Testimony of Senator Russell D. Feingold
Committee on Rules and Administration
Hearing to examine and discuss S. 271, a bill which reforms the regulatory and reporting structure of organizations registered under Section 527 of the Internal Revenue Code
March 8, 2005

Mr. Chairman, members of the Committee, I want to thank you for this opportunity to testify in favor S. 271, the 527 Reform Act. This Committee is beginning to feel like a home away from home for Sen. McCain and me. The first time we testified here, almost exactly a year ago, it had been eight years since our last appearance. Now this is our third visit in a year. It's good to be back.

I am very pleased that you have joined the reform team, Mr. Chairman, and indeed, have taken a leadership role on this bill. I enjoy working with you and I am very hopeful about what we can accomplish together this year. I also want to thank the Ranking Member, Senator Dodd, for all he has done for campaign finance reform over the years. I look forward to working with him on this legislation as well.

Mr. Chairman, let me be very clear, the reason we are here today is not because of a loophole in the McCain-Feingold bill. Rather, we are here because the FEC has failed to do its job enforcing a law that is now over 30 years old.

Our bill, as you know, was concerned with the raising and spending of soft money by the political parties, and with phony issue ads run by outside groups in proximity to an election. And it worked, despite a campaign of misinformation that lives on today with

false and misleading attacks. For example, last week the charge was made that McCain-Feingold would go after bloggers. Nothing could be further from the truth, as you know.

The fact is, the real result of the McCain-Feingold bill is that members of Congress are no longer calling up CEOs or union leaders and asking them for huge contributions to the political parties. We ended the corrupting influence of unlimited corporate, union, and individual contributions. Some thought this would destroy the parties – in fact, they have flourished. In the last election, for the first time in nearly two decades, our parties and our candidates concentrated on raising money from average citizens empowered by our reform effort. And they raised more hard money in 2004 than they had raised in soft and hard money *combined* in the 2000 cycle.

The last thing we need to do is reopen the big money game by raising the hard money limits, as I have heard that some want to do. We significantly raised the limits in the McCain-Feingold bill. We indexed most of those numbers for inflation. The parties are doing fine under these new limits; let's not tempt fate by reopening that issue on this bill. Indeed, this bill must not be used as a vehicle to reopen any provision of BCRA.

As we have said for over a year, the question of whether and how 527s should be regulated in their fundraising and in their spending on other activities is a question that should have been answered under the Federal Election Campaign Act passed by Congress in 1974, and upheld and modified by the Supreme Court in the Buckley case. Our

position is and has been from the outset that S. 271 is simply a clarification of existing law.

I was struck by the testimony of Prof. Hill, who you will hear from later today, about the game of what she calls "statutory arbitrage" that has been going on. Lawyers for politically active organizations realized the tax advantages of the 527 tax status, which also dates back to the 1974 law, and worked hard to convince the IRS that they qualified for it because their work is partisan and political, while at the same time arguing to the FEC that they are actually engaged in issue advocacy and nonpartisan efforts so they shouldn't have to register as political committees. The FEC could have called a halt to this last year prior to the general election, but it dropped the ball. Congress has to end this game now and this bill is the way to do it.

I say this bill is the way to do it, but that doesn't mean I am wedded to every section and every provision, or that improvements cannot be made. This is complicated stuff because we do not want to regulate 501(c) organizations, and we do not want to regulate organizations who work only on state elections and whose activities do not influence Federal elections. As I said before the Senate Rules Committee nearly one year ago today, care must be taken not to chill the legitimate activities of 501(c) advocacy organizations that do not have the primary purpose of influencing elections.

We remain very serious about that today. I urge the Committee to work with us, and help us repair any problems you may find. Don't just assume, as some of our critics

do, that if there is a flaw in the language, we must have some dark and hidden motive. I think, for example, that Commissioner Mason, who you will hear from later, has identified some important points that may need to be clarified or fine-tuned in this bill. Even though he was part of the group at the FEC who rejected the effort to regulate the 527s last year, I don't by any means reject his constructive criticisms and analysis out of hand.

But I also ask you to make sure to read the bill carefully before believing that the critics have caught a flaw. I have heard, for example, that one critique floating around says that our bill will cover state candidates and parties. It won't. Note the reference to section 527(i)(5) of the Internal Revenue Code in the exceptions on page three of the bill. One of your witnesses in this hearing argues in his testimony that since our bill applies to organizations "described in section 527" that means that the FEC can go after 501(c) organizations and claim that they are really 527s and should be covered. Not true. Read section 527(i)(1) of the Code which states very clearly that an organization is not described in section 527 unless it has given notice to the IRS that it should be treated as a 527. Our bill covers groups that have self-declared themselves as 527s, meaning that they are partisan, political organizations.

I mention these arcane and technical issues as a word of caution to the Committee. There are a lot of people out there who like the status quo just fine. They will come at you hard with more misinformation, obscure hypotheticals, and doomsday scenarios. For example, there is a petition circulating for groups to oppose this bill

because it will cause state ballot initiative organizations to become federal political committees. The fact is, we have an explicit exception for state ballot initiative groups. It's right there in subparagraph (C)(ii) on page four of the bill. If we've written it wrong, we will be happy to work with the Committee and fix it. But the folks who circulated this petition are not interested in fixing that provision; they are interested in killing the bill. Why? Because they want very rich individuals to continue to be able to give millions of dollars for ads and GOTV drives that attack one or the other of the presidential candidates. They want to see the system that brought us Swift Boat Veterans for Truth on the right and the Media Fund on the left in 2004 to survive and flourish in 2006, 2008, and beyond.

These same people wish we hadn't banned soft money to the parties and ended phony issue ads paid for with soft money in BCRA. But we did. And we're not going back. Now they don't want us to put a stop to the statutory arbitrage that is letting 527 organizations do an end run around the campaign laws. But we will, with your help. Our citizens deserve a political system that empowers them, as McCain-Feingold did, not wealthy individuals and powerful special interests. This bill is yet another step in putting average citizens in control of their democracy and in ending the cynicism and apathy that result from a system where their voices are drowned out by powerful special interests. Working together, we can take the next step.

Thank you again for the opportunity to testify.