

Response from Michael Malbin of the Campaign Finance Institute:

Brad Smith, John Samples and Bob Bauer have all criticized the recent Campaign Finance Institute study, Nonprofit Interest Groups' Election Activities and Federal Campaign Finance Policy by Stephen Weissman and Kara Ryan, as if the study recommends new regulation of these activities. (Samples uses the word "proposal." Smith says that it is "clear" where we think the debate ought to go.) Since I cannot figure out how to post to their blogs, I am sending this to the Election Law list and to them individually.

The claims simply are not true. The paper said that you could not look at PACs, 527s and 501(c)s in isolation from each other. It also predicted that regulating contributions to 527s would be likely to drive money into 501(c)s, particularly if the IRS fails to monitor political expenditures. It did *not* say that political activity by nonprofits should therefore be regulated more than they are under current tax law. It specifically said, for example, there is still room for debate whether contributions from individuals to any truly independent nonprofit group (including a 527) should be subject to limits.

The study did focus on large, enduring, politically active organizations because these generate sustained pressure on the system and force us to confront the easy assumptions that have driven much prior debate. These groups' own leaders describe their organizations in public statements and in court depositions as spending millions on election related projects while they generally report little or nothing in political expenditures on their 990 Forms. Based on this, the report argued that there ought to be better definition and disclosure of election expenditures on the 990s. It also argued that to the extent that 501(c)s spend major amounts on elections, there will inevitably be pressure to look at the funding sources for these expenditures and not just at the amounts. And before anybody jumps on me, note that the words in the last sentence say "look at" not "limit". Some will push for contribution limits, others will ask for disclosure, others will seek to roll back the disclosure currently called for by the IRS.

Let me also note in the interest of full personal disclosure that a CFI Task Force in 2001 recommended that any organization spending more than \$50,000 per year on election communications -- regardless of the organization's corporate form -- should be required to disclose contributors who give more than a threshold amount. To protect an organization's ability to receive anonymous contributions for non-election activities, the report recommended that organizations put their election funds into a separate bank account and that the required disclosure be limited to that account.

Whatever one may think of this idea, any policy (including the current IRS rules for Form 990s) presupposes an ability to distinguish electoral from non-electoral expenditures. We know that any such definitions are bound to be controversial. Arguments over similar definitions have kept many lawyers in business for years. We also are well aware that a bad definition could harm activities that ought not to be harmed. That is why the conference was structured to include representatives from the nonprofits as well as campaign finance law specialists. The paper is a path breaking study that puts uncomfortable facts on the table. It was meant to be the opening gambit in a conversation. It was not a "proposal." Whether one likes the facts, that conversation needs to take place.

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