

going far beyond current law, which requires them to use hard money only for contributions, "express advocacy" messages and union or corporate broadcast "electioneering communications";

- Skew federal election law in favor of business corporations over unions and other Section 501(c) non-profit groups because businesses typically can continue to spend for political purposes in tax-neutral ways, while non-profits that are denied the use of their non-federal political accounts will be taxed at the highest corporate tax rate on the lesser of their political spending or investment (interest) income.

- Unjustly turn state and local PACs into federal PACs if they spend over $1,000 to publicly comment on the official conduct of federal officeholders or undertake most partisan or non-partisan voter registration or get-out-the-vote activities, and otherwise force them to rely on a parent organization's federal PAC to fund many of their public "references" to political parties; and

- Divert much political activity from transparent Section 527 groups to Section 501(c) groups, which – other than unions – have mostly confidential finances, and this inevitably will lead to unjustified demands that those Section 501(c) groups' (and, no doubt, unions') general treasury fundraising and spending be targeted even more directly in order to extinguish all "soft" so-called "election-influencing" activity.

Let me next specify how the 527 Bill would affect Section 527 organizations in general, and then address how it implicates the legitimate concerns of unions and other Section 501(c) organizations that sponsor many of the 527 accounts. As to 527 groups in general:

A. **The 527 Bill converts *every* 527 (either registered with the IRS as a 527 or otherwise "described in" Section 527) into a federal PAC *unless* it falls within a narrow exception** – it either receives less than $25,000/yr. or deals "exclusively" with non-federal elections, non-federal candidates, non-elected offices or ballot measures. The Internal Revenue Code's tax exemption for political activity will be effectively withdrawn from a broad range of organizations that now fall under it, even though that exempt status is not a "loophole" but, as I have noted, an integral aspect of how federal tax and election laws have operated in harmony for 30 years.

B. **The bill effectively imposes an "any purpose" test for federal PAC status--contrary to the "major purpose" requirement judicially imposed in *Buckley v. Valeo*, 424 U.S. 1, 79 (1976)**--because it withholds its exception from federal PAC status from most 527s that spend over $1,000 either to "promote, support, attack or oppose" ("PSAO") a federal candidate at *any* time within a year before a general election, or for "voter drive activity"--even if totally non-partisan--during substantial periods of time before a federal election. Because the major-purpose limitation is both necessary to

sound policy and constitutionally required under *Buckley*, its abandonment makes no apparent sense whatsoever.

C. **The bill fails to define PSAO or even restrict it to speech that refers to candidacy or elections.** Communications that express opinions about incumbent federal officeholders' official conduct, policy positions or legislative votes could convert a 527 speaker into a federal PAC. For example, if the bill were in effect during 2003-04, commentary about "the President's" policies from November 2, 2003 to November 2, 2004, would have turned a Section 527 group into a federal PAC. Likewise, a voter guide that indicates its sponsor's public policy views, and therefore inferentially suggests which candidate positions the guide's sponsor prefers, could be prohibited speech for a non-federal Section 527 group.

D. **The bill also forces 527s to operate as federal PACs if they are dedicated to voter mobilization**--registration, GOTV or voter ID, no matter how non-partisan or issue-oriented (rather than candidate-or even party-oriented) their activities are. But these are worthwhile activities, and in 2004 were vital to inspiring millions of people to vote.

E. **The 527 Bill will directly impair the ability of individuals and groups to associate for political, legislative and policy purposes.** The bill eliminates a substantial range of uses of the 527 organizational form with its new triggers for federal PAC status: dealing to *any* degree with federal candidates or elections, or spending just $1,000.01 on "PSAO" communications or "voter drive activity." The Supreme Court has repeatedly upheld an individual's First Amendment right to spend as much as he or she wishes to convey any electoral message, including about federal elections, independently of candidates and parties. Wealthy individuals will still be able to finance whatever political activity they wish – they'll just hire others to carry it out. But the 527 Bill prohibits people who can't afford to self-finance from pooling that same spending together if their message might influence a federal election.

F. **The bill targets substantial political, legislative and policy spending despite the fact that it occurs completely independently of candidates, officeholders and political parties.** Again, the 527 Bill moves the campaign to eliminate "soft money" away from redressing actual potentially "corrupt" influences associated with the private giving of soft money to candidates and parties. Instead, with demonizing characterizations of supposedly sinister "527s" and of virtually all political activities as "soft money influence," this bill targets the pooled and fully publicly disclosed efforts of individuals, unions, membership groups, and other associations to advance common political and social causes independently of candidates, officeholders and parties.

G. **The bill leaves the financing of voter drive activity by supposedly corruptible state and local political parties *less* regulated than the financing of the same activity by independent groups that pose no danger of corruption.** That's because (subject only to state law) the parties can solicit and use union, corporate and individual contributions up to $10,000/yr. for what the 527 Bill terms "voter drive

activity," but if a Section 527 group spends even $1,000.01 on the same activity, it must operate as a federal PAC, with union and corporate contributions prohibited, and individual contributions capped at $5,000/yr.

H. **The bill sponsors explicitly admit that they want to outlaw 527s in order to insulate incumbent officeholders from criticism and electoral risk.** "[Sen.] McCain said that lawmakers should support the bill out of self-interest, because it would prevent a rich activist from trying to defeat an incumbent by diverting money into a political race through a 527 organization. 'That should alarm every federally elected Member of Congress,' he said." *Washington Times* (Feb. 3, 2005). The 527 Bill will only further enhance the power and voices of elected officials at the expense of their constituents and those affected by their official actions.

I. **The 527 Bill predicates federal PAC status on the application of important but unexplained concepts.** For example:

1. What do "election or nomination activities" include? These terms are new to federal election law.

2. What does "relate exclusively" mean? In *Buckley v. Valeo*, 424 U.S. 1 at 40-44, the phrase "relative to" was construed to be limited to express advocacy in order to avoid unconstitutional vagueness; must "relate exclusively" be construed the same way? If not, what *does* it mean, and how can we know for sure?

