

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
FEC PRESS OFFICE
FEC PUBLIC RECORDS

FROM: OFFICE OF THE COMMISSION SECRETARY *S.H.*

DATE: May 12, 2004

SUBJECT: *Ex Parte* COMMUNICATIONS
RE: Political Committee Status Regulations

Transmitted herewith are *ex parte* communications regarding the above-captioned matter.

Proposed final regulations are on the agenda for Thursday, May 13, 2004.

Attachment



CONGRESS OF THE UNITED STATES

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2004 MAY 12 P 2: 22
May 12, 2004

Mr. Bradley C. Smith, Chairman
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Bradley:

I am writing in response to recent media reports that the Commission is considering postponing issuing new rules for the regulation of 527 organizations for an additional 90 days.

I believe the Commission's responsibility to expeditiously clarify and properly enforce the federal election laws with respect to 527 organizations is clear, and oppose further delay on this paramount issue.

I do not believe, for example, that the arguments presented by the General Counsel for delaying activity in any way apply to the essential need for revising the incorrect existing Federal Election Commission allocation rules that are being used by outside groups to spend 98 percent soft money on activities to influence the 2004 presidential elections. The Commission has a clear obligation to act on this issue now.

Congressman
Christopher Shays
Fourth District Connecticut

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It was my understanding the Commission planned to vote as early as May 13, on a proposal put forward by Commissioners Scott Thomas and Michael Toner April 30, to close the 527 loopholes and correct past misinterpretations by the Commission of the Federal Election Campaign Act.

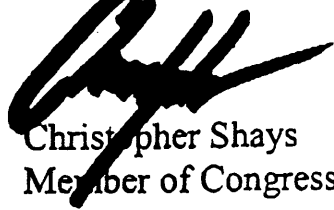
The Toner-Thomas proposal is a strong, bipartisan solution to a problem that needs fixing. In order to protect the integrity of our campaign finance laws in the 2004 federal elections, I believe the Commission must act now to approve it and make it effective immediately.

Mr. Bradley C. Smith, Chairman -- May 12, 2004 -- Page 2

To do nothing would be to condone loopholes that will have grave consequences for the efficacy of the federal election laws and again leave the public with the impression that the election laws can be circumvented without any consequence. This result, coming so soon after Congress closed the last loophole created by the Commission, would be most unfortunate.

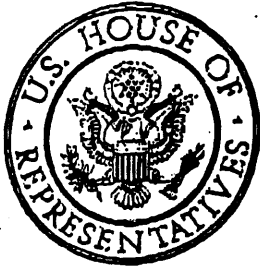
Thank you for your consideration of these comments.

Sincerely,



Christopher Shays
Member of Congress

CS:dr



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Washington, DC 20463

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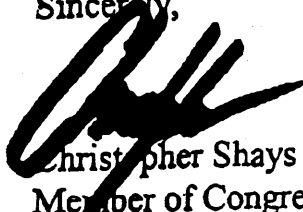
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Thank you for your consideration of these comments.

Sincerely,


Christopher Shays
Member of Congress

CS:dr

STATEMENT OF SENATOR JOHN MCCAIN REGARDING THE TONER/THOMAS 527 COMPROMISE AND THE PROPOSED 90 DAY DELAY IN FEC RULEMAKING

Mr. McCAIN. Mr. President, I'm joined on the floor today by my good friend from Wisconsin, Sen. Feingold, to speak briefly about a recent recommendation by the General Counsel of the Federal Election Commission (FEC) to delay the 527 rulemaking another 90 days. Additionally, we'd like to express support for an excellent bipartisan proposal by two members of the FEC to resolve the issue of 527 groups spending illegal soft money to influence federal elections. As my colleagues know, the problem of 527 groups raising and spending soft money has somehow become a very contentious and partisan issue. That's unfortunate, because it need not be, and the Toner/Thomas proposal proves the point.

As my colleagues know, the General Counsel of the FEC made a recommendation yesterday to delay the 527 rulemaking which the Commission is to rule on tomorrow. This is a terrible idea. There is simply no reason for the Commission to continue fiddling while Rome burns. The Commissioners need to decide the 527 issue tomorrow, on schedule, without more pointless delays. Everyday, 527 groups whose purpose is to influence the presidential election are breaking the law. They're spending millions of dollars in soft money to influence federal elections in plain violation of the Federal Election Campaign Act of 1974, which the Commission has failed to enforce for a generation. And these groups are now using the FEC's inaction to blow a hole in the soft money ban upheld by the Supreme Court.

In the middle of an election cycle, the FEC is considering taking a pass on the most critical issue on its plate. If they do, it will be just one more example of the agency's utter inability to enforce election law. My colleague Trent Lott recently said he was considering hearings on FEC reform, and if this absurd delay happens, I think we may be talking about hearings sooner rather than later. The FEC is responsible for the start of soft money in the first place. They must not get away with it again.

