

Mr. HARKIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Georgia.

UNANIMOUS CONSENT
AGREEMENT—H.R. 4762

Mr. COVERDELL. Mr. President, I ask unanimous consent that when the Senate receives from the House the campaign disclosure bill, it be immediately placed on the calendar. I further ask unanimous consent that it become the pending business after the final vote this evening—just concluded—and that it be considered under the following agreement: 30 minutes for total debate on the bill to be equally divided in the usual form; that no amendments be in order; that following the disposition of the time, the bill be automatically advanced to third reading and passage occur, all without any intervening action or debate, with the vote occurring on passage at 9:40 a.m. on Thursday, with 7 minutes for closing remarks prior to the vote, with 5 of those minutes under the control of Senator McCAIN. Finally, I ask unanimous consent that following the passage of the bill, the action on the McCain amendment No. 3214 be vitiated and the amendment then be withdrawn.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Reserving the right to object, and I do not intend to object, I first say to my distinguished colleague and friend of almost a quarter of a century, JOHN McCAIN, I judge this action will enable the defense bill then to no longer have this amendment, and at what point will that occur?

Mr. COVERDELL. That needs to be addressed to the Parliamentarian.

Mr. McCAIN. Immediately following the vote.

The PRESIDING OFFICER. The amendment will be withdrawn following passage of the bill tomorrow.

Mr. WARNER. I want to make certain I hear. The Chair and the distinguished Senator from Arizona were speaking at the same time. Can it be repeated?

The PRESIDING OFFICER. Following final passage of the bill tomorrow, the amendment will be withdrawn.

Mr. WARNER. And that bill being?

The PRESIDING OFFICER. H.R. 4762.

Mr. WARNER. That clarifies it. I thank the leadership on both sides of the aisle.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. If I might just continue, I have consulted with the majority leader, and it is hoped at a subsequent time we can clarify when the Department of Defense bill can be

brought up because I know the distinguished Democratic whip, who has helped tremendously on this bill, as have others, is anxious to see this Defense authorization bill move forward; am I not correct, I say to Senator REID?

Mr. REID. I say to my friend from Virginia, I have spoken with the co-manager of the bill, Senator LEVIN, and we are anxious to get to this bill. We have a defined number of amendments. We have spoken to proponents of the amendments. I think it is something we can dispose of within a few hours.

Mr. WARNER. Good. That is interesting. I see my distinguished ranking member.

Mr. REID. I did not see Senator LEVIN. I am very sorry.

Mr. LEVIN. If the Senator will yield, I agree with our whip. It is our intention to, No. 1, limit amendments to relevant amendments, if we can, and, No. 2, begin to work through those amendments and eliminate as many as possible that do not need to be offered, modifying some, agreeing to some, and, if necessary, obviously voting on some. We will be working very hard with our good friend, the chairman of our committee, to proceed through the bill as soon as it is before the Senate, and the moment it is, we think we can make some real progress.

Mr. WARNER. Mr. President, I thank my distinguished colleagues. I hope germaneness will prevail as to the amendments that come up on this bill.

Mr. McCAIN. I ask for the regular order.

The PRESIDING OFFICER. The regular order has been requested. Is there objection?

Mr. WARNER. There is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE DEPARTMENTS OF LABOR,
HEALTH AND HUMAN SERVICES,
AND EDUCATION AND RELATED
AGENCIES APPROPRIATIONS,
2001—Continued

Mr. COVERDELL. Mr. President, I ask unanimous consent that the pending motion to waive be laid aside and Senator FRIST be recognized to offer his amendment regarding education and that no second-degree amendments be in order prior to the vote in relation to the amendment. I further ask unanimous consent that the Senate turn to the Frist amendment immediately following the debate on H.R. 4762, and the vote occur in a stacked sequence beginning at 9:40 a.m. under the same terms as outlined for H.R. 4762.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Reserving the right to object, we have not seen a copy of the Frist amendment yet. I want to have it described or see a copy so we know to what we are agreeing. I do not think that is an unreasonable request.

Mr. COVERDELL. I am sorry, I thought the conference on this side was over the Frist amendment.

Mr. HARKIN. I heard conflicting things about it, and I want to see how it is written.

Mr. COVERDELL. Do we have a copy at the desk?

Mr. HARKIN. Just let us see it. I have no objection.

Mr. COVERDELL. I propound the unanimous consent I just read.

Mr. REID. Reserving the right to object, Mr. President, I ask the unanimous consent request be amended so that after the disposition of the Frist amendment, Senator DASCHLE be allowed to offer an amendment; following the disposition of that, the Republicans will offer an amendment; and following that, Senator DORGAN will offer an amendment.

Mr. COVERDELL. I amend it so that the Republican amendment will be the Ashcroft amendment.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Inquiry: We are asking unanimous consent that following the Frist amendment, Senator DASCHLE be recognized for an amendment, Senator ASHCROFT be recognized for an amendment, and then Senator DORGAN be recognized for an amendment?

The PRESIDING OFFICER. Following disposition of the Frist amendment.

Mr. HARKIN. Yes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

INTERNAL REVENUE CODE OF 1986
AMENDMENT

The PRESIDING OFFICER. Under the previous order, the clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4762) to amend the Internal Revenue Code of 1986 to require 527 organizations to disclose their political activities.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I am extremely pleased we have reached an agreement to consider and almost certainly pass H.R. 4762, which passed the House last night by an overwhelming vote of 385-39. Tomorrow will be a historic day. For the first time since 1979, the Congress is going to pass a campaign finance reform bill. The bill we are going to pass is by no means a solution to all the problems of our campaign finance system, but it is a start—and an important start—because it will close the loophole that was opened at the intersection of the tax laws and election laws that allows unlimited amounts of completely secret contributions to flow into our campaign finance system and influence our elections.