3. Must the FEC treat the components of "voter drive activity" – "voter registration activity," "voter identification," "get-out-the-vote activity" and "generic campaign activity" – as meaning the same as these identically worded components of "federal election activity" in 11 C.F.R. § 100.24(a)? If not, how broadly might they sweep?

The 527 Bill directly impairs the legitimate interests of Section 501(c) organizations as well:

A. **Due to its expanded definition of "political committee" and its onerous new allocation requirements, the 527 Bill invites increased scrutiny of and enforcement against Section 501(c) groups that engage in political and legislative activity through their federal and non-federal political accounts.** Particularly at risk are advocacy groups, unions and trade associations, but charities as well are plainly not immune.

B. **The 527 Bill will curtail or eliminate the practice of Section 501(c) organizations using separate segregated non-federal Section 527 accounts funded by their regular treasury funds in order to make tax-exempt political disbursements.** Again, since 1975 federal tax law and the IRS have encouraged this practice so that tax-

free investment income doesn't finance political activity; these accounts are not "evasions" of federal election law. But the 527 Bill will mandate that non-profit groups conduct their operations otherwise, for any of three reasons:

1. *First*, the 527 account will be treated like any other Section 527 organization, forced to operate as a federal PAC unless it satisfies one of the new narrow exceptions (receipts less than $25,000/yr., confined to non-federal elections, etc).

2. *Second*, even if the 527 account *does* satisfy one of these exceptions, in order to allocate spending with a federal PAC as a "qualified" non-federal account, the 527 account's money must be "raised only from individuals" and it "may not accept more than $25,000 from any one individual in any calendar year." This apparently means that even a Section 501(c) membership organization could *not* fund its non-federal Section 527 account with general treasury funds comprised of individual dues receipts.

3. *Third*, under the new "allocation" requirements for federal and "qualified" non-federal 527 accounts of Section 501(c) organizations, the federal PAC must finance a substantial share of the political activity anyway, ranging from 50% to 100%, depending solely on whether and when public communications or voter drive activity "refers" in any manner or context to federal candidates, political parties or non-federal candidates.

C. **But the 527 Bill might be read also to prevent Section 501(c) groups now from using their general treasury accounts for public communications or voter drive activities that "refer" to federal candidates or political parties.** That's because the bill's "allocation" provision states that the Section 501(c) "connected organization" of a federal PAC and a qualified non-federal account can pay for their administrative and fundraising expenses--but the bill does *not* likewise provide that the connected organization can pay for public communications or voter drive activity that "refers" to federal candidates or political parties, and instead authorizes only the separate political funds to spend for those purposes. If so interpreted, Section 501(c) groups will be barred immediately from pursuing their usual advocacy and voter engagement work – unless they do so through separately funded, highly regulated political accounts.

D. **Even if that reading is rejected, the 527 Bill will force Section 501(c) organizations to finance much more political and legislative activity than they do now either through (a) a federal PAC or (b) taxable general treasury spending.** As indicated earlier, that's because if the IRS considers a Section 501(c) group's general treasury spending to be election-influencing (so-called "exempt function" activity), the group must pay a *35% tax* on that spending (or the general treasury account's investment (interest) income, whichever is less) under Section 527(f)(1). The Internal Revenue Code enables Section 501(c) groups to influence elections without paying that tax if they use a non-federal Section 527 account and publicly report its finances. But the 527 Bill upsets that system by sharply reducing the permissible uses of those accounts, forcing the

spending instead into federal PACs or taxable general treasury spending or – as will likely often happen – chilling the activity entirely.

E. **The 527 Bill will skew FECA in favor of business corporations over unions and other non-profit groups, upsetting the historic balance of federal election law.** The bill fosters imposition of the 35% "penalty tax" on Section 501(c) groups while leaving corporate tax rules on businesses unchanged. Unlike non-profit organizations, businesses have no need to create treasury-financed Section 527 accounts as a prerequisite to funding their political activities; rather, they may use their corporate general treasuries without incurring a tax in doing so. Although most business political expenditures are non-deductible, this is inconsequential for corporations that owe little or no tax through other accounting devices or that experience an overall loss for tax purposes; and, the corporate tax is graduated from 15% to 35% as a function of the amount of net income. For a business that is economically indifferent to whether its next spending is tax-deductible, a decision to spend on politics is tax-neutral under the Internal Revenue Code.

By contrast, as discussed, a Section 501(c) group compelled by the 527 Bill to use its general treasury account for political spending, which previously could have been effected through its Section 527 account *without* being taxed, will face a penalty tax at the highest 35% rate. And, as a tax on *spending*, this tax will apply irrespective of whether the group has any actual net income, and it will have no offsetting deductions.

F. **And, the FEC could deem a Section 501(c) organization itself to be "described in Section 527" and required to operate as a federal PAC.** That's because the bill adds to the FECA definition of a federal political committee "any applicable 527 organization," that is, "an organization described in Section 527 of the Internal Revenue Code," regardless of whether it has registered with the IRS as a 527 group or the IRS has determined that it is one. With the IRS standards for Section 527 status unclear as it is, giving the FEC independent authority to determine that status could lead to Section 501(c) groups not just being liable for taxes under the Internal Revenue Code but also being subjected to the organizational and funding strictures and penalties of FECA

In fact, the bill explicitly provides the FEC with an end-run around the "major purpose" requirement for federal PAC status that has bound federal campaign finance regulation since *Buckley*. An organization (however it portrays itself) that is "described in" Section 527, and that doesn't meet one of the narrow exceptions to "applicable 527 organization" status – say, because it spent $1,000.01 out of a million-dollar budget on a newspaper advertisement in Washington, DC that criticized the new "McCain-Feingold" bill within a year of either Senator's next election – could only operate as a federal PAC, even though it indisputably had no "major purpose" to influence any federal election.

