

527 Rules Needed Now

Now that the Supreme Court has upheld the constitutionality of the McCain-Feingold campaign finance law, a key question remains to be decided: With the national parties strictly barred from raising and spending soft money, can tax-exempt outside groups, organized under Sections 527 and 501(c) of the tax code, legally take the parties' place and spend unlimited soft money on election-related activities that could directly affect the 2004 presidential and Congressional elections?

The Federal Election Commission has an obligation to decide this critical legal question as soon as possible. If the answer is yes, almost all campaign finance observers agree that the McCain-Feingold law will be severely undermined, and that at least as much soft money will be spent on electoral activities in 2004 as was spent before the new law was enacted.

The stakes are very high. Published reports indicate that Democratic-oriented tax-exempt groups plan to spend hundreds of millions of dollars of corporate, union and other soft-money funds to air advertisements attacking President Bush and to conduct voter-mobilization activities in targeted states. Press accounts indicate that a group called America Coming Together is aiming to spend at least \$95 million on Democratic voter identification and get-out-the-vote activities in key states. Billionaire currency trader George Soros has reportedly pledged more than \$15 million to ACT and MoveOn.org to help underwrite these efforts. Moreover, an outside entity named the Media Fund, headed by Harold Ickes, a former aid to President Bill Clinton, reportedly plans to spend nearly \$100 million to finance television and radio advertisements critical of President Bush.

All told, published reports indicate that Democratic-oriented outside groups are planning to spend at least a quarter of a billion dollars on election-related activities. This year alone outside spending by Democratic groups could exceed the \$245.2 million of soft money that the Democratic Party's national committees spent during the entire 2000 election cycle.

Although Democratic-oriented Section 527 and 501(c) groups

have received more media attention to date, there is little doubt that Republican groups are poised to also spend vast amounts of soft money prior to Election Day if it is determined to be legally permissible.

The FEC is scheduled to rule in early February on an advisory opinion sought by a Republican tax-exempt group known as Americans for a Better Country. However, in order to comprehensively address the legal ability of outside tax-exempt groups to spend soft money on election-related activities, the commission needs to issue binding regulations as soon as possible.

The FEC issued final regulations implementing the national-party soft-money ban 90 days after McCain-Feingold became law. I believe the commission should issue rules governing outside groups with similar expedition. If the FEC issues final rules by mid-April, it would ensure, no matter what the agency decides, that the rules are effective for the 2004 presidential election.

I do not prejudge what legal rules the FEC should issue. However, in upholding the constitutionality of the McCain-Feingold law, the Supreme Court repeatedly indicated that the government has the power to prevent circumvention of the campaign finance laws. Outside tax-exempt groups are seeking to essentially replicate, with soft-money funds, much of the issue advertising and voter-mobilization activities that the national parties financed with soft-money funds before the new law was enacted. At the very least, serious questions exist whether outside groups are circumventing the McCain-Feingold law, and these questions must be addressed.

In the weeks ahead, it will be critical that the sponsors of the McCain-Feingold law indicate whether they believe outside tax-exempt groups can legally spend unlimited soft money on election-related activities in the place of the national political parties under the new law. I believe the FEC should decide this important question as soon as possible, before the outside groups spend the millions of dollars they are currently amassing. The future effectiveness of the new campaign finance law may largely hang in the balance.

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