I yield 3 minutes to the initial leader on this issue, the Senator from Connecticut, Mr. LIEBERMAN.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair, and I thank my friend from Wisconsin.

Mr. President, I rise to express my strong support for this bill, which contains nearly identical language to a bill I introduced earlier this session and to an amendment Senators MCCAIN, FEINGOLD, and I sponsored to the Defense authorization bill. This bill deals with the proliferation of so-called stealth PACs operating under section 527 of the Tax Code. These groups exploit a recently discovered loophole in the tax code that allows organizations seeking to influence federal elections to fund their election work with undisclosed and unlimited contributions at the same time as they claim exemption from both Federal taxation and the Federal election laws.

Section 527 of the Tax Code offers tax exemption to organizations primarily involved in election-related activities, like campaign committees, party committees and PACs. It defines the type of organization it covers as one whose function is, among other things, "influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office. . . ." Because the Federal Election Campaign Act, (FECA) uses near identical language to define the entities it regulates—organizations that spend or receive money "for the purpose of influencing any election for Federal office"—section 527 formerly had been generally understood to apply only to those organizations that register as political committees under, and comply with, FECA, unless they focus on State or local activities or do not meet certain other specific FECA requirements.

Nevertheless, a number of groups engaged in what they term issue advocacy campaigns and other election-related activity recently began arguing that the near identical language of FECA and section 527 actually mean two different things. In their view, they can gain freedom from taxation by claiming that they are seeking to influence the election of individuals to Federal office, but may evade regulation under FECA, by asserting that they are not seeking to influence an election for Federal office. As a result—because, unlike other tax-exempt groups like 501(c)(3)s and (c)(4)s, section 527 groups do not even have to publicly disclose their existence—these groups gain both the public subsidy of tax exemption and the ability to shield from the American public the identity of those spending their money to try to influence our elections. Indeed, according to news reports, newly formed 527 organizations pushing the agenda of political parties are using the ability

to mask the identities of their contributors as a means of courting wealthy donors seeking anonymity in their efforts to influence our elections.

Because section 527 organizations are not required to publicly disclose their existence, it is impossible to know the precise scope of this problem. The IRS's private letter rulings, though, make clear that organizations intent on running what they call issue ad campaigns and engaging in other election-related activity are free to assert Section 527 status, and news reports provide specific examples of groups taking advantage of these rulings. Roll Call reported the early signs of this phenomenon in late 1997, when it published an article on the decision of Citizens for Reform and Citizens for the Republic Education Fund, two Triad Management Services organizations that ran \$2 million issue ad campaigns during the 1996 elections, to switch from 501(c)(4) status, which imposes limits on a group's political activity, to 527 status after the 1996 campaigns. A more recent Roll Call report recounted the efforts of a team of GOP lawyers and consultants to shop an organization called Citizens for the Republican Congress to donors as a way to bankroll up to \$35 million in pro-Republican issue ads in the 30 most competitive House races. And Common Cause's recent report *Under The Radar: The Attack of The "Stealth PACs" On Our Nation's Elections* offers details on 527 groups set up by politicians, Congressmen J.C. WATTS and TOM DELAY industry groups; the pharmaceutical industry-funded Citizens for Better Medicare; and ideological groups from all sides of the political spectrum, the Wyly Brothers' Republicans for Clean Air, Ben & Jerry's Business Leaders for Sensible Priorities and a 527 set up by the Sierra Club. The advantages conferred by assuming the 527 form—the anonymity provided to both the organization and its donors, the ability to engage in unlimited political activity without losing tax-exempt status, and the exemption from the gift tax imposed on very large donors—leave no doubt that these groups will proliferate as the November election approaches.

None of us should doubt that the proliferation of these groups—with their potential to serve as secret slush funds for candidates and parties, their ability to run difficult-to-trace attack ads, and their promise of anonymity to those seeking to spend huge amounts of money to influence our elections—poses a real and significant threat to the integrity and fairness of our elections. We all know that the identity of the messenger has a lot of influence on how we view a message. In the case of a campaign, an ad or piece of direct mail attacking one candidate or lauding another carries a lot more weight when it is run or sent by a group called "Citizens for Good Gov-

ernment" or "Committee for our Children" than when a candidate, party or someone with a financial stake in the election publicly acknowledges sponsorship of the ad or mailing. Without a rule requiring a group involved in elections to disclose who is behind it and where the group gets its money, the public is deprived of vital information that allows it to judge the group's credibility and its message, throwing into doubt the very integrity of our elections. With this incredibly powerful tool in their hands, can anyone doubt that come November, we will see more and more candidates, parties and groups with financial interests in the outcome of our elections taking advantage of the 527 loophole to run more and more attack ads and issue more and more negative mailings in the name of groups with innocuous-sounding names?

The risk posed by the 527 loophole goes even farther than depriving the American people of critical information. I believe that it threatens the very heart of our democratic political process. Allowing these groups to operate in the shadows pose a real risk of corruption and makes it difficult for us to vigilantly guard against that risk. The press has reported that a growing number of 527 groups have connections to—or even have been set up by—candidates and elected officials. Allowing wealthy individuals to give to these groups—and allowing elected officials to solicit money for these groups—without ever having to disclose their dealings to the public, at a minimum, leads to an appearance of corruption and sets the conditions that would allow actual corruption to thrive. If politicians are allowed to continue secretly seeking money—particularly sums of money that exceed what the average American makes in a year—there is no telling what will be asked for in return.