G. **The 527 Bill could prohibit or at least chill donations by unions and other non-profit groups to civil rights and other organizations that engage in voter registration and GOTV activities, even if non-partisan.** With non-federal 527 accounts placed off-limits for "voter drive activity," donors in the non-profit community

may have to use their federal PACs (if they have them and can afford this) or risk making taxable donations from their general treasuries to sustain these important civic efforts.

H. **The 527 Bill invites further regulation of Section 501(c) groups if the bill causes associational activity that was conducted through transparent Section 527 organizations to be undertaken instead through them.** A September 2004 Public Citizen report pejoratively labeled Section 501(c) groups – including unions, trade associations and both liberal and conservative advocacy organizations – "the new stealth PACs" because some of their activities (cited examples include legislative advocacy and membership communications) can influence elections with little or no disclosure. In the "reform" lobby's worldview, this is intolerable and must be remedied through forced conversion to federal PAC status.

Notably, none of Public Citizen's four co-signers of a March 7, 2005 statement endorsing H.R. 513's identical Senate version, S. 271 – the Campaign Legal Center, Democracy 21, Common Cause and the League of Women Voters – has taken issue with Public Citizen's "stealth PAC" analysis of Section 501(c) organizations. Yet these groups – contrary to the plain text of H.R. 513 and the logic of their own arguments in favor of the bill – deny that the bill will either affect Section 501(c) groups or portends further regulation of them. In truth, the 527 Bill is another significant step down a classic slippery slope that leads inexorably to the general treasury funding and spending of Section 501(c) groups themselves.

I. **The new "affiliation" rule for "qualified" non-federal accounts for the first time will impose on non-federal accounts sponsored by any branch of a Section 501(c) organization the same affiliation rules currently applicable to their federal PACs.** Yet while most national organizations with state and local affiliates collectively maintain just one or a few federal accounts, they typically sponsor many non-federal accounts in various states and localities, subject to the different state laws. These state-based funds usually operate very autonomously from each other. But the new affiliation rule will compel an unpredictable and burdensome legal aggregation of these non-federal accounts if the Section 501(c) organization and its branches wish to avoid using 100% hard money and instead to "allocate" their political spending.

J. **Because of this new affiliation rule and the individual-only funding requirement for "qualified" non-federal accounts, Section 501(c) organizations will have to create and maintain both "qualified" and other (not "qualified") non-federal accounts – assuming that the 527 Bill would even permit that – in order to preserve some ability to do much political spending.** But this would be administratively complex and would still not avoid the significant, new dependence on hard money for non-electoral activities that the 527 Bill mandates.

K. **The allocation rule will prevent state and local PACs sponsored by branches of Section 501(c) organizations from "referring" in a public communication or "voter drive activity" to political parties in a federal election year--even endorsing "John Smith, Democrat for Mayor"--unless they are funded**

with individual money and secure at least 50% of the cost of the "reference" from the parent Section 501(c) organization's federal PAC.

The AFL-CIO has also carefully reviewed H.R. 1316, "The 527 Fairness Act of 2005." Unlike the 527 Bill, H.R. 1316 has the virtue of seeking to encourage more participation in the political process. As written, however, the bill focuses on relaxing the "contribution" side of federal regulation rather than what I have called the "civic engagement" side. So, for example, it would uncap the current, two-year $101,400 individual aggregate federal contribution limit; index contributions to and from federal PACs to inflation; uncap political party coordinated spending with candidates; and accord trade association PACs greater access to potential contributors from corporate ranks. On the civic engagement side, unions, advocacy groups, and trade associations could undertake broadcast "electioneering communications" by raising individual funds without doing so through federal PACs, and state party committees could use non-federally restricted funds for voter registration near elections and some sample ballots.

As far as H.R. 1316 goes on the civic engagement side, the AFL-CIO would consider it a very modest improvement over current law. But the contribution-side changes are plainly more problematic, though some might be acceptable in the context of a different mix of amendments to FECA.

If the FECA debate is to be reopened so soon after BCRA, let us explore all aspects of the statute and not be artificially confined to topics chosen by particular bill sponsors. We would urge consideration of a variety of ideas - - for example, enabling membership organizations to use individual, dues-based funds for "electioneering communications" (which H.R. 1316 does not now appear to do); eliminating from the realm of unlawful "coordination" the actually uncoordinated conduct of common vendors and successive employees; enhancing the contribution options for small-donor federal PACs; modernizing the presidential public financing system; constraining the remaining lawful avenues of actual soft-money donations at the national level, namely, national party conventions and presidential inaugurations; and enhancing disclosure requirements concerning "bundlers" of federal contributions.

In short, if we are to have this debate, let us undertake some hearings focused not on particular bills, but on all appropriate ideas, principles and goals for formal regulation of politics. And, especially in this period of one-party control, Members should agree to proceed only on the basis of a significant bipartisan consensus. It is important to consider that the original enactment of FECA and every significant amendment of it occurred in a period of divided party control of the national government. A constructive engagement by this Congress with individuals and groups that are most directly regulated now or that could be subject to new regulatory proposals must include assurances that the process will be open and fair in each body and in any conference committee.

Again, I appreciate your consideration and welcome your questions.

The CHAIRMAN. I want to thank the panel. The more I listen, the more I do become confused. Mr. Bauer is identical to Mr. Doolittle in a sense, not politically, but in his opinion.

You know, we have thrown names around here today, and although I don't agree with him, I give credit to George Soros for his willingness, frankly, to spend his money on what he believes in. I wish there could be a Republican who would have the same attitude, and then you would have an equal playing field.