This is particularly galling because the main reason the General Counsel's office gives for its delay - the size and complexity of the rulemaking, and the possible impact on 501(c) organizations - is a canard. There's an excellent, bipartisan proposal on the table from Commissioners Toner and Thomas that would deal with the 527s in a simple, straightforward way. With their proposal, the Commission has the perfect opportunity to prove they can uphold the election laws that were passed by Congress more than 25 years ago, signed by the President, and upheld by the Supreme Court. It may sound a little odd to be excited at the prospect of a federal agency properly upholding existing law, but in the case of the FEC, it would be something of a new phenomenon.

There is absolutely nothing in the General Counsel's rationale for delaying action here

that justifies refusing to act now to fix the FEC's absurd allocation regulations that are being used to spend 98 percent soft money to influence the presidential election. The General Counsel's recommendation provides no excuse for failing to act tomorrow on the portion of the Toner/Thomas proposal that would fix the allocation rules and correct the FEC's mistake in adopting them, a mistake made clear by the Supreme Court decision *McConnell v. FEC*. The only conclusion that can be reached if action to correct the allocation rules is rejected by the FEC is that the Commission wants to protect and license the illegal use by 527 groups of soft money to finance partisan voter mobilization efforts to influence the 2004 presidential election.

Mr. President, the bipartisan proposal by Commissioner Michael Toner, a Republican, and Commissioner Scott Thomas, a Democrat provides a clear, effective and immediate solution to the soft money problems that have arisen with these 527 groups. The FEC is supposed to meet tomorrow to consider this proposal, and I strongly urge them to adopt the proposal and seize this opportunity to enforce the law.

First, I want to note that their proposal would explicitly apply only to 527 political committees, and not to 501(c) nonprofit groups, which should take care of the concerns of those in the nonprofit community that the FEC would overreach, and affect their own important work. That is simply no longer an issue, and the Commission can act tomorrow, rather than waiting around until a more convenient moment to enforce the law.

The Toner/Thomas proposal deals with what we believe to be the two main problems with the 527 groups. First, their plan would fix the Commission's absurd allocation rules, which control the mix of soft and hard money these groups can spend. Under the current rules, 527s can simply claim that they're involved in both federal and state elections, even though they're obviously and admittedly clearly working for the sole purpose of defeating or electing a presidential candidate. That claim, and the absurd FEC rules that currently exist, has led one such 527 group to use 98 percent soft money for their partisan voter mobilization activities to influence the presidential election and only two percent hard money. That's an obvious circumvention of the longstanding Federal Election Campaign Act (FECA) as well as the new ban on soft money in federal elections, and a hole in the dike that absolutely must be plugged.

The Toner/Thomas plan would deal with this by simply requiring groups involved in partisan voter mobilization activities in federal elections to use a minimum of 50 percent hard money to pay for those activities. That straightforward, easy to understand rule will have the effect of substantially limiting the amount of soft money a 527 group can use on these activities, and I believe it's an effective way to deal with the problem at this time.

The second issue the two Commissioners' plan would address is the use of soft money by these 527 groups to run attack ads attacking and promoting presidential candidates. These groups are claiming that they're exempt from the normal federal rules prohibiting the use of soft

money to fund such ads because they're not political committees under FEC rules. In essence, these political organizations are claiming that as long as their ads don't use words like "vote for" or "vote against," they can spend as much soft money as they please attacking and promoting federal candidates.

Mr. President, that argument is simply absurd, even though the FEC's failure to properly enforce the law has allowed it to gain currency over the years. In order to qualify for their 527 tax status, these organizations have to meet the IRS test of being groups that are "organized and operated primarily" to influence elections. And under the Federal Election Campaign Act, which has been around since 1974, groups that have a primary purpose of influencing federal elections and raise or spend \$1,000 to do so have to register as political committees and comply with federal campaign finance laws. 527 political groups have sprung up in this election with the clear and sole purpose of influencing the presidential election. Under existing laws and Supreme Court rulings these groups can run whatever ads they want - but they have to register as federal political committees and they do have to abide by the same federal campaign finance rules as all other political committees and candidates have to play by, and pay for those ads with hard money.

The Toner/Thomas proposal clears up this issue by correctly deeming any organization operating as a political group under section 527 of the tax code to have a "major purpose" of influencing federal elections, unless the group falls within certain specified exemptions. This common-sense approach simply corrects the FEC's failure to properly interpret the law in the past as it applies to 527 groups. It makes it clear that 527 political groups that have a major purpose to influence federal elections and spend more than \$1,000 to influence a federal election have to comply with federal campaign finance rules, regardless of whether their communications contain express advocacy.

Again, Mr. President, we have a golden opportunity here to fix an emerging problem before it gets out of hand. The Commission should take this rare opportunity to show they can do their job in a bipartisan way. They should approve the Toner/Thomas proposal on Thursday.