The bill we are addressing today gives us hope for forestalling the conversion of yet another loophole into yet another sinkhole for the integrity of our elections. The bill aims at forcing section 527 organizations to emerge from the shadows and let the public know who they are, where they get their money and how they spend it. The bill would require 527 organizations to disclose their existence to the IRS, to file publicly available tax returns and to file with the IRS and make public reports specifying annual expenditures of at least \$500 and identifying those who contribute at least \$200 annually to the organization. Although this won't solve the whole problem, at least it will make sure that no group can hide in the shadows as it spends millions to influence the way we vote and who we choose to run this country.

Opponents of this legislation claim that our proposal infringes on their First Amendment rights to free speech

and association. Nothing in our bills infringes on those cherished freedoms in the slightest bit. To begin with, the Supreme Court in *Buckley versus Valeo* made absolutely clear that Congress may require organizations whose major purpose is to elect candidates to disclose information about their donors and expenditures.

Even without that opinion, the constitutionality of this bill would be clear for an entirely different reason. And that is that this bill does not prohibit anyone from speaking, nor does it force any group that does not currently have to comply with FECA or disclose information about itself to do either of those things. Instead, the bill speaks only to what a group must do if it wants the public subsidy of tax exemption—something the Supreme Court has made clear no one has a constitutional right to have. As the Court explained in *Regan versus Taxation with Representation of Washington*, 461 U.S. 540, 544, 545, 549 (1983), “[b]oth tax exemptions and tax-deductibility are a form of subsidy that is administered through the tax system,” and “Congressional selection of particular entities or persons for entitlement to this sort of largesse is obviously a matter of policy and discretion . . .” Under this bill, any group not wanting to disclose information about itself or abide by the election laws would be able to continue doing whatever it is doing now—it would just have to do so without the public subsidy of tax exemption conferred by section 527.

Let me address one final issue: that it is somehow wrong to apply this bill to 527s but not to other tax exempt groups. I believe deeply in the cleansing tide of disclosure, whether the contributing organization involved is a labor union, a business association, a for-profit company or a tax-exempt organization. For that reason, I worked hard with a bipartisan bicameral group of reformers to come up with a fair proposal requiring across the board disclosure from all organizations that engage in election activity. I thought we had a good proposal, but we were unable to get enough support for it to see it pass the House at this time. We should continue to work to enact such disclosure, but we cannot let that goal stand in the way of passing this urgently needed legislation now, because there are real differences between 527 organizations and other tax exempts, and these differences justify closing the loophole, even if we can't enact broader reform.

First and foremost, section 527 organizations are different because they are the only tax-exempts that exist primarily to influence elections. That is not my characterization. That is the statutory definition. 527s are not lobbying organizations. They are not public-interest issue organizations. They are not labor organizations or business organizations. They are election orga-

nizations, plain and simple. You can't say the same about the AFL-CIO or the Chamber of Commerce, or Handgun Control or the NRA, whose primary purpose is to advocate a policy position or to represent specific constituencies. So I say to anyone who claims these groups are just like other tax-exempts, “Read the tax code.”

Just as importantly, there is a greater need for improved disclosure by 527 organizations than there is for disclosure by other tax exempts. When the AFL or the Chamber of Commerce runs an ad, we know exactly who is behind it and where their money came from: union member dues in the case of the AFL, and business member dues in the case of the Chamber. These groups provide the basic information the public needs to evaluate the motivation of the messenger. The absolute opposite is the case with 527s. The public can't know what hidden agenda may lie behind the message because so many 527s have unidentifiable names and are funded by sources no one knows anything about.

In the best of all possible worlds, all money supporting election-related activity would be disclosed. But we should not allow our inability to achieve that goal now to stand in the way of closing the most egregious abuse of our hard-won campaign laws that we have seen during this election cycle. We all agree the American people have an absolute right to know the identity of those trying to influence their vote. So why let another day go by allowing these self-proclaimed election groups to operate in the shadows. Let's work together, across party lines, to close the 527 loophole.

We have become so used to our campaign finance system's long, slow descent into the muck that it sometimes is hard to ignite the kind of outrage that should result when a new loophole starts to shred the spirit of yet another law aimed at protecting the integrity of our system, but this new 527 loophole should outrage us, and we must act to stop it. On June 8, a bipartisan majority of the Senate said that we stand ready to do so when we adopted nearly this precise language as an amendment to the Defense authorization bill. An overwhelming majority of the House of Representatives did the same when it passed this bill on June 28. We cannot retreat from what we have already said we are ready to do. We must pass this bill now.

I am thrilled to support this bill. I pay appropriate tributes to Senators MCCAIN and FEINGOLD for their principled and persistent leadership of this movement to bring some sanity, openness, limits, and control back to our campaign finance laws. I have been honored to work with them in the front lines of this effort.

This is a turning point. The campaign finance laws of America adopted after Watergate say very clearly that

individuals cannot give more than \$2,000 to a campaign. Corporations and unions are prohibited by law from giving anything. Yet we know that unlimited contributions have been given by individuals, corporations, and unions, but at least that soft money, if anyone can say anything for it, is fully disclosed.

In this cycle, we have seen increasing use of the most egregious violation of the clear intention of our campaign finance laws: So-called 527 organizations that not only invite unlimited contributions from corporations, unions, and individuals, but keep them a secret.