I don't think I would even be sitting here thinking about doing something for 527s if it wasn't for the fact that BCRA went in and took away the voice, in my opinion, of so many people. I represent, as you know, 128,000 union people in my district. I very proudly have accepted the support of those unions and those union rank and file over a period of 20-some years.

I just look at it, and I see what this Congress did, and I am coming to the conclusion that two wrongs don't make a right. That is a question that has to be asked. Although I could probably tell from your testimony, let me just ask directly: Do you support BCRA itself?

Mr. BAUER. Well, let me put it to you this way. Perhaps I will answer the question this way, which is it is the law of the land. I completely agree with Cleta Mitchell that there are aspects of this bill that were not thought through, that it is not crafted in a fashion that carefully tailors the activity that maybe Congress ought legitimately to think about restricting. So I have grave reservations both about the way it is structured and the way it is operated.

I would also like, as long as Congressman Doolittle and I are marching side-by-side here, I would like to say one other thing in support of the comment he made earlier, and that is this 527 activity is not, let me stress, is not a loophole. There are specific references to 527 activity in BCRA. Congress was well aware when it considered and passed the legislation there were political committees of this kind whose activities might influence elections, and, for that reason, there are restrictions in BCRA on the transactions between 527s on the one hand and Federal officeholders and parties on the other. So Congress was well aware that this was a problem.

Moreover as Congressman Doolittle correctly said, to the extent anyone believes this is a loophole, it is a federally-statutorily created loophole. In other words, it is thereby, frankly, mandate of the government to protect these and permit them to operate in this fashion. Calling it a loophole, I think, again, is a rhetorical trick.

The CHAIRMAN. I take from that that you, the primary sponsor of the 527 Reform Act, believe that 527s are regulated not by BCRA, but by the FEC.

Mr. BAUER. That is inaccurate. What happened in this legislation was that as soon, and this is unfortunately the history of some aspects of the so-called reform movement in the United States, the 527 issue, for political reasons, was set aside and Congress encouraged not to have to worry about it. As soon as the bill was passed, the FEC was told it was required to step in and deal with the problem.

That is not a publicly accountable way to deal with a political spending issue. It should have been addressed or not addressed by the Congress. But it is certainly not the fault of the federal regulatory agency that it refused to do that which Congress deliberately elected not to do.

The CHAIRMAN. We are in this predicament here, and I call it a predicament, because you have average people out there in districts, and they sit there, Republican, Democratic, Independent, Libertarian, whatever they are, and know, if they are members of labor unions, that their money is the dirty, tainted money. And they sit there, and in their opinion, a few rich guys in this country are running the show, because soft money didn't end.

That was the point I said on the floor of the House, and what I will say today. Look at the transcripts of the floor. Soft money will end as we know it. And it didn't. That is all I am saying. I am not saying it is good or bad, but it didn't end. That is my point, it didn't end. And if that language or that 527 provision had been in that bill, that bill would never have passed the floor of the House, in my opinion.

Ms. MITCHELL. Along those lines, Mr. Chairman, you are absolutely correct, and along those lines I sat here and listened to the sponsors of the 527 regulatory regime saying, oh, but we are not touching 501s. Not now they are not. But I promise you, that they will be back. This is, as George Will says, metastisizing Federal regulation. It never stops.

That is one of the reasons I say that if for a change Congress were to take the Pence-Wynn approach, which is let's adjust, let's roll back some of the regulations, that that, in fact, would be a very new day in Congress.

One of the things that bothers me tremendously is exactly what you, Mr. Chairman, just alluded to, the idea that the reformers always say we don't want the wealthy people to have control. We are going to take the big money out of politics.

What BCRA did and what we are proposing, what hopefully the Pence-Wynn bill, if enacted, would do, is to take the situation that currently exists, where one guy can write a check for $1 million and say whatever he wants, buy whatever ads he wants, do whatever he wants, but 1 million people giving $1 in their dues to the NRA or the AFL–CIO or any membership organization, cannot have that organization speak for them.

So what we have really done is the exact opposite of what the reformers say they intended and continue to say is their objective. We have taken the ability of people to associate together who cannot themselves afford to buy radio and TV ads, but to pool their resources through their organizations and to be able to have the same speech rights as one wealthy individual. That is very distressing, I think, in terms of a model for the system.

The other piece of it is with the parties, to be able to say that a political party has to be restricted in how much it can spend to support its candidates. Congress did recognize in the millionaires' amendment that there is a value, there is a public policy objective, to saying, okay, well, if you have a really rich guy running against you, then we are going to let you raise your contribution limits and the party coordinated limits are off and increased contributions

don't count against the aggregate. So Congress has already recognized the idea of repealing or not counting coordinated and aggregate limits.

I think that if we can take that and just get rid of those and get rid of the complexity, I mean, I finally couldn't explain aggregate contribution limits, so I did a picture, and I would defy any Member of Congress, without using a picture or a crib sheet, I would defy any Member of Congress to be able to explain the aggregate contribution limits. I don't mean that in any pejorative way, I am just saying it took me months and writing this down before I could do it. So anything that that is that complicated, we ought to get rid of.

The CHAIRMAN. I want to have the other members ask questions. I just have one brief question, and it deals with BCRA. I think about my campaign 25 years ago, when I ran against a former Member of Congress that had been elected in the legislature, in other words, an incumbent. At that time the Republican Party said, "We are going to help you."

We look at the Republican and Democrat parties and any other party that could come on the scene, and say, "Well, wait a minute, they are pretty healthy; they raised X amount of money." But I don't think I would be here today had it not been for the Party's help. I might have an easier life or a less complicated one, but I don't think I would be here today if it wasn't for the party being able at that time to say, "Okay, we are going to give you a chance. Nobody else thinks you can win, but we are going to give you a chance."

