



## FEDERAL ELECTION COMMISSION

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### **Statement on Tribal Political Contributions by Commissioner Hans A. von Spakovsky February 8, 2006**

On Wednesday, February 8, 2006, FEC Chairman Michael Toner and Vice Chairman Robert Lenhard testified before the Senate Indian Affairs Committee at the invitation of Chairman John McCain about the treatment of political contributions by Indian tribes under the Federal Election Campaign Act of 1971 ("FECA").

FECA bars corporations and labor unions from making political contributions under the reasoning that such money flowing into the political process would lead to "corruption or the appearance of corruption." Since the passage of FECA, a "loophole" - whether intended or unintended - has existed that allows Indian tribes to be treated as *persons* for political contributions, yet the aggregate limit in FECA that applies to *individual* contributors does not apply to Indian tribes because the tribe is an organization rather than a human individual. Individuals face both a candidate contribution limit of \$2,100 per election and an aggregate contribution limit on contributions to all candidates of \$101,400 in a two-year period. While the candidate limitation of \$2,100 applies to Indian tribes, the aggregate limit of \$101,400 does not, allowing Indian tribes to give the maximum contribution to as many candidates as they want. This has resulted in Indian tribe contributions outpacing both the defense industry and manufacturers. "*Tribes' donations since 1999 top \$25M,*" Roll Call, January 30, 2006.

It is true that the aggregate contribution limit also does not apply to Political Action Committees ("PAC's"). However, PAC's must register with the FEC and report all of their financial contributions and expenditures to ensure transparency in their involvement in the political process - Indian tribes do not.

One of the obvious reasons for the huge increase in tribal donations is due to funding generated by casino gambling on Indian reservations. Political campaigns are thus the recipients of gambling funds - but only gambling funds from unincorporated Indian tribes, and not gambling funds from other corporations. Although Congress probably did not contemplate this issue in 1971, will it now regulate Indian tribes? If not, why not? Is the political speech of Indian tribes involved in the gambling business not as "corrupting" as that of corporations or labor unions? Is there greater value on their speech versus the speech of other groups and individuals?

The main excuse given for not applying the FECA restrictions to Indian tribes is that they are “sovereign” governments. That status gives them the right to impose tribal laws on their members and on their reservations. But when they leave tribal lands, they have to abide by the same laws and regulations that apply to everyone else – and that should be particularly true when they participate in political campaigns that affect how all citizens are governed.

If Indian tribes are to be treated as individuals under FECA, then the individual aggregate limit should apply. If tribes are not going to be subject to the aggregate limit, then they should have to register and report their financial contributions and expenditures with the FEC just like a PAC. Similarly, all restrictions imposed on corporations that are involved in the gambling industry should apply to tribal organizations that are involved in the gambling industry. This is a matter of fundamental fairness and equity.

However, if Congress decides that there is no corruption justifying applying the same restrictions to Indian tribes that everyone else has to live with, perhaps Congress should also question why others have those restrictions. Only Congress can correct this statutory glitch – the FEC does not have the ability to change the statutory provisions that created this loophole. Congress could have fixed this in 2002 when it passed the McCain-Feingold campaign reform law that amended FECA but chose not to – will it finally remedy this problem now?

*“Bad laws are the worst sort of tyranny.”* Edmund Burke, 1780.