Finally, we have come to a point in the abuse of our campaign finance laws that Members can no longer defend the indefensible. This is a victory for common sense, for our democracy, for the public's right to know. It has value in itself. But I hope it will also be a turning point that will lead us to further reform of our campaign finance laws.

I will say this: In the battle that has brought us to the eve of this victory—that we will enjoy tomorrow, I am confident—we have put together a broad bipartisan, bicameral group committed to cleaning up our election laws, our campaign finance laws.

I hope and believe the debate tonight and the vote tomorrow are the beginning of finally returning some limitation, some sanity, some disclosure, some public confidence to our campaign finance laws.

I thank the Chair and thank the leaders in this effort—Senator MCCAIN and Senator FEINGOLD—and am proud to walk behind them in this.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. I am delighted to yield 4 minutes to our fearless leader on this issue, the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. I thank my friend from Wisconsin.

Mr. President, I am pleased that we are about to pass and send to the President the first piece of campaign finance legislation in 21 long years. This bill is simple, just, and the right thing to do in order to ensure that our electoral system is not further debased.

My friend from Wisconsin and my friend from Connecticut have described the details of the bill. I just want to point out again that making these requirements a contingency for certain tax credit status ensures that these requirements are clearly constitutional. The Constitution guarantees freedom of speech and association, not an entitlement to tax-exempt status. Further, because of the simplicity of this approach, no vagueness problems will arise and compliance will be easy.

What could be more American? What could be more democratic?

Before I go further, I want to take a moment to thank my colleagues in arms who fought so hard to bring this issue forward. I thank Senator SNOWE and Senator LEVIN for their hard work. I thank my colleagues from the House: Congressmen CHRIS SHAYS, MARTY MEEHAN, MIKE CASTLE, LINDSEY GRAHAM, AMO HOUGHTON, and others. Without their courage to stand up and demand to do what is right, we would not be here tonight and on the verge of the vote tomorrow.

I especially thank Senators FEINGOLD and LIEBERMAN. Senator LIEBERMAN was the author of legislation mandating 527 disclosure. It was his bill that served as the basis for this debate. And, of course, I must again thank Senator FEINGOLD for all the courage he has shown in fighting for reform at any cost. I sincerely appreciate his efforts.

Just yesterday, the House of Representatives overwhelmingly voted in favor of this modest reform by a vote of 385-39. I hope the Senate vote will be equally overwhelming.

Would I have liked to accomplish more? Absolutely. Will I continue the fight, along with my good friend from Wisconsin, to enact more sweeping reform? I absolutely promise to do so. Will we continue to do whatever is necessary to restore the public's confidence in an electoral system perceived by many, if not most, to be corrupt? You can be assured of it.

But tomorrow—I say to all those across this great land who want reform—will be a great first step. It will, indeed, be a great day for democracy and a government accountable to the governed.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I yield 2 minutes of our time to the other co-initiator of this issue, Senator LEVIN.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, first, I commend the real leaders in this effort, Senators MCCAIN and FEINGOLD. They have been extraordinary in their tenacity. We look forward to their continuing tenacity to close two egregious loopholes—the one we are closing through this bill, and the other one is the soft money loophole.

I thank Senator LIEBERMAN for his leadership in terms of the 527 loophole itself. We are about to take a step on a long journey. It is a journey to bring back some limits on campaign contributions. Those limits have been destroyed by two loopholes: The soft money loophole and the so-called 527 loophole.

We are about to shed some light, pour some sunshine on the 527 loophole. And the public will respond, I believe, when they see just how egregious

this loophole is. When the disclosure required by this bill becomes law—as it will—the public will respond to the unlimited contributions which are also hidden. That disclosure, I believe, will lead to the closure of this loophole. And for that, we commend the leaders in this effort.

It is an ongoing struggle. It can only be said to be successful when the soft money loophole is closed, and when the 527 loophole is not just brought out into the sunshine but, hopefully, when it shrivels away and is closed because the public wants the restoration of limits on campaign contributions. They want them disclosed, but they want them limited.

We have taken the important step of disclosure relative to one of those loopholes, and for that we have to thank Senators MCCAIN, FEINGOLD, and LIEBERMAN. I very much express the gratitude of a bipartisan coalition to all of them.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I would like to make just a few comments about the legislation that is before the Senate.

First, everyone in the Senate supports disclosure by any group that contributes to a federal candidate, or expressly advocates the election or defeat of a federal candidate. And, I might add that currently every organization set up under section 527 of the Internal Revenue Code that contributes to federal candidates, or expressly advocates the election or defeat of a federal candidate does, in fact, publicly disclose their contributions and expenditures.

So, let's be clear: nearly every 527 organization in America publicly discloses its donors and its expenditures.

Second, the narrow legislation before this body would target a handful of tax-exempt organizations established under section 527 of the tax code that do not make contributions to candidates, or engage in express advocacy, and thus, are not required to publicly disclose contributors or expenditures.

Although these 527 groups are small and few, the constitutional questions are real. The caselaw demonstrates that there are serious questions as to whether the government can require public donor disclosure of groups that are not engaging in express advocacy. In fact, the Supreme Court has rejected public disclosure of membership lists and contributors to issue groups as a violation of the First Amendment in landmark cases like *Buckley v. Valeo*, 424 U.S. 1, 80 (1976) and *NAACP v. Alabama*, 357 U.S. 449, 462 (1958). And, less than two weeks ago, yet another federal court—the United States Court of Appeals for the Second Circuit—struck down an attempt to regulate groups that do not engage in express advoca-

cacy. I would like to have two items printed in the RECORD that explain in detail the constitutional concerns with this legislation. The first item is a letter from the American Civil Liberties Union, and the second item is testimony by election law expert, James Bopp, Jr., of the James Madison Center for Free Speech. Mr. Bopp's testimony from a Senate Rules Committee hearing this year cites a long string of court decisions striking down this type of regulation over the past quarter century.

