

More Freedom Is Answer to 527 Reform

by Rep. Mike Pence
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The following testimony was delivered Tuesday to the House Rules Committee.

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today to discuss my amendment in the nature of a substitute to the underlying Shays-Meehan bill, the 527 Reform Act, as well as one perfecting amendment. I humbly sit before you this afternoon, fighting for freedom in the political marketplace.

As you may know, I was the sole House plaintiff in the McConnell case before the United States Supreme Court against the Bipartisan Campaign Reform Act of 2002, which is riddled with regulations and penalties that hinder free speech. So I've been down this road before.

But since I last fought for political freedom, one big thing has changed. The soft money ban from the first Shays-Meehan law forced money away from the political parties and ushered in what I like to call the "Summer of 527s." Because political speech and the money supporting such speech will always find a home in a free society, Swiftboat Veterans and MoveOn.org dominated the 2004 election airwaves, leaving political parties, political action committees, and the campaign committees of George Bush and John Kerry with very little control over their own messages.

Most people can agree that this imbalance in the political system is a problem. Where honest people then differ is the solution to the problem. To regulate or not to regulate; that is the question before us.

Mr. Chairman, I'm from a basketball state, so I tend to frame all issues in terms of basketball. In this case, if there are four people playing basketball, and three of them have rocks in their shoes, there are two ways to create a level playing field: put rocks in the fourth guy's shoes, or let the other three take the rocks out of their shoes.

Similarly, in the campaign system, we can fix an inequity by adding more burdensome federal regulations on the freer entities-in this case 527s-or we can remove some regulations from the other players in the system-parties, citizens groups, PACs, and trade associations.

More regulation or more freedom?

Mr. Chairman, this is the deregulatory underpinning of my substitute amendment today, co-authored by Congressman Wynn of Maryland. The amendment is identical to the committee-reported version of 527 Fairness Act, so named because it aims to bring fairness to the political system largely by leaving 527s alone and by freeing up what other groups can do and say. Instead of pushing down the 527s, as some have proposed, my substitute aims to lift up the other players by injecting more freedom into the campaign system.

Let me quickly highlight a few things the Pence-Wynn substitute does and does not do. **Pence-Wynn DOES:**

1. **Remove the *aggregate* contribution limits** on contributions to federal candidates and other committees (like parties and PACs) - so individuals can support as many candidates and as many campaign committees as they want;
2. **Remove the coordinated *spending* limits** now imposed on national political parties - the *only* entities with spending limits that were established in 1974 - so that parties can spend what they want on their own candidates; and
3. **Allow state and local parties** to spend non-federal dollars for voter registration and sample ballots. This is an issue dear to Mr. Wynn and I'm sure he'll expand on it in his testimony.
4. **Repeal the Wellstone Amendment to the first Shays-Meehan bill for electioneering communications by grassroots organizations.** That is, our substitute would reinstate the Snowe-Jeffords provisions of the *original* Shays-Meehan bill a few years ago to allow grassroots organizations to receive and spend contributions from *individuals* for electioneering communications (the same thing that 527s are currently allowed to do). We should stop forcing grassroots organizations to establish a federal PAC in order to engage in political speech in the days leading up to an election.
5. **Encourage Contributions to Federal PACs** by increasing and then indexing PAC contribution limits and by repealing the onerous "prior approval" rules for PAC solicitations by trade associations.

Now let me emphasize what the Pence-Wynn substitute does NOT do. It does NOT:

1. Repeal the limits on individual contributions to candidates or other campaign committees (so that even in the absence of an aggregate, an individual could still only give up to \$2,100 to any candidate per election, and up to \$26,700 to any party committee per year);
2. Undo any other major provision of the last Shays-Meehan bill (as much as I might wish it would);
3. Allow "soft money" to the national political parties; or
4. Try to restore balance to the campaign system by over-regulating 527s...in the hope that doing so is the silver bullet for a Republican majority as far as the eyes can see.

Mr. Chairman, I'd like to quickly mention the other amendment I'm offering today. It is a perfecting amendment, in case the Pence-Wynn substitute does not prevail.

My perfecting amendment would carve the national party committees out of the individual aggregate contribution limits and remove the individual subaggregates, so that donors don't have to choose between party committees.

That is, individuals would still only be able to contribute \$26,700 to any single national party committee (like the DNC, the NRCC, etc.) per year, and individuals would still only be able to contribute a total of \$101,400 to candidates and other committees (like parties and PACs) this election cycle, but the contributions to the national parties would NOT count toward the overall aggregate (\$101,400).

Furthermore, the \$101,400 aggregate limit for individuals is currently divided into subaggregates (\$40,000 to candidates, \$61,400 to other committees). This amendment would eliminate those subaggregates (but retain the overall \$101,400 aggregate).

While I'd prefer to eliminate the aggregate contribution limits altogether, as in the Pence-Wynn substitute, I am offering this perfecting amendment as a compromise between full repeal and leaving the current aggregates in place. We need to direct the flow of money back toward the parties, where it would be more visible and more accountable, and this carveout compromise is one way to do just that.

Before I close, Mr. Chairman, I'd like to make a few observations.

Many supporters of the latest iteration of Shays-Meehan argue that we need to increase federal regulations on citizens groups--527s--because of frustration with the campaign calls that their constituents are receiving, supposedly funded by 527s and supposedly spreading damaging messages about incumbents. But Mr. Chairman:

- There's nothing in Shays-Meehan that would stop these calls from continuing.
- Even if the bill **did** stop 527s from making calls critiquing government officials, and even if we think this is an acceptable goal in a free society, how do we know that most of the current calls are coming from 527s and not from 501(c)4 groups or from wealthy individuals?
- And lastly, do we really think that we can regulate our way out of criticism from American citizens? We shouldn't want to, and we shouldn't give ourselves the power to do so.

So what will Members do when the calls don't stop? Will we continue to play regulatory whack-a-mole by clamping down on the entities that dare escape the maximum federal regulations-501(c)4s, media corporations, and individuals?

As usual, the American people are at least one step ahead of Congress. According to the IRS website, the MoveOn.org Voter Fund (their 527) reported just \$14,544 in total expenditures and zero contributions over \$200 during the last six months of 2005. But MoveOn.org's **PAC**, which would NOT be affected by the new Shays-Meehan, reported \$3.9 million in funds raised during the last half of 2005 and \$1.2 million cash-on-hand as of Dec 31, 2005.

So, in at least one large respect, the new Shays-Meehan bill won't do what it's supposed to do. And perhaps we should be thankful.

In closing, Mr. Chairman, greater government control of political speech is not the solution to political inequities. More freedom is the answer.

And while this freedom may be less convenient, less predictable for some in the political class, as Thomas Jefferson said, "I would rather be exposed to the inconveniences attending too much liberty than those attending too small a degree of it."

My amendments today are about answering the inequities of the "Summer of 527s" with the only antidote a free people should ever administer: more freedom.

Mr. Chairman, thank you again for the opportunity to appear today before the Rules Committee. I would be happy to answer any questions the Committee may have for me.

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