That was my argument with BCRA. What are we doing down the line? Why do we restrict the two parties? Or, hey, if there is a third party, Independent Party, Natural Law, whatever, just in a nutshell, what will BCRA do to the political parties? Do they get stronger somehow, do they stay the same, or do they weaken?

Ms. MITCHELL. I believe that the intent of BCRA was in no small part to weaken the parties. I think the people who proposed it were not necessarily party people, probably think that people who walk around with donkey pins or elephant hats are slightly nuts. And the fact is it is another associational right of the American people, and I think BCRA really has, vis-a-vis external groups, it has weakened the parties.

I think you cannot look at 2004 and draw any conclusions from it in terms of the financial health of the parties going forward, and I think that is a very big mistake, to say, oh, the parties raised this $1 billion and saying everything is fine.

I don't think everything is fine, and I don't think the parties ought to have to compete with each other to be able to raise funds within the hard dollar limits. So I think it is important to take a scalpel—I would like to take a sledge hammer, but it is the law of the land. Nobody has the stomach for taking a sledge hammer to BCRA. So it is take a scalpel and let's fix a couple of things that need to be fixed and then give it a chance to work.

The CHAIRMAN. Mr. Bauer.

Mr. BAUER. I entirely agree. I think BCRA was unhelpful to the parties. I think a good bit of the data being supported about the salutary effects on parties in 2004 is bogus data, it is being mis-

ruled, the numbers are not being properly or, frankly, rigorously used.

I think it will take some time for us to account for the effects of BCRA. You cannot assess a reform piece of legislation of this kind in one cycle, because you have to adjust, control for so many factors.

So I believe as a piece of legislation, it targets parties, and I agree with Cleta, it is supported by many that simply don't agree that parties play a healthy role in the political process. BCRA, in that respect, was unhelpful.

Mr. GOLD. Well, I think BCRA certainly had an approach on parties that, in part, unions supported with respect to limiting soft money directly to them. On the other hand, unions totally and completely support a very potent party system, and believe that wherever we go, it should not be in the direction as this bill, that is, H.R. 513 goes, which is to say let's protect our parties and others perhaps by suppressing other activity.

The instinct here we think is in a pretty dangerous direction, and unfortunately was opened up by some of the aspects of BCRA that we did oppose and opposed very strongly.

One thing that is happening here I think is that the classification of speech and associational activity is being federalized. You hear Congressman Shays refer to "Federal 527s." He wasn't talking about Federal PACs, he was talking about organizations that register with the IRS, do a lot of things, address a lot of issues, registered a lot of people, and reported everything they did to the IRS. But he has cast it under this notion of "Federal." Everything is "Federal."

That started in BCRA. That was an unhealthy aspect of one of the party provisions which we did not support, the notion of Federal election activities, anything that is voter registration within 120 days of an election, anything that is an attempt to get out the vote generally. Well, if it happens in a Federal election year, it is Federal activity all of a sudden. That is a terrible override really of State and local elections, but it is also an invitation, unfortunately, to pushing everybody and shoehorning all political activity within these very rigorous kinds of restrictions. That is unhealthy.

This bill pushes that way further. Hard money now can only be used for references to Federal candidates in all spheres at all times if you are a 527. This whole notion of promote, support, attack and oppose which was introduced in BCRA, again only for State and local parties, now has, to use Cleta Mitchell's term, metastasized in this bill, now it applies to all 527s, whatever that means, if you do that. Whatever it means, we don't know what it means, but whatever it means, all of a sudden that becomes Federal activity.

We view this as just, you know, marching in the wrong direction, and really intimidating organizations and just engaging in ordinary activity, talking about issues, legislation and public officeholders.

The CHAIRMAN. I thank you.

The gentlewoman from California.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman.

Thank you all for being here. It is great to hear from you and to get the real experts talking to us about this issue.

Ms. Mitchell, in your statement, you said that the first and truly most important provisions of the Pence-Wynn bill are those which strengthen the political parties. How much more strength do we need to give them from $1.2 billion? That is a lot of money that they raised. What other strength should we seek, outside of what has already been validated by the largest amount of money being spent in an election?

Ms. MITCHELL. Well, as I said earlier, Congresswoman, I think it is a mistake to conclude from the 2004 election that the parties are doing just fine. I think that that is a mistake, because I do believe that this election was somewhat unique, and we don't know going forward. That is one response.

I would also add that when we say $1.4 billion was raised, my question is, is that enough? As compared to what? Is Congress going to be in the business of saying this is the right amount of money for parties to be able to raise to spend to help their candidates?

It seems to me if we put that into a context, and I have seen many people do that before, comparing how much money is raised and spent in political campaigns, and compare that to how much money is raised and spent for advertising of potato chips, it is a minute amount. And what is more important, a bag of potato chips or who is going to be serving in Congress and elected to the presidency? So I think that is just not a right gauge.

Let me go to the more practical aspects. I serve as outside counsel to the Republican Senatorial Committee this cycle, and it is very clear—I mean, I heard Congressman Shays talking about people could give, and I was trying to figure up where he was coming up with these numbers.

Well, I suppose it is conceivable that somebody might give $26,700 a year to all six national party committees, but I would sure like to meet that person, because I don't think that that person really exists.

You might have a few people, and we are talking about a few people, who want to be able to help the Republican Senatorial Committee and the RNC and the NRCC, all three, and they have the means to do that. Today, under current law, the NRCC, the NRSC and the RNC have to compete with each other for those donors. There aren't that many of them, but they have to compete with each other. The Republican Committees are not competing with Democrats for donors at that level, they are competing with one another.

So I suppose there is somebody in America who would want to give $10,000, the maximum an individual can give, to the Federal accounts of a State political party and would want to give that to every Democratic State party and every Republican State party. Again, I think that is where those numbers had to be coming from—Congressman Shays' testimony.

But I don't think that person really exists, and I don't know any person, any donor, who is likely to give the maximum to every State Republican party, to their Federal account.