Mr. President, I ask unanimous consent that the material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, June 8, 2000.

DEAR SENATOR: I am writing to communicate the American Civil Liberties Union's opposition to the McCain Amendment No. 3214 concerning disclosure by organizations covered by Section 527 of the Internal Revenue Code.

The American Civil Liberties Union supports certain methods of disclosure for tax exempt issue organizations and for organizations that engage in express advocacy. However, different methods of disclosure are appropriate for express advocacy groups that are not appropriate for groups that engage in issue advocacy. It is appropriate to require a 527 group to provide the Internal Revenue Service (IRS) with the name and address of the organization, the purpose of the organization and other information that is now required of other issue advocacy organizations such as 501(c)(4)s, 501(c)(3)s and 501(c)(5)s.

However, it is certainly inappropriate and unconstitutional to require issue organizations to report donor lists and membership lists to the IRS, as they would be required to do under the McCain Amendment. This is not about protecting secrecy, this is about preserving the rights of all people to express their opinions on issues without requiring them to report to the government in order to do so. By participating in groups that elevate a particular issue, citizens are exercising their much cherished free speech rights. It would greatly chill free expression if the IRS or the Federal Election Commission (FEC) required donor lists of groups that represent unpopular viewpoints, minority viewpoints or views that are highly critical of government policies.

THIS IS NOT A NEW ISSUE

Three years after it passed the Federal Election Campaign Act of 1971, Congress amended the Act to require the disclosure to the Federal Election Commission of any group or individual engaged in: any act directed to the public for the purpose of influencing the outcome of an election, or . . . [who] publishes or broadcasts to the public any material referring to a candidate (by name, description, or other reference . . . setting forth the candidate's position on any public issue, [the candidate's] voting record, or other official acts . . . or [is] otherwise designed to influence individuals to cast their votes for or against such candidates or to withhold their votes from such candidates.

Such issue advocacy groups would have been required to disclose to the FEC in the same manner as a political committee or

PAC. They would have to make available every source of funds that were used in accomplishing such acts. This unconstitutional regulatory scheme is the template for the McCain amendment now before you.

The ACLU challenged this provision of the 1974 amendments as part of the *Buckley v. Valeo* case. When the challenge came before the US Court of Appeals for the DC Circuit, the law was unanimously struck down because it was vague and imposed an undue burden on groups engaged in activity that is, and should be, protected by the First Amendment. The DC Circuit Court ruling stated: to be sure, any discussion of important public questions can possibly exert some influence on the outcome of an election . . . But unlike contributions and expenditures made solely with a view to influencing the nomination or election of a candidate, issue discussions unwedded to the cause of a particular candidate hardly threaten the purity of the elections. Moreover, and very importantly, such discussions are vital and indispensable to a free society and an informed electorate. Thus the interest group engaging in non-partisan discussions ascends to a high plane, while the governmental interest in disclosure correspondingly diminishes.

Because of the Court's unanimous and unambiguous ruling, the FEC did not even attempt to appeal this aspect of the courts ruling concerning issue group regulation disclosure, and that defective section of the Act was allowed to die.

The ACLU urges members of the Senate to vote against Amendment No. 3214, the McCain Amendment on 527 group disclosure. Sincerely,

Laura W. Murphy,
Director.

TESTIMONY OF JAMES BOPP, JR., APRIL 26,
2000, SENATE RULES COMMITTEE

THE REFORMERS' ATTACK ON ISSUE ADVOCACY
HAS ANOTHER FRONT—SECTION 527 OF THE INTERNAL REVENUE CODE

There is another bill that I want to discuss today that is also part of the unrelenting attack on citizens' ability to participate in public discourse. Not content with a frontal assault through the FECA, reformers have turned their attention to the Internal Revenue Code. HR 4168 proposes to amend the Internal Revenue Code of 1986 to require that federal election rules apply to groups formed under § 527 of the Internal Revenue Code.

Before I talk about the specific effects of House Resolution 4168, some clarifying background information about § 527 and the FECA is necessary. Section 527 was added to the Internal Revenue Code in 1974 to resolve long-standing issues relating to inclusion of political contributions in the gross income of candidates. Drafters were concerned that candidates would use their campaign committees to earn investment income free of tax, and so a tax on investment earnings became the major limitation on the exemption available under § 527.

Section 527 of the Internal Revenue Code provides an exemption from corporate income taxes for political organizations that are organized primarily to intervene in political campaigns. Thus, to qualify for the tax exemption, the organization must be a "political organization" that meets both the organizational and operational tests under § 527.

A "political organization" is a party, committee, association, fund, or other organization organized primarily for the purpose of directly or indirectly accepting contributions or making expenditures for an exempt function activity. Section 527(e)(1) of the

Code defines the term "exempt function" to mean, in relevant part, the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected or appointed. A "political organization" meets the organizational test if its articles of incorporation provide that the primary purpose of the organization is to influence elections. Under the operational test, a "political organization" must primarily engage in activities that influence elections but it need not do so exclusively.

The IRS has issued no precedential guidance in this area, but it has issued private letter rulings which provide an indication of what constitutes evidence of political intervention for purposes of § 527. Activities that are intended to influence, or attempt to influence, the election of individuals to public office may include encouraging support among the general public for certain issues, policies and programs being advocated by candidates and Members of Congress.

