STATEMENT OF SENATOR JOE LIEBERMAN ON PASSAGE OF SECTION 527 FIX BILL

Mr. President. I am very pleased that the Senate today is passing a compromise bill aimed at improving disclosure by Section 527 political organizations and relieving certain 527 organizations from arguably duplicative filing requirements. I want to thank my colleague, Senator Hutchison, as well as our colleagues in the House, for working steadfastly with us to draft this bill in a manner that achieves its purpose, but does not open any loopholes in the original Section 527 reform law.

In June 2000, Congress passed the first significant campaign finance reform measure in a quarter of a century. The so-called Section 527 reform bill dealt with a truly troubling development, one whereby organizations that received tax-exempt status by telling the IRS that they exist to influence elections denied the very same thing to the FEC. As a result, these self-proclaimed election organizations engaged in election activity without complying with any aspect of the election laws, influencing our elections without the American public having any idea who -- or what -- was behind them.

The 527 reform law enacted in 2000 put a stop to that, by requiring organizations claiming tax-exempt status under Section 527 of the Internal Revenue Code to do three things: (1) give notice of their intent to claim that status; (2) disclose information about their large contributors and their big expenditures; and (3) file annual informational returns along the lines of those filed by virtually all other tax-exempt organizations.

During the approximately two years that the 527 reform law has been in effect, that law has blasted sunshine onto the previously shadowy operations of a multitude of election-related organizations. Through the filings Section 527 now mandates, the American public has learned a great deal about who is financing many of these organizations and how these organizations are spending their money. As outlined in a report issued earlier this year by the group Public Citizen, the 527 reform law brought us the knowledge that 25 of the largest 527s raised over $67 million between July 2000 and December 2001, and that they spent it on a plethora of campaign activities – most significantly those pre-election issue ads that we all know so well and that are often indistinguishable from candidate ads. We've also learned from these IRS filings the specifics about who was trying to influence particular elections and where their money came from. Were it not for the 527 disclosure law, we probably wouldn't have any of this information, and we probably would have had a lot more shadowy groups operating in the election system – ones that slithered away on their own because they didn't want to face the disinfectant of sunshine.

These filings will become all the more important come this November, when the Bipartisan Campaign Reform Act – the McCain-Feingold bill – goes into effect. As we all know, at least some of the soft money donors who will no longer be able to give to political parties will be looking for other ways to influence our elections. Donations to 527 groups will probably top many of their lists, because these are the only tax-exempt groups that can do as much election work as they want without jeopardizing their tax status. With the potential for all this new money coming in, it is critical that we have a healthy 527 disclosure regime in place.

Although the 2000 law has been a tremendous boon in the fight for clean and open elections, the 527 disclosure regime does have some problems. Public interest groups that use the disclosure reports tell us that those reports lack important information needed to understand 527s' activities, and, more importantly, that the reports are hard to access and analyze. A new report by the nonpartisan Campaign Finance Institute's blue ribbon Task Force on Disclosure, for example, concludes that "there is a serious lack of meaningful web disclosure" by the IRS of 527 group activities, and calls upon Congress to mandate a fully searchable database and electronic filing. Put simply, the public needs more information to be reported and it needs the IRS to provide better access to it.

Just as importantly, concerns have been raised about the law's impact on State and local political organizations that already fully disclose to the public all of the activities covered by the 527 reform law. When we first enacted the 527 reform law, we made clear that we believed that 527 organizations, as a condition of receiving the federal benefit of tax exemption, owed the public disclosure of certain information about themselves and their activities. A number of State and local political organizations have now convinced us that they already disclose that information on the State level, thereby already serving the law's purpose, and that they there is no reason to require them to report the same information again to the IRS.

The bill we are considering today seeks to comprehensively address all these problems. First, it makes important and necessary improvements to the reporting and disclosure requirements, to enable the public to have better access to more information. For example, organizations will have to provide more information about the contributions they receive and the expenditures they make – providing the dates of both them, as well as the purpose of their expenditures. The added requirement to state the purpose of an expenditure will be particularly helpful in allowing the public to see whose money is supporting particular candidates. I hope that in implementing this provision, the IRS makes clear that organizations should state the purposes of expenditures with specificity, including whether particular expenditures are in support of, or opposition to, particular candidates, as well as the name and office sought by any such candidates. The bill we are considering today also requires 527s to provide updated information on themselves if there is any material change in the basic identifying information they filed with the IRS. This important change will make sure that the public can at all times locate these groups and know who is running them.

