**Statement of Senator John McCain, Senate Committee on Rules**

**Wednesday, March 10, 2004**

In its recent opinion in *McConnell v. FEC*, the Supreme Court wisely noted that money, like water, is going to seek a way to leak back into the system. We already see that. Now that the parties have been taken out of the soft money business, there are efforts by political operators to redirect some of that money to groups that operate as political organizations under Section 527 of the IRS Code, or so-called ASection 527@ groups.

The game is the same: these groups are raising huge corporate and union contributions, and multi-million dollar donations from wealthy individuals, and want to spend that money on so-called Aissue@ ads that promote or attack federal candidates, and voter mobilization efforts intended to influence federal elections.

The tax laws say that a 527 group is a "political organization@ that is organized and operated primarily for the purpose of influencing the election of candidates.

In other words, any 527 group is by definition in the business of political campaigns, and it has voluntarily sought the tax advantages conferred on political groups. But these groups should not then be permitted to shirk their other obligations, including those under the campaign finance laws.

Use of soft money by 527 groups whose major purpose is to effect federal elections is not legal. This is not a matter of the Reform Act of 2002; it is a fundamental rule of federal election law since 1974. That law, as construed by the Supreme Court in *Buckley v. Valeo*, requires any group that has a Amajor purpose@ to influence federal elections, and spends $1,000 or more to do so, to register with the Federal Election Commission as a Apolitical committee,@ and be subject to the contribution limits, source prohibitions and reporting requirements that apply to all political committees.

That 527s have been allowed for years by the FEC to operate outside of the law is not surprising. In *McConnell*, the Supreme Court stated, in no uncertain terms, how we ended up in the soft money crisis to begin with. The Justices placed the blame squarely at the doors of the FEC, concluding that the agency had eroded the prohibitions on union and corporate spending through years of bad rulings and rulemakings, including its formulas for allocation of party expenses between federal and non-federal accounts.

The Supreme Court stated in *McConnell* that the FEC had Asubverted@ the law, issued regulations that Apermitted more than Congress . . . had ever intended@, and, with its allocation regime, Ainvited widespread circumvention of FECA=s limits on contributions.@

What we need today is for the FEC to enforce the law the way it should be enforced. This is what the FEC rulemaking is about. The FEC has been wrong with respect to its treatment of 527s for years, and the agency needs to get its house in order fast, and make clear that a section 527 group B a group that has voluntarily identified itself for tax law benefits as a Apolitical

organization@ B must comply with the federal election laws when its major purpose is to influence federal elections.

Section 527 groups need to play by the rules that all other political committees are bound by, the rules that Congress has enacted to protect the integrity of our political process B they need to raise and spend money that complies with federal contribution limits and source prohibitions for ads they run that promote or attack federal candidates or otherwise have the purpose to influence federal elections, and they need to spend federal funds for voter mobilization activities that are conducted on a partisan basis and are intended to influence federal elections. Just like every other political committee.

Let me also say that the FEC in this rulemaking must change its absurd allocation rules. Under these rules, a committee that wants to manipulate the law can arrange its activities to spend 100 percent soft money for voter drive efforts that obviously are for the purpose of influencing federal elections. Indeed, one of the 527 groups operating today-- America Coming Together, or ACT B has made overwhelmingly clear that its principle purpose is to defeat President Bush. Yet ACT recently filed a report with the FEC in which it claims that under the Commission=s existing allocation rules, it can fund its voter drive activities with 98 percent soft money. This is ridiculous, and it makes a mockery of the law. The Commission needs to put some teeth in its allocation rules, now.

But many other organizations, although politically active, do not have partisan politics as their primary purpose. Section 501(c) groups, for instance, are prohibited by the tax laws from having a primary purpose to influence elections. These groups thus operate under different rules, and appropriately so.

Section 501(c) groups can B and should B engage in nonpartisan voter mobilization activities without restriction. And under existing tax laws, Section 501(c) groups B unlike section 527 groups Bcannot have a major purpose to influence federal elections, and therefore are not required to register as federal political committees, as long as they comply with their tax law requirements. Much of the public controversy surrounding the FEC=s rulemaking stems from a failure to understand these simple distinctions.

It=s tempting to see everything that is done in campaign finance reform through a partisan lens. And sometimes, it=s true that things are done with partisan ends in mind. But we all need to remember that what may seem, in the middle of an election, to be in the short-term political interest of one party is not necessarily a good thing in the long run B even for that party.