Thus, the IRS has found that expenditures for issue advocacy could qualify as intervention in a political campaign within the meaning of § 527(e)(2). Moreover, the distinction between issue advocacy activities that were educational within the meaning of § 501(c)(3) and issue advocacy activities that were not educational and therefore qualified as § 527(e)(2) expenditures intended to influence the outcome of elections, was not based on major differences in the nature of conduct of the activities. The IRS instead pointed to the targeting of the activities to particular areas, the timing of them to coincide with the election, and the selection of issues based on an agenda. As will be discussed in a moment, these factors have been rejected by the courts as irrelevant to any determination of whether an organization's speech, regardless of its tax status, is express advocacy.

In a recent private letter ruling to an organization under § 527, made public on June 25, 1999, the IRS determined that a wide range of programs qualified as "exempt functions" for a § 527 political organization. The IRS found a political nexus even though some of the materials to be distributed, and techniques to be used, resembled issue advocacy and other materials and techniques often used in the past by charitable organizations without violating section 501(c)(3) of the Internal Revenue Code. However, because the materials and techniques were designed to serve a primarily political purpose and would be inextricably linked to the political process, the political nexus was substantiated.

Of particular interest is the IRS's conclusion that voter education, which may include dissemination of voter guides and voting records, grass roots lobbying messages, telephone banks, public meetings, rallies, media events, and other forms of direct contact with the public, can be apolitical intervention when it links issues with candidates. Whether an organization is participating or intervening, directly or indirectly, in a political campaign, however, depends, in the view of the IRS, upon all of the facts and circumstances. Thus, while voter education may be both factual and educational, the selective content of the material, and the manner in which it is presented, is intended to influence voters to consider particular issues when casting their ballots. This intent was

seen by the evident bias on the issues, the selection of issues, the language used in characterizing the issues, and in the format. The targeting and timing of the distribution was aimed at influencing the public's judgment about the positions of candidates on issues at the heart of the organization's legislative agenda. These activities are partisan in the sense that they are intended to increase the election prospects of certain candidates and, therefore, would appear to qualify under § 527(e)(2).

It is the perceived intersection between the Internal Revenue Code and the FECA that reformers want to regulate. Section 527 organizations must convince the IRS that they are organized and operated for the exempt function of influencing elections as required under § 527(e)(2). However, because the organization is engaged in only issue advocacy and does not make contributions to candidates or engage in express advocacy, the organization is not subject to the FECA. However, H.R. 4168 would treat them as if they engaged in such activities and require them to register as PACs under the FECA.

However, the Supreme Court has made it clear that an organization cannot be treated as a PAC because it engages in issue advocacy—which was one of the purposes of the express advocacy test in the first place. The Supreme Court, in one of its most oft-quoted footnotes, has provided an illustrative list of which terms could be "express words of advocacy:" "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "reject." Since the Court's ruling in *Buckley*, district and federal courts of appeal have followed this strict interpretation of the express advocacy test and have struck down any state or federal regulation purporting to regulate based on intent or purpose to influence an election. These courts have unanimously required express words of advocacy in the communication itself before government may regulate such speech.

Furthermore, the organizations "major purpose" must be making contributions and express advocacy communications to be treated as a PAC. The FECA defines a "political committee" as "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year. In *Buckley*, the U.S. Supreme Court narrowly construed this definition, holding that under the FECA's definition of political committee, an entity is a political committee only if its major purpose is the nomination or election of a candidate.

An organization's "major purpose" may be evidenced by its public statements of its purpose or by other means, such as its expenditures in cash or in kind to or for the benefit of a particular candidate or candidates. Even if the organization's major purpose is the election of a federal candidate(s), the organization does not become a political committee unless or until it makes expenditures in cash or in kind to support a person who has decided to become a candidate for federal office.

Recently, the Fourth Circuit found a definition of "political committee," that included both entities that have as a primary or incidental purpose engaging in express advocacy, and those that merely wish to influence an election (engage in issue advocacy), as being overbroad and unconstitutional. The court found that the definition of "political committee" could not encompass groups

that engage only in issue advocacy and groups that only incidentally engage in express advocacy.

Thus, only an organization that engages primarily in excess advocacy triggers FECA reporting and disclosure requirements. Issue advocacy in the context of electoral politics does not cause an organization to be deemed a political committee. Merely attempting to influence the result of an election is not enough. This classic form of issue advocacy, influencing an election without express words of advocacy, does not cause an entity to be subject to the reporting and disclosure requirements of political committees under the FECA. Only those expenditures that expressly advocate the election or defeat of a clearly identified candidate do so.

Thus, it is perfectly consistent that an organization may qualify for exemption under §527 of the Internal Revenue Code yet not qualify as a PAC under the FECA. Tax law provides for exemption from corporate tax and a shield against disclosure of contributors. Election law mandates PACs to report all their contributors and expenses, subjects them to contribution limits, and prohibits them from receiving corporate or labor union contributions. These burdens on a PAC cannot be constitutionally applied to an issue advocacy organization.

Therefore, as discussed above, §527 casts a wider net than does the FECA. The FECA bases its requirements on narrowly defined activities, not on tax status. Thus, activities deemed political by the Internal Revenue Service, for purposes of determining tax exempt status, are not considered "political" under the FECA when there is no express advocacy of the election or defeat of a federal candidate.

