

Sen. John McCain Testimony on FEC
Senate Rules Committee
July 14, 2004

X I would like to express my appreciation to Chairman Lott for holding this important hearing on oversight of the Federal Election Commission.

X The Federal Election Commission is a failed agency. It has failed in its principal mission -- to interpret the campaign finance laws correctly and to enforce the laws effectively.

X I ask that a series of documents that illustrate the failures of the FEC, and my written statement be made part of the record.

After Congress passed comprehensive campaign finance reform in 1974, the FEC created the soft money loophole that allowed the very same kinds of large contributions to flow back into the system. The FEC then stood by passively while the soft money system grew to more than half a billion dollars by the 2002 election, and made a mockery of the law.

The FEC has spent the past two years, however, issuing regulations that opened up new loopholes in the Bipartisan Campaign Reform Act (BCRA), the law passed by Congress to close the loopholes the FEC had previously created. The FEC has also failed to act to stop the new schemes to evade the longstanding Federal Election Campaign Act, involving the so-called 527 groups.

In upholding the BCRA, the Supreme Court got it exactly right in placing the blame squarely on the FEC for creating the soft money system. The Court described the soft money allocation system as AFEC regulations [that] permitted more than Congress, in enacting FECA, had ever intended.@ The Supreme

Court noted that FECA was subverted by the creation of the FEC's allocation regime@ which allowed the parties to use vast amounts of soft money in their efforts to elect federal candidates.@ The Supreme Court flatly stated that the Commission's rules invited widespread circumvention@ of the law.

X There is perhaps no better example of the Commission's failure to do its job than the sorry story of how it has allowed section 527 groups to develop into new vehicles for spending soft money in the 2004 election.

The Commission, as far as we know, has taken no enforcement action against these groups, but instead decided to address these matters in a rulemaking. This new rulemaking has now dragged on for months, and the one thing that is certain is that the Commission will not take any action in time to stop the abuses in this year's election.

X The problems with the FEC can be understood by examining the attitudes of some of its members. The current chairman, Bradley Smith, has openly expressed his contempt for the law he is supposed to administer. He has said that the ideal system@ for regulating money in politics is no regulation.@ He has said that soft money is some of the best money@ and one of the good things in the system.@ He has also said, During my time in office, I have begun to question if there's any benefit from [campaign finance] disclosure. I'm not seeing that we are getting many benefits out of it.@ Most incredibly, this official who is sworn to uphold federal law has advertised his open contempt for it, saying of the Supreme Court's decision upholding BCRA: Now and then the Supreme Court issues a decision that cries out to the public, >We don't know

what we are doing.= McConnell is such a decision.@

What an extraordinary statement from a public official whose statutory responsibility is to enforce the laws of the land as written by Congress, signed by the President, and upheld by the Supreme Court! By the way, the Supreme Court has repeatedly rejected Mr. Smith=s views on the constitutionality of the nation=s campaign finance laws.

The approach of the Vice Chair, Ellen Weintraub, is similarly disturbing. In opposing any action by the Commission to address the problem with Section 527 groups in this election, Commissioner Weintraub said that Aat this stage in the election cycle, it is unprecedented for the FEC to contemplate changes to the very definitions of terms as fundamental as >expenditure= and >political committee= . . . sowing uncertainty during an election year.@

Ms. Weintraub has no business looking at the election calendar. What is her business is to enforce existing law. It should not matter to Ms. Weintraub whether we are in an even numbered year, an odd numbered year, fall, spring, winter or summer. Hers is an incredible statement as to how politics affects a Federal commission that is supposed to rule on laws, not political campaigns.

In contrast, Commissioners Scott Thomas, a Democrat, and Michael Toner, a Republican, are to be commended for their efforts in the recent 527 rulemaking to develop a sensible and targeted proposal to effectively address the 527 evasion taking place in this election. Unfortunately, one part of their proposal was rejected by a 3-3 vote, and another by a vote of 4-2.

X Beyond the views of its current members, there are three reasons why the

FEC can't work. First, the agency was designed to fail. With a 3-3 membership, Congress structured the agency in a way that maximizes the opportunity for deadlock.

Second, Congress denied the FEC the powers to be an effective enforcement agency. The third reason for the FEC's failure is the culture of the appointments process. The reality is that the congressional leadership of both parties, in consultation with party officials and party attorneys, send names to the White House which are then rubberstamped and sent to the Senate.

X Senator Feingold and I have introduced a bill that would address all of these problems. We urge the Committee to consider and act on this legislation. It would create a new three-member Federal Election Administration, or FEA. We believe that this structure would greatly improve the chances of having highly qualified people receive appointments to the agency.

X Nothing less than fundamental reform of the FEC will solve the problems that are endemic to the agency, and that only continue to get worse with time.