I note that FEC Vice-Chair Ellen Weintraub opposed a rulemaking on 527 activity at this time, saying 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 Aexpenditure@ and Apolitical committee@ . . . sowing uncertainty during an election year.@ Weintraub stated AI will not be rushed to make hasty decisions, with far-reaching implications, at the behest of those who see in our hurried action their short-term political gain.@

In fact, what the FEC needs to do now is simply enforce existing federal election law as written by Congress in 1974 and interpreted by the Supreme Court in 1976. It defies the whole

purpose of the FEC to say that it should not enforce this law in the middle of an election year because such enforcement might effect that election. The fact that the FEC has neglected to enforce the law correctly for the last several years because it erroneously interpreted the rules for 527s is not a reason for the Commission=s continued failure to enforce it now that the Supreme Court has made it clear in *McConnell* that they should do so.

One of the problems the FEC faces today is that Commissioners refuse to acknowledge even the Supreme Court=s authority in this area. FEC Chairman Brad Smith=s response to the *McConnell* decision was to say; ANow and then the Supreme Court issues a decision that cries out to the public, 'We don't know what we're 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!

Mr. Chairman, it is statements like this that point out the need for fundamental reform of the FEC. I hope this Committee will hold hearings on the legislation that Senator Feingold and I have introduced to do this. The FEC=s current difficulty in dealing with an issue as straightforward as these 527 organizations spending soft money in the 2004 federal elections, and the 3-3 ties at the Commission when it recently considered an advisory opinion on this issue, are only the most recent examples of the need for FEC reform.

While FEC Vice-Chairman Weintraub spoke about her concern that the 527 issue was being raised for Ashort-term political gain@, I trust no one will suggest that my position in this hearing is so motivated. The Chairman certainly knows of the many occasions where I have been accused of neglecting partisan interests. My dedication to the cause of campaign finance reform goes back many years and will extend far beyond the current election cycle. The same may of course be said of my colleague, Russ Feingold, who joins me here today.

We believe the FEC needs to do what is right, which is to ensure that both the Federal Election Campaign Act of 1974 and the Bipartisan Campaign Reform Act of 2002, are fully enforced. I welcome recent efforts by the Republican National Committee to encourage enforcement of the law regarding 527 federal political activities. Support for enforcement is welcome no matter the reasons for it. Just as some former opponents of campaign reform now favor enforcement actions by the FEC, some of those who in the past urged enforcement of the law have suddenly changed their tune. Let me read you a portion of a letter sent to the Department of Justice asking for a criminal investigation of a 527 group which was proposing to run issue advertising and conduct voter registration for the purpose of affecting federal elections and which had failed to register with the FEC as a federal political committee.

> [It has} begun to raise $25 million so that this group can finance issue advocacy advertisements and get-out-the-vote activities. This organization plans to finance these activities from donations raised outside of the Federal Election Campaign Act=s (AFECA@ or the AAct@) source limitations and amount restrictions, and without regard to the FECA=s registration and reporting requirements. The result is an organization that is claiming tax-exempt status as a Apolitical organization@ under Section 527 of the Internal Revenue Code, but which is willfully refusing registration and reporting expenditures and contributions received.

This letter came from Democratic election law attorney Bob Bauer and his law firm Perkins Coie in 1998, objecting to a 527 created by Congressman Tom Delay. I agree with Mr. Bauer=s analysis of federal election law relating to 527s and federal political committees as stated in this letter. Unfortunately, Mr. Bauer and his law firm are now representing 527s who want to engage in the sort of activity which they argued only a few years ago was Aillegal@ and required criminal investigation. [Letter in record]

What this letter proves is that it is foolish for anyone-including Members of Congress or Commissioners of the FEC-- to make decisions on enforcing the election laws based on perceptions of short-term, inherently changeable, partisan considerations. Instead, precisely because partisan calculations change over time, and then change again, the only appropriate basis for interpreting the law in this area is the statutes themselves, and the principle of keeping corporate and labor funds out of federal elections.

With the Bipartisan Campaign Reform Act, we showed our constituents, in a bipartisan way, that we care about making sure that they have the political power in this country, rather than the Enrons and the WorldComs and unions and the wealthiest of the wealthy. We need to continue that work, not undermine it, at this critical time. And we need not wait until the election is over. The FEC should act as quickly as it can to settle this matter, and bring the confusion over these groups to a close.

I hope the Commissioners will not let short-sighted political or personal ideological concerns deter them from the right course B for themselves, for their parties, and for the public they represent.