But I do think that if we have these hard dollar limits in place, we have already rationed those, let donors give to as many Federal candidates as he or she wants within the hard dollar limits and to

as many parties. Why should one donor have to decide I can only max out under current law to nine candidates for Congress, and I can give the primary amount to one more.

Now, it seems to me that that makes no sense. If what we do is say, all right, if you are a big rich guy, and you want to do more, rather than giving it over here to 527s, we will make it possible for you to give it within the system. We are not going to try to shut down the 527s, because that is going the wrong direction, but what we are going to do is we are going to make it possible for you to stay than with the regulated system.

Ms. MILLENDER-MCDONALD. You said, and if we go on the premise of what you said that this was a unique situation in terms of a $1.4 billion or whatever it was, then perhaps one could argue the point that the 527s were the unique situation at this time and perhaps would not have that type of money flowing in the next election. So we can talk about that on both sides of the spectrum and really come to the conclusion that both strengthen the political process, irrespective.

Ms. MITCHELL. I am not here to argue that 527s should be subject to all of this regulation that Congressmen Shays and Meehan are proposing. Let me be very clear: I do not think Congress should do that. I think that is following the same pattern that was followed under BCRA, and that we should stop doing that.

I do think that as a means of encouraging people to stay within the regulated system, to support candidates, to support parties, to support Federal PACs, if we really believe and worship at the alter of hard dollars, let's allow people to give the hard dollars, let's allow the parties to not pretend that part of their support for candidates is coordinated and part is independent. Let's get rid of some of these silly things.

Let individual members' dues money to the NRA and the AFL–CIO and other organization be used—not money from corporations but from individuals, let people speak through their organizations, leave the 527s alone, do a couple of slight changes that encourage people to stay within the hard dollar system, support the parties, help the membership organizations, and then forget it. Let it be for a while.

Ms. MILLENDER-MCDONALD. BCRA's whole notion was to sever the links between politicians and soft money. It seems that the Pence-Wynn bill, unless I am not reading it correctly, opens up new opportunities for State and local parties to spend soft money, even on voter registration. Is that correct, my assessment of that?

Ms. MITCHELL. It allows State and local parties to spend their State-regulated money. Let me give you an example. I am from Oklahoma. I really resent—I object to referring to State-regulated money as soft money. Some States have more restrictive laws and some States have less restrictive laws.

I am from Oklahoma, and Oklahoma, a person can give, a family can give $5,000 to the political party in Oklahoma in a year. Well, the State party would be allowed, under Pence-Wynn, to spend its State-raised money, money raised under State law, not its Federal account money, but its State-raised money, to be able to do voter registration, even when their Federal candidate is on a ballot, even within 120 days of the Federal election, going back to what Mr.

Gold referred to, that now under BCRA, all voter registration within 120 days of a Federal election has to be paid for with hard dollars, Federal dollars.

Ms. MILLENDER-MCDONALD. But given that, as you have just indicated, that certain States have differences in terms of the amount of money that they use, soft money that they receive, then there is still a disadvantage of one State over the other.

Ms. MITCHELL. Everybody is welcome to move to Oklahoma, if you like. Actually, California allows corporate dollars to be given, which Oklahoma doesn't allow. My point is it takes a little bit of the restriction that BCRA imposed, not a lot, but some of the restrictions away, allows State and local parties to spend their State dollars for voter registration, it allows them to spend them for sample ballots. If they mention a Federal candidate, whether or not they like it, they have got to have all of the Federal candidates for that office.

These are very minor changes, but they are meaningful to State and local parties.

Ms. MILLENDER-MCDONALD. I suppose the Pence-Wynn bill tends to inject more PAC money into the political process by indexing the contribution limits for PACs, which BCRA did not do, and I have some concerns about that.

Ms. MITCHELL. See, I am not one of those people that thinks PACs are a bad idea, because, again, I believe in the notion that somebody who cannot write a $5,000 check to a candidate ought to be able, as a member of a union, or a member of a 501(c)(4) organization or somebody who just wants to give to the Green Earth PAC, that if you can get a group of people to give small amounts of money, that is the whole idea of a PAC, is that a lot of people give small amounts of money can compete and be on the same level as somebody who can write a $5,000 check.

What will happen if PAC contributions are not indexed, is that within a few years the indexed amounts for individual contributions will exceed the amounts that PACs can give, and therefore, relatively diminishing the role of the small donors to the PACs vis-a-vis the wealthy individuals.

Ms. MILLENDER-MCDONALD. And bringing more special interest money in.

Ms. MITCHELL. Well, I don't see how that happens.

Ms. MILLENDER-MCDONALD. Really? It appears to me like it would.

The other two gentlemen, is it fair to restrict 527 activities and activities of other political committees organized by activists and ordinary citizens while removing restrictions from corporate interests and party organizations controlled by officeholders? What are your thoughts on that?

Mr. BAUER. I have to say this is where I part company with Cleta. I think that the juxtaposition of Pence-Wynn with the proposed 527 regulation makes no sense as a matter of policy. I don't think it is a neutral as a partisan matter. I think it is just bad public policy, precisely for the reasons you suggest.

Mr. GOLD. I would agree. I think that, again, as I have said, we oppose further restrictions on independent, fully-disclosed political activity by individuals and groups, particularly membership organi-

zations, unions and others. That is exactly what the law ought to be fostering and encouraging, and the 527 bill is directly targeted against it and against a lot of nonprofit organizations.

Pence-Wynn has a number of proposed changes that have been described today, and as I said in my prepared testimony, there may be some elements that would be worthwhile to consider. But in the context of, I think, a different approach to this, it will be hard for us to say we support this, we oppose that with respect to that bill. We think we would have to take a broader approach to this.