With this background of how the provisions of §527 and the FECA work, it is apparent that the reformers are yet again attempting to regulate citizen participation in the form of protected issue advocacy. As a result of the IRS's amorphous definitions of "social and welfare activities" and "political intervention," many §501(c)(4) organizations are now forced to organize under §527 for tax purposes. In fact, the Christian Coalition has filed suit against the IRS challenging its overbroad interpretation of what is political intervention which caused it to be denied its §501(c)(4) exemption.

House Resolution 4168, however, would require issue advocacy organizations exempt under §527 to be treated as PACs under the FECA. However, it is unconstitutional to require issue advocacy groups to register as PACs. What the government may not do directly, it may also not do indirectly by bootstrapping onto the Internal Revenue Code a requirement of "political committee" registration and reporting requirements. In other words, Congress may not condition a tax exempt status on reporting and disclosure requirements of issue advocacy when it may not constitutionally require in the first instance.

The fact that issue advocacy groups may engage in activities which influence an election, or even admit that their purpose is to influence an election, is totally irrelevant to the analysis. What is pertinent is whether these groups engage in any express advocacy. The Buckley Court left intact, as constitutionally protected, speech that influences an election.

To make it clear that speech that only influences an election, but does not contain express words of advocacy, is completely free from regulation, the Supreme court explicitly stated this both positively and nega-

tively. First, the Court stated that "[s]o long as persons and groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, they are free to spend as much as they want to promote the candidate and his views. Second, the Court explained that the FECA did "not reach all partisan discussion for it only requires disclosure of those expenditures that expressly advocate a particular election result.

Therefore, in order to protect speech, especially speech that may influence an election, the Court drew a bright-line so that the speaker would know exactly when he crossed into regulable territory—the express advocacy realm. Anything on the other side of the line, speech that may influence an election, whether intentionally or not, was to be protected from government regulation so as to promote the free discussion of issues and candidates. Thus, speech free from explicit words of advocacy, whether made with the intent to influence an election or not, is perfectly appropriate and legitimate.

This is not to say that Congress is completely without power to lawfully regulate §527 organizations. The Joint Committee on Taxation's recommendation that §527 organizations should be required to disclose tax returns (except for donor information) would create parity between §527 organizations and §501(c)(3) and §501(c)(4) organizations. However, any disclosure that goes beyond the public disclosure of tax returns violates the constitutional protection of issue advocacy.

Mr. MCCONNELL. The Senate has precious few legislative days this year to finish the important business of the American people, and there is no time for a meaningful debate on campaign finance reform. I think that even my colleagues on the other side would concede that there are not sixty votes on substantive issues like the antiquated hard money limits and the soft money question. In fact, after two weeks of discussions, neither the House nor the Senate could cobble together a majority for broad and meaningful disclosure.

But I do commend Senator GORDON SMITH for his efforts to find a reasonable middle ground. His bill, the Tax-Exempt Political Disclosure Act, sought a compromise between the McCain-Lieberman 527-only bill and the broad bill reported out of the House Ways and Means Committee that went so far as to cover tax-exempt social welfare organizations like the AARP, the NAACP, and the Disabled American Veterans.

The Smith bill targeted the key tax-exempt groups in America: labor and business organizations set up under sections 501(c)(5) and (c)(6) of the tax code, like the Chamber of Commerce, the Teamsters and the National Education Association. Recent news stories underscored the need for meaningful disclosure of tax-exempt labor and business organizations. Documents reviewed by the Associated Press demonstrate that the National Education Association has spent millions of tax-exempt dollars to influence elections while simultaneously reporting to the IRS that the organization has spent no

money on political activities. This gross reporting disparity has prompted the filing of formal complaints with the IRS and the Federal Election Commission against the NEA. And, I think we all can agree to the obvious: neither the National Education Association nor any labor union will be covered or affected in any way by this legislation. They can continue to spend millions of dollars on political activity with no meaningful disclosure.

Nevertheless, I have chosen to allow this matter to move forward for a vote without offering amendments or extended debate. The Senate needs to focus on the important business of the American people and return to our first priority of ensuring that all of our appropriation bills are passed on time.

I plan to vote against this legislation because I believe that the best and most constitutionally sound solution is to require 527 issue advocacy organizations to file public returns with the IRS similar to those filed by issue advocacy organizations organized under section 501(c)(4) of the Internal Revenue Code. Such public returns would include, among other things: the name and address of the organization, including an electronic mailing address; the purpose of the organization; the names and addresses of officers, highly-compensated employees, members of its Board of Directors, a contact person and a custodian of records; and the name and address of any related entities.

I also would require the Secretary of the Treasury to make this information publicly available on the Internet within 5 business days after receiving the information. However, Mr. President, I would not cross the constitutional line of requiring that the organizations' confidential donor lists be made public.

Again, Mr. President, I think this is an important debate, but respectfully disagree with my colleagues on the constitutional propriety of requiring public disclosure of confidential donor lists for groups that do not contribute to federal candidates or engage in express advocacy.

With that, I yield back the remaining amount of time.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, the Senator from Kentucky said that nearly every 527 publicly discloses their contributors and expenditures. I don't know how the Senator from Kentucky can make that claim because he doesn't know. No one knows how many 527 organizations there are. They currently don't file any reports whatsoever, so we can't know that. They currently don't even notify the IRS that they exist. That is exactly what this bill will change.

I now yield 2 minutes to one of our strongest allies on this issue and on

the entire issue of campaign finance reform, the Senator from New York, Mr. SCHUMER.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. I thank the Senator from Wisconsin for yielding.

Both to the Senator from Arizona and the Senator from Wisconsin, kudos on their exemplary leadership on this issue and the general issue of campaign finance reform, as well as my colleagues from Connecticut, Michigan, and Maine who have been such reform leaders.