At the same time as we are improving the nature of the filings, we are also mandating better disclosure of them. From here forward, all 527s filing reports on their contributors and expenditures will have to do so electronically, and the IRS will have to make those reports searchable on, and downloadable from, the Internet. This will vastly improve the public's access to information about, and understanding of, 527 organizations and their activities.

The second major feature of this bill is its elimination of arguably duplicative reporting requirements. In particular, it grants relief from the 527 reform law to a number of organizations that focus on State and local elections and that are regulated by State disclosure laws.

First, the bill fully exempts from its mandates State and local candidate and party committees.

Under the reform law, these committees must notify the IRS of their intent to claim Section 527 status, and they have to file annual information returns if they have over $25,000 in gross receipts. They do not, however, have to file contribution and expenditure reports. Since the reform law went into effect, we have become convinced that the burden imposed on these committees by the two relevant disclosure mandates outweigh the public purpose served by requiring them to comply with these mandates.

By exempting them from the contribution and expenditures reporting requirements that lie at the heart of the Section 527 law's disclosure regime, the original reform law recognized that State and local candidate and party committees do not generally pose the threats the 527 law intended to address. In contrast to other political committees, there is never any doubt as to who is running these committees or whose agenda they aim to promote. Just as importantly, State laws regulate and require disclosure from all of these committees.

Different considerations apply to the case of so-called State and local PACs. The bill grants more limited relief to a carefully defined set of these groups. In granting this relief, we have walked a very fine line. On one hand, we want to recognize the fact that every State requires disclosure from political committees involved in that State's elections and that many State and local PACs covered by the 527 reform law therefore are already disclosing the information the 527 law seeks. On the other hand, we still believe that there is a strong public interest in knowing how the federal tax-exemption under Section 527 is being used by these organizations, and we most decidedly do not want to exempt from the law's disclosure requirements any State or local PAC that does not otherwise publically disclose all of its activities.

To exempt a State or local PAC merely because it claims that it is involved only in State elections and files information about some of its activities with a State agency would risk creating a massive loophole that could undermine the 527 reform law. That is because just as prior to the passage of the 527 reform law, some 527 groups were claiming that they were trying to influence elections for the purposes of the tax code, but not for the purposes of the election laws, a broad exemption for State or local PACs could lead some groups to claim that they are influencing State elections for the purposes of Section 527 but not for the purposes of the State disclosure laws.

So, we have reached the following compromise. First, we are not exempting any of these organizations from the Section 527(i) requirement to notify the IRS of the intention to claim Section 527 status. Unlike candidate and party committees, it is not always clear to the public who is behind these groups or what their purposes are, making the information filed in these notices important sources of otherwise unavailable information. Moreover, because we are not completely exempting these groups from the law's other disclosure requirements, the notice requirement will be critical in helping the IRS and outside groups monitor compliance with the law's other mandates. In light of that, we believe the minimal effort required to file the 527(i) notice is worth the tremendous value of giving the public some basic information about these groups.

Second, we are granting an exemption from the Section 527(j) contribution and expenditure

reporting requirements to some of these organizations, but only if they can meet certain strict requirements. The group's so-called exempt function activity must focus exclusively on State or local elections; a group that engages in even the smallest amount of activity related to a federal election will not be entitled to this exemption. The group also must file with a State agency information on every contribution and expenditure it would otherwise be required to disclose to the IRS. This requirement ensures that Congress' conditioning of tax exemption on complete and full disclosure is not compromised.

In addition, these State filings must be pursuant to a State law that requires these groups to file the State reports; this requirement seeks to prevent organizations from hiding truly federal activity by voluntarily reporting to a State where reports may not be as readily accessible as are federal reports. Moreover, no group will be able to take advantage of this exemption if the State reports it files are not publically available both from the State agency with which the report is filed and from the group itself. Finally, this exemption also is not available to any organization in which a candidate for federal office or someone who holds elected federal office plays a role -- whether through helping to run the organization, soliciting money for the organization or deciding how the organization spends its money. I should note here that the use of the word "solicit" in this case is meant broadly; if a federal candidate or office holder suggests that money be given to a committee or directs it there in anyway, then federal disclosure is mandated.

In short, this bill exempts from Section 527(j)'s contribution and expenditure reporting obligations only those groups that truly and legitimately engage in exclusively State and local activity and only when they already report to their State on all of the information the 527 law seeks. This latter condition is important not just because it precludes the hiding of federal activity, but also because we believe that even those groups involved in exclusively State and local elections should face some disclosure requirement if they are to take the federal benefit of tax exemption under Section 527.