Also we are very mindful of the fact, as I said before, that unlike every other time when campaign finance legislation has been enacted, when there was some divided party control, some checks, something that is really, really important to the fortunes of those who are voting here, we are in a one-party control situation now, and whatever happens really ought to be bipartisan, significantly so.

Ms. MILLENDER-MCDONALD. The Supreme Court has really upheld this bill, 99 percent of it. Why are we trying to change it at this juncture? Why don't we let this bill continue to work itself out, given all of the nuances of it? Why are we trying to correct something in the middle of a process working itself out? Why do we have to deal with BCRA at this point?

Mr. BAUER. If I may say, I don't think we should, and I think there are two reasons why not. First of all, I think we ought to allow more experience with the bill before people rush to judgment about what is wrong with it, about what needs to be "fixed." One cycle is simply not enough.

Second, and this is a theme that I think has been sounded consistently throughout this hearing by the other side here, when the Members of Congress said we are simply adding to an awesome degree of complexity in these laws. I was struck here that repeatedly the Members of Congress here in this Chamber who are part of the body responsible for passing the law, kept on referring to how they looked forward to having the private lawyers come to a panel to explain to them what the law was all about.

Ms. MILLENDER-MCDONALD. Unfortunately.

Mr. BAUER. That seems to me to be an unfortunate state of affairs.

Ms. MILLENDER-MCDONALD. This is one of the reasons why Ms. Mitchell said, I think, if I am not misquoting you, that perhaps next year or the next year, we will be coming back up to maybe amend this again. So I think we need to allow this to percolate and not just constantly be coming back doing knee-jerk reaction types of amendments.

Ms. MITCHELL. I don't disagree with that, but let me say this: The history over the last several years, and I have testified before this committee and before other committees on campaign finance proposals, my favorite was being the 12th panelist on the House Ways and Means Committee on the 527 regulation bill of 2000. I was the 12th panelist out of 12, and I was the only one on the panel who opposed the bill. I said then and I believe what happens is because the media is never covered by any of these provisions, they can spend full-time stampeding Congress into enacting new

regulatory provisions on everybody else's speech. That is what we really have: We have legislation by headline.

But I also think that even beyond that, that Congressman Ney really touched upon a nerve that goes to a lot of Republicans, and that BCRA was passed with a solid majority of Democrats and a few Republicans, such that a Republican-controlled Congress enacted it and it was signed by a Republican President and then upheld by the Supreme Court, but there were a lot of Republicans who opposed BCRA who watched with dismay as these 527s outside the system flourished and had all of this money, and the money flowed out to them. So that the very people, with all due respect, people who voted for BCRA and said we are going to get rid of these big money checks and blah, blah, blah, and now then are thrilled to death to have the 527s flourishing out here.

I think there was a sense of wait a minute, guys, you are not playing by the rules you set for us. My view is it is Lucy and the football. You know, don't let Lucy pull the football again now. We can go back and rehash BCRA, but don't make the same mistake today.

The CHAIRMAN. We will move on to Mr. Doolittle, but before we do, I would like to answer one of your questions. In my opinion, the reason why we are here, and the reason 527s—MoveOn.org, et cetera—became an issue all of a sudden, is because along came a Swift Boat ad. If I am correct, the presidential candidate for the Democrat said, "Mr. President, shouldn't we stop these things?"

I am not saying that he was wrong to take that tack. I would say it too if I was out there. I am not blaming it on the Democrats. Republicans and Democrats alike had problems with 527s. Initially, nobody in our districts knew what a 527 was. Then the Swift Boat ads came along, and the next thing you know, everybody is starting to say you had better do something about it. Both presidential camps I think said, "Yes, we have to do something about it", because people were saying, "What are these entities?"

I think that is how this discussion came about, because then the authors of the bill received the pressure of media scrutiny. "I thought you stopped soft money. And here we go." And that is why I think we are having this discussion. I don't know what is right or wrong on this issue, but this is why I think we are here, and the authors of the bill have a lot of pressure to say, "Well, we have to correct this component now." That is my opinion.

Mr. GOLD. I think the focus on the public discussion of 527s has long preceded the Swift Boat ads. The reason that this Congress in June, 2000 passed a disclosure law, the amendments to section 527 was because there was a hue and cry at the time about so-called "stealth PACs." That is where I think it started and it was talking about these very same groups that did not disclose and that did things that influenced public policy and elections and the like. So Congress required disclosure very much like FEC disclosure except to the IRS. Then BCRA happened and there were specific references in BCRA to 527s, but no suggestion that there was anything wrong about them that had to be controlled.

And even after BCRA in November, 2002, Congress changed that disclosure law to relax it a bit because it had overreached. In 2004, there was, of course, you know, more activity, a new election cycle.

And I think the public press attention to 527s arose well before Swift Boats. It was really a year ago when that letter that you cited earlier was sent. The FEC was considering itself beyond its statutory authority I believe.

The CHAIRMAN. I agree with you that it occurred before the Swift Boats became prominent. It was out there, and then Swift Boat ignited it and everybody knew the term "Swift Boat."

Mr. GOLD. I think my real point is not to quarrel over when there might have been public attention, but the fact is that Congress should not be led by sort of the fads of press reporting of politics. The fact is that if you look at the activity and the relative amount of money that was spent in the advertising, most of it was candidates and political parties. That is just the reality of it.

The CHAIRMAN. You get a headline and everybody wants to revise the entire world.

Mr. GOLD. That is a very dangerous thing to do when you are regulating politics.

Mr. DOOLITTLE. Would you care to speculate, assuming that the law stays as it is without enacting new law for the next few years and that probably is an unwarranted assumption, but for the sake of argument, let us say that is the case, what do you think the effect is on political parties as we move farther into the future. What do you think happens?

Mr. GOLD. Under the current law, if current law remains, I think parties at the national level are pretty healthy. Clearly they raised a lot more money than they had in previous cycles. I think State and local parties are under excessive kinds of restrictions on what they can do. I thought that during BCRA—and that hasn't changed.

