Testimony of Lawrence Noble
Executive Director
The Center for Responsive Politics

Before the Senate Committee on Rules and Administration

Hearing on the Scope and Operation of Organizations Registered Under Section 527 of the Internal Revenue Code

March 10, 2004

Mr. Chairman, and members of the committee, my name is Larry Noble. I am executive director of the Center for Responsive Politics, a non-partisan, non-profit research organization that studies money in politics and its impact on elections and public policy. Prior to joining the Center in 2001, I was general counsel of the Federal Election Commission for 13 years. I appreciate the invitation to address the committee today on the question of the scope and operation of organizations registered under Section 527 of the Internal Revenue Code.

The Center for Responsive Politics was founded in 1983 by two U.S. Senators, Democrat Frank Church of Idaho and Republican Hugh Scott of Pennsylvania, who wanted to make Congress more responsive to the public. As part of its mandate, the Center began to examine the relationship between money and politics during the 1984 presidential elections, when it first studied contribution patterns to federal candidates. Since 1989, we have systematically monitored contributions to federal candidates and political parties, both from political action committees and from individuals. Starting in 2003, we began to download and analyze the information filed with the Internal Revenue Service by the "Section 527" groups– entities registered as "political organizations" under section 527 of the Internal Revenue Code, 26 U.S.C. § 527. We publish the results of our work on our Web site, OpenSecrets.org.

The Center is a strictly non-partisan organization. The reason for our existence is simple: to inform citizens about who's paying for federal elections and who is in the position to exercise influence over the elected officials who represent the public in our nation's capital. A February 23, 2004 *New York Times* editorial referred to CRP as "a research group dedicatedly nonpartisan in publicizing the power of money in politics." It is with our mission in mind that we I offer these comments.

At the outset, I would like to note that questions surrounding the scope and operation of section 527 groups under the campaign finance laws have been, and still are, before the Federal Election Commission (FEC) in the context of enforcement complaints, advisory opinion requests and now a rulemaking. Because we believe these issues are critical to the integrity of the law, CRP has joined with two other nonpartisan organizations, The Campaign Legal Center and Democracy 21, in filing complaints with

the FEC regarding several of these 527 groups. We also have filed comments with the FEC on two advisory opinion requests—one from a Republican group and one from a Democratic group (since withdrawn)—addressing these legal issues in detail, and we will be filing comments on the rulemaking. While I would like to now briefly summarize what we have said in these other contexts, I also have attached a copy of one of the complaints and one set of comments to this testimony. These documents more fully explain the factual and legal basis for our belief that the activities of some of these 527 organizations violate the law and I ask that they be made part of the record.

When Congress enacted the Bipartisan Campaign Reform Act of 2002 (BCRA), the national party committees were cut off from the soft money contributions historically made by corporations, labor unions and individuals. This was no small matter to the political parties, as these contributions were often given in five-, six-, and even seven-figure amounts. In fact, in the 2002 election, which was the last in which the parties could raise soft money, the Democratic Party raised $246 million in soft money, while the Republicans raised $250 million. For the Democrats, this was slightly more than half of all the money they raised in that cycle, while the Republican Party soft money funds made up about 36 percent of what they raised.

As expected, as soon as it became clear that BCRA was going to become the law, some party officials, political operatives and soft money donors on both sides immediately began to look for ways to redirect this soft money back into the political process. One of the main avenues chosen involves the use of the 527 groups, including groups like Americans Coming Together (ACT), the Media Fund and the Leadership Forum. While both Democratic and Republican 527 groups have been formed, there has been much more activity on the Democratic side, which is not surprising given the hard money advantage the Republicans have and how much more reliant the Democrats were on soft money prior to BCRA.

This latter point is important in putting the 527s—and the reaction to them—in context. The political reality surrounding the 527s and their potential impact on this election is the elephant and donkey sitting in the middle of the room. What happens with the 527 organizations will inevitably impact this election, and that is undoubtedly influencing how a lot of people look at the issue. But that does not change the fact that these groups must act in compliance with the law. When you step back and look at the bedrock legal issues involved, it is clear that the 527 groups set up to elect or defeat Democratic or Republican candidates for federal office are federal political committees, and as such they cannot be used to funnel soft money back into the election. That is true for 2004, and it will continue to be true for 2006 and 2008.

Since the question comes down to whether the 527 groups established to defeat or elect a federal candidate are political committees under the Federal Election Campaign Act (FECA) of 1971, it is useful to walk through the statute. In doing so, however, I think it is important to keep in mind that I am talking about section 527 groups, not those that fall under §501(c) of the Internal Revenue Code.

FECA defines the term "political committee" to mean "any … group of persons which receives contributions … or which makes expenditures aggregating in excess of $1,000 during a calendar year." 2 U.S.C. §431(4) In turn, an "expenditure" is defined as "…anything of value made … for the purpose of influencing any election for Federal office…" 2 U.S.C. §431(9)(A) Under these definitions, a group that spends more than $1,000 for the purpose of influencing a federal election would be a political committee. However, in order in order to avoid the statute being unconstitutionally overbroad, the Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1976), further construed the term "political committee" to include only "organizations … the major purpose of which is the nomination or election of a candidate." 424 U.S. at 79 Therefore, determining whether a group is a political committee depends on a two-step analysis: 1) What is the organization's major purpose, and 2) has it made a contribution or expenditure in excess of $1,000?

First, what is the major purpose of 527 groups like ACT? Organized under section 527 of the Internal Revenue Code, they have defined themselves as "political organizations" that are operated "primarily" for the purpose of influencing candidate elections. The Supreme Court said in *McConnell v. FEC,* 540 U.S. ___ (slip op. December 10, 2003), that "section 527 'political organizations...by definition engage in partisan political activity." Slip op. at 62, n.64. As we describe more fully in the attached complaint, the statements and activities of these organizations also make it clear that their major purpose is to influence the election of a particular candidate or candidates for federal office. Therefore, these groups meet the major purpose test of the Federal Election Campaign Act.

Next, is the question of whether they are making an "expenditure" in excess of $1,000. As noted, under FECA, "expenditure" is defined to mean disbursements made "for the purpose of influencing" any federal election. In our view, groups that are spending millions or tens of millions of dollars for partisan voter mobilization activities aimed at the general public or for broadcast advertisements aimed at defeating President Bush, or supporting the election of Republican candidates to the House, are clearly making "expenditures" under FECA. (Because the major purpose of these groups is the election or defeat of federal candidates, neither the "express advocacy" nor "electioneering communications" tests are necessary to determine if they are engaged in political activity.)

This, of course, does not mean that 527 groups can't undertake activities aimed at electing or defeating federal candidates. What it does mean is that when they do so they have to play by the rules applicable to all federal political committees and must use hard money raised under the limits and prohibitions of the law.

Thank you. I will be glad to try to answer any questions you may have.