Finally, the bill makes a small change to these State and local groups' obligation to file an annual information return when they do not have taxable income. Under the current law, they must file such returns when they have $25,000 in annual receipts; the bill increases that trigger to $100,000. Like all other 527 organizations, though, they still will have to file such returns if they have taxable income.

To help walk my colleagues through this bill, I am attaching at the end of my statement a section-by-section of the bill and ask unanimous consent that it be printed in the record after my statement.

Again, let me thank Senator Hutchison in particular for her efforts on this bill. I believe we have worked out a good compromise, one that grants relief where it is warranted, but does not in any way threaten to open up a loophole in the law. I thank her for that, and I yield the floor.

Section-by-Section

Section 1 exempts State and local candidate and party committees from the requirement to notify the IRS of their Section 527 status (Form 8871) and makes that exemption retroactive to the date of the 2000 law's enactment.

Section 2 exempts qualified State or local PACs from the requirement to file reports with the IRS detailing their contributors and expenditures (Form 8872). It defines a qualified State or local political organization as one which: (a) focuses solely on State or local elections; (b) reports and discloses information about all its sizable contributions and expenditures under State law; and (c) does not have a federal candidate or elective office holder playing any material role in the organization or raising money for it. The provision makes clear that an otherwise qualified exempt State or local PAC does not lose its exemption simply because there are certain variations between State and federal law with respect to reporting of contributor and expenditure information.

Sections 3(a)-(b) repeal certain changes the 2000 law made to the requirements governing the filing of tax returns (Form 1120) by political organizations. Although political organizations are exempt from taxation on most of their income (such as contributions), certain income may be subject to federal tax. Prior to the 2000 law, only Section 527 groups with taxable income had to file the Form 1120. The 2000 law required most 527s to file the form, whether or not they had taxable income. Section 3(a) restores the pre-2000 law and puts 527s on a similar footing to other tax-exempt organizations with respect to the 1120 Form by requiring filing of the form only if the organization has taxable income. Section 3(b) restores the pre-2000 law by making clear that the tax returns of 527s with taxable income are confidential.

Section 3(c) exempts a number of organizations from the requirement to file the Form 990 annual information return. Exempt groups will now include State or local candidate and party committees, associations of State or local officials and groups filing with the FEC. The section also provides that qualified State and local PACs must file the 990 only if they have at least $100,000 in annual gross receipts (other non-exempt groups must file the 990 if they have at least $25,000 in annual gross receipts). Finally, the section directs the Treasury Secretary to adapt the 990 form, which was not developed for political organizations, to seek information relevant to the activities of Section 527 organizations.

Section 4 directs the Treasury Department to work with the FEC to publicize the 527 law's reporting requirements.

Section 5 authorizes the Treasury Secretary to waive amounts imposed for failing to file 8871 notices or 8872 reports if he concludes that the failure to file was due to reasonable cause and not willful neglect.

Sections 6(a), (b) and (d) modify existing law regarding noncompliance. Section 6(a) provides that organizations that fail to notify the IRS of their intent to claim Section 527 status will have all of their so-called exempt-function income subject to taxation, regardless of whether that income was segregated for use for an exempt function. Section 6(b) provides that the procedures used for collecting amounts imposed for failing to comply with the 8872 contributor/expenditure

reporting requirement are akin to those used to collect penalties from tax-exempt organizations that fail to file the form 990 (this section affects the process of collection, not the amount collected). Section 6(d) makes clear that the tax code's existing criminal fraud penalties for anyone who willfully furnishes information to the IRS he knows is false or fraudulent also applies to 8871 and 8872 filings.

Sections 6(c), (e), (f) and (g) make changes to certain disclosure requirements. Section 6(c) streamlines the 8871 notice requirement by eliminating the need to file the notice in writing; only electronic reporting of the notice will remain. Section 6(e)(1) adds the date and purpose of expenditures and the date of contributions as required information on the Form 8872. Section 6(e)(2) mandates electronic filing of the 8872 contributor/expenditure reports, and Section 6(e)(3) requires that the IRS make information in those reports available to and searchable by the public on the Internet and downloadable to personal computers. Section 6(f) amends the 8871 notice to require filers to note whether they intend to claim an exemption from the 8872 contribution/expenditure reporting requirement or the form 990 annual return requirement. Finally, Section 6(g) requires organizations to file amended 8871 notices within 30 days of any material change of the information on the previous 8871.

Section 7 provides that forms already filed and made public by the IRS under current law will remain public after this bill becomes law. This provision is needed because many of the bill's exemptions are retroactive, and without Section 7, the IRS could be found in violation of taxpayer confidentiality rules for posting filings that were public under the original law but will no longer be public after this bill's enactment.