Mr. DOOLITTLE. You talking about making them spend federally-qualified money in voter registration.

Mr. GOLD. And this whole notion that we haven't discussed on the restrictions on how they raise it and that sort of thing. You know, I think they are unduly complex and only very indirectly get at what Congress was after. It is very hard to predict how people are going to associate and spend their money and talk about politics and engage in the future just based on what happens in the past. No election cycle has been the same as it was before. And that was true during that 27-year period between FECA in 1975 and 1976 and BCRA in 2002. No 2 years were the same, because things change. And every election has different pressures and different circumstances.

So I don't think we should be jumping heavy-handedly into changing the law, especially if we are putting in further restrictions just based on what happened last week or what the press, which as Bob Bauer mentioned, is utterly unrestricted in these laws, chooses to focus on.

Mr. DOOLITTLE. Isn't it still in the law that the only rationale for impinging on core First Amendment rights of expression would be to prohibit corruption or the appearance of corruption? Is that still the test?

Mr. BAUER. Yes, it is.

Mr. DOOLITTLE. And if that is the test, how does—how do you evaluate the effort to regulate 527s according to that test? What would be the corruption they are trying to prevent?

Mr. BAUER. From my point of view, it is an extremely exaggerated argument. It isn't consistent with Buckley. And not consistent with McConnell, but McConnell was written in such a way, it has given life to the thought that even independent activity of this kind can be restricted. I don't believe it has a constitutional basis and I don't believe it relates appropriately to the anti-corruption rationale which is still, in theory, the constitutional law of the land.

Mr. GOLD. I think it is a troubling notion that independent groups that do things that influence legislation and policy, comment on public officeholders, that Members of Congress, which is what we are talking about, those are the individuals who the campaign finance laws are supposed to be preventing from being corrupted, that Members of Congress are going to somehow be corruptly influenced by the fact that they observe, just observe uncoordinated activity by ordinary citizens, or by people banning together, or even wealthy individuals acting on their own.

That is why the Supreme Court 30 years ago, and it is still the law today, said that one could not lawfully restrict independent expenditures by individuals and by many groups as well. And the notion that we are going to start legislating against independent activity, political activity for fear that somebody in Congress might be grateful, is a bad turn to go. And it doesn't address certain things. What about where Members of Congress do coordinate and do deal overtly with groups? You have individuals, your constituents, unions, NRA, who you are politically compatible with and you work together with to pass legislation. The entire Social Security debate is a good example of what is happening where the AFL–CIO is involved and working with legislators from both parties on this issue.

I don't view it as corrupting to you, that is to say you Members of Congress, I don't believe it is corrupting that we are working hand in hand towards common political goals and we are saying things, in fact, about what you do. Nor is it—and the sponsors of H.R. 513, the groups that support their legislation, they work hand in hand and extol their virtues. I don't believe that is corrupting. If that is not corrupting, how can it be corrupting to have uncoordinated political activity going on that you just observed?

Mr. DOOLITTLE. I don't believe it is corrupting either, but I thought it was a silly rationale when it was put into Buckley. What do you think is the—what is your concern for the future about the independent political operations? Do you think there is cause for further concern based on the McConnell decision?

Mr. GOLD. I think as Bob Bauer mentioned, I will let him expand on it, because he has written a lot more than I have on it. There are aspects of the McConnell decision that clearly give encouragement to those who want to regulate independent activity further. It is not well-thought through or expressed, and not necessarily the holding in the case, but I think it would be a mistake for Congress to act as if some of the very aggressive interpretations of that decision were correct and mandated or really supported strongly in a further restriction.

Ms. MITCHELL. In that regard, I think we should not overlook what has transpired as a result of the Supreme Court decisions in 1996 and 2001, and then the McConnell decision related to coordinating spending by the political parties. We can now have—parties can make unlimited expenditures, but the question is how does a party corrupt its candidates and vice versa. I think we all agree that that is not possible. And the lower courts found that. But because the Supreme Court has already ruled that parties can make unlimited independent expenditures, we have this fiction where the parties have to set up these independent programs which are less accountable, they are not accountable for the message and can't be accountable for the message, they can't coordinate it with the candidates. It seems to me that is something Congress ought to address.

Mr. BRADY. Just quickly, Mr. Chairman, I was told to wait for the experts and the experts tell me do nothing.

Ms. MITCHELL. I am not saying that. I think there are small things you need to do that would be important, because Congress has already legislated in this area and only Congress can correct it.

Mr. BRADY. We have a Pence-Wynn that I think may address the local and State parties and relieve them with some restrictions, but I am told you are not supporting that.

Ms. MITCHELL. I support Pence-Wynn, but they don't.

Mr. BRADY. I am back where I started from. Not knowing what I can and cannot do and wait and find out how much it is going to cost you for attorneys and they tell me they don't know either.

Mr. BAUER. We absolutely do know. We know, we can be helpful.

Mr. BRADY. I will wait for that.

The CHAIRMAN. Any other questions? I want to thank the panel. I think this was a good hearing and well worth exploring. And I want to thank our ranking member Congresswoman Millender-McDonald and her staff, as well as our staff and the other members and their staff for participating. I ask unanimous consent that members and witnesses have 7 legislative days to submit material into the record. Their statements and materials will be entered in the appropriate place in the record. Without objection, the material will be so entered. I ask unanimous consent that the staff be authorized to make technical and conforming changes on all matters considered by the committee at today's hearing. Without objection, so ordered. And thank you for your time.

Ms. MILLENDER-MCDONALD. May I compliment on a really well run hearing today? I thought it was informative, both the first panel and the second panel. And while we perhaps further look at this before taking action, at least we had the experts and the members come forth.

[Whereupon, at 1:06 p.m., the committee was adjourned.]

○