



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Rosemary Smith
Associate General Counsel

FROM: Office of the Commission Secretary *MWS*

DATE: May 13, 2004

SUBJECT: *Ex Parte* Communication – Political Committee Status
Rulemaking

Attached is a letter received by Chairman Smith from Senator Olympia Snowe regarding the above-captioned matter.

cc: Commissioners
Staff Director
General Counsel
Press Office
Public Disclosure

Attachment

OLYMPIA J. SNOWE
MAINE
154 RUSSELL SENATE OFFICE BUILDING
(202) 224-6344
E-Mail: Olympia@snowe.senate.gov
Web Site: <http://snowe.senate.gov>

United States Senate

WASHINGTON, DC 20510-1903

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May 12, 2004

The Honorable Bradley A. Smith
Chairman
Federal Elections Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Chairman Smith:

As a coauthor of the Bipartisan Campaign Reform Act of 2002 (BCRA), the historic legislation that Congress enacted to remove the influence of unregulated soft money from politics, I have become increasingly concerned with the actions of some organizations that have publicly flouted the provisions of the law during the 2004 election cycle, as well as the Commission's failure thus far to ensure these entities' compliance with BCRA. As a solution to this problem, I urge you to consider and adopt, at the Commission's open meeting tomorrow, the bipartisan proposal devised by Commissioners Michael Toner and Scott Thomas. As a principal proponent of BCRA in Congress, I can assure you that the Toner-Thomas proposal is an important first step toward full enforcement of BCRA's provisions, and is entirely consistent with the congressional intent of the Act.

Hiding behind Section 527 of the Internal Revenue Code, scores of organizations around the country have already expended millions of dollars running television and radio ads and conducting grass roots organizing, *all with the use of banned soft money*. One of these organizations claimed in a recent FEC filing that 98 percent of the money it has spent so far on election-related activities has come from soft money. These political organizations' sole stated purpose is to affect the outcome of the 2004 elections, yet they continue to assert that somehow their tax-exempt status also absolves them from complying with the provisions of BCRA. Simply put, it does not.

As you know, BCRA places limitations and transparency requirements upon organizations *whose major purpose is to influence federal candidate elections*. Internal Revenue Code Section 527, which existed long before the passage of BCRA, allows organizations *whose primary purpose is political* to make many federal income tax deductions. The object of this, of course, is to get people more involved in politics. It

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never has been used, nor was it intended to be used, as a loophole to avoid federal election laws.

The FEC's response to this flagrant disregard for federal law has been lackluster at best. Rather than issuing a ruling immediately clamping down on these practices by Section 527 groups, the Commission's response was to wait a few months, then issue a 112-page notice of proposed rulemaking that certainly cannot be completed before the end of the 2004 elections.

In anticipation of the Commission's May 13 meeting, two of your colleagues, Commissioners Toner and Thomas, have put forth a bipartisan, reasonable compromise that hopefully will be acceptable to all sides and concerns in this debate. Under the Toner-Thomas proposal, 527 groups that spend money for the use of partisan mobilization activities must draw at least half of those expenditures from hard money contributions. By adopting the Toner-Thomas proposal, the Commission can give real teeth to BCRA, clean up our electoral process, and thereby fulfill its duty to enforce acts of Congress relating to campaigns.

By permitting these groups to use up to 50 percent in soft money donations, the Toner-Thomas proposal recognizes that get-out-the-vote drives in this election cycle will often be conducted jointly on behalf of both state and federal candidates. Likewise, by allowing these groups to use much of the money they have already raised, the proposal does not unduly disadvantage these organizations, notwithstanding their disregard for following federal elections laws. Finally, some concern was raised that any new FEC rules would have a negative impact on Section 501 groups, non-profit organizations that have played no part in the recent controversy. The Toner-Thomas proposal focuses solely on 527 groups, or as Commissioner Toner phrased it, "narrowly tailored to the entities of greatest concern."

The Toner-Thomas proposal is not perfect. A common-sense reading of BCRA certainly dictates that 527 organizations that conduct partisan activity in federal elections should draw *all* of their expenditures from hard money. Moreover, the compromise fails to explicitly require that 527 committees make full financial disclosure of all sizeable contributions and expenditures within 60 days of the general election a move that seems quite necessary given the 527 groups' eagerness to exploit any loophole whatsoever. Any future permanent regulations promulgated by the FEC must, at a minimum, include these basic provisions for the true effect of the Act to be felt.

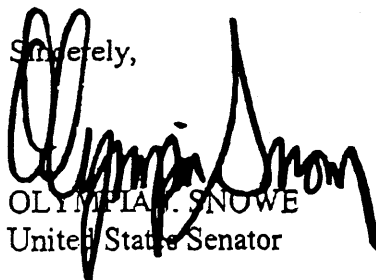
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Nevertheless, if the FEC does not take action now, the 527 groups' illegal campaign activities will go unchecked in this year's election cycle. I am particularly disturbed by the recent recommendation of the Commission's staff, encouraging the FEC to delay at least another 90 days before taking any rulemaking action. This document, released two days ago, further recommends that once this 90-day period ends, the Commission could either issue a second rulemaking notice or simply "defer the issuance of new rules and instead look for guidance from Congress." Either course of action would effectively give 527 groups a free pass from complying with federal election laws in the 2004 campaigns. Furthermore, the notion that the Commission must wait for further direction from Congress before applying BCRA to 527 organizations simply ignores the fact that they exist for the express purpose of influencing federal elections according to their filings with the Internal Revenue Service.

The Commission's unresponsiveness to date can be rectified by taking up, adopting, and immediately enforcing the Toner-Thomas proposal. This compromise is neither the ultimate solution, nor is it the perfect expression of Congress' intent in passing BCRA. It is, however, an immediate, proactive step that can be taken to force these political groups to play by the same rules as all others campaigning on behalf of candidates for national office.

Congress passed BCRA to root out the corrupting effects of soft money in federal elections, and the U.S. Supreme Court, in *McConnell v. FEC*, confirmed that this legislative approach was fully within the bounds of the Constitution. The FEC exists to carry out and enforce acts of Congress. By adopting and vigorously executing the Toner-Thomas proposal, the FEC will remain faithful to its duty.

Sincerely,



OLYMPIA SNOWE
United States Senator

cc: Hon. Ellen L. Weintraub, Vice Chair
Hon. David M. Mason, Commissioner
Hon. Danny L. McDonald, Commissioner
Hon. Scott E. Thomas, Commissioner
Hon. Michael E. Toner, Commissioner