A Chinese proverb says that a trip of 1,000 miles begins with the first step. This is the first step, but we do have 1,000 miles to go. It is the first step, and it is a significant one. Until this proposal becomes law, organized crime, drug lords, and other various bottom crawlers in society unknown to any of us could influence the political process by contributing money and running ads that we all know are, for all practical purposes, political ads. To have no disclosure, let alone no limits, on these kinds of activities puts a dagger in the heart of democracy. Sunlight is the disinfectant we need. Sunlight is the disinfectant provided by this provision. It does no less; it does no more.

We have many more miles to go. The distinction between hard money and soft money, the fact that these days candidates don't have to worry about a \$1,000 limit because soft money is so prevalent and so available and because of, in my judgment, recent misguided Supreme Court decisions that allow political parties to do political ads—we all know they are political ads; simply because they don't say vote for candidate X, they are not classified as political ads—makes our system a joke, makes our system a mockery.

What we are doing here is simply returning to the status quo of a year ago before these 527 accounts were founded. We have a very long way to go. The only confidence I have is that we do have leaders such as the Senator from Arizona and the Senator from Wisconsin to help us move forward.

If we were to rest on our laurels, if we were to think we had now cleaned up the system because we passed this legislation, we would be sadly mistaken. It is very much need because this is the part of campaign finance that remains under a rock with all the worms and critters crawling undiscovered. At the same time, we need to go much, much further. I will be glad to follow the banner of Senators MCCAIN and FEINGOLD to try to help make that a reality.

I thank the Chair and the Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I thank the Senator from New York for everything he has done on this matter.

I ask the Chair how much time remains on our side.

The PRESIDING OFFICER. Three minutes.

Mr. FEINGOLD. Mr. President, I ask unanimous consent for an additional 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. Mr. President, let me note that there is no constitutional argument against this bill because these organizations receive a tax exemption. The public is entitled to this information in exchange for the substantial tax benefit these groups receive. I am so pleased this matter will be demonstrated in the courts because this bill is going to actually become law.

I would like to use the remaining time to remind my colleagues and the public of the scope of the loophole we are about to get rid of. This has been called the "mother of all loopholes." If left unchecked, literally millions upon millions of dollars originating from foreign governments, foreign companies, and even, theoretically, organized crime could be spent in our elections without a single solitary bit of reporting and accountability—totally secret money in unlimited amounts, and no one would know where the money was coming from. It is hard to imagine anything that would be worse for the health of our democracy.

We have a chart here containing, word for word, what is essentially an advertisement by one of these groups. It is as plain as day. This group solicits contributions from extremely wealthy individuals and groups. Contributions, it says, can be given in unlimited amounts. They can be from any source. They are not political contributions and are not a matter of public record. They are not reported to the FEC, to any State agency, or to the IRS.

Today, we are wiping out what might be the most important part of this advertisement, that the contributions are not a matter of public record. From now on, these groups will disclose their contribution to the IRS. The public will be able to see where their money is coming from and understand what is behind the message.

I do want to mention a number of people who have been central to this effort. Of course, my friend and colleague, Senator MCCAIN, deserves a huge amount of the credit for putting forward our original amendment to the DOD bill and tenaciously continuing to push until it became law. Senators LIEBERMAN and LEVIN developed the original bill on 527s, recognizing the huge threat these stealth PACs posed. Their work over the past few weeks to make sure we finish the job has been extraordinary. Senator SNOWE, who has long been concerned about getting disclosure of phony issue ads run in the last days before an election, was a key

supporter, as was Senator SCHUMER and many others. On the House side, Representative SHAYS, who is in the Chamber now, as well as Representatives MEEHAN, HOUGHTON, CASTLE, DOGGETT, and MOORE were crucial to getting the bill passed there, over the strong opposition of the House leadership. I am proud of how we worked in a bipartisan and bicameral fashion to get the bill done and close this loophole. This effort bodes well for the future of campaign finance reform.

This is my final point, Mr. President. This is not the end of the fight, as we have said. It is just the beginning. Now that we have cracked the wall of resistance to any reform at all, I think we are ready to move forward on truly cleaning up the corrupt campaign finance system. Now that we have disclosure of the unlimited amounts that are going to outside groups, I think we are ready to address the unlimited contributions from corporations, unions, and wealthy individuals that the soft money loophole permits to be given to the political parties.

Mr. President, I should have also mentioned Senator JEFFORDS, who is present in the Chamber, for his help on this issue.

I know that many of my colleagues want to clean up this system and are willing to work in good faith to find a way that we can do that.

In the few seconds I have remaining, I thank a number of staff for their incredibly hard work and dedication to the campaign finance issue and to this 527 disclosure bill. We have not had many wins, and they are the ones responsible for keeping us in this fight. Mark Buse, Ann Choinere, Lloyd Ator of Senator MCCAIN's staff, Laurie Rubenstein of Senator LIEBERMAN's staff, Linda Gustitus with Senator LEVIN, Jane Calderwood and John Richter from Senator SNOWE's staff, Andrea LaRue with Senator DASCHLE, and Bob Schiff of my own staff worked very long hours to make sure that we got to this point, and we appreciate all of their efforts and look forward to future victories together.

I yield the floor.

The PRESIDING OFFICER. Does the Senator yield back his remaining time? Mr. FEINGOLD. Yes.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 4762) was ordered to a third reading and was read the third time.

THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS, 2001—Resumed

The PRESIDING OFFICER. The Senate will now resume consideration of H.R. 4577, which the clerk will report.