

## BCRA's Unintended Consequence: The 527s Controversy

**September 17.** When the Swift Boat Veterans for Truth launched their initial attack ad on John Kerry's war record back in August, their primary target audience was voters in three of the battleground states. Needless to say, the audience expanded. Outraged Democrats assailed the controversial ad—a clip of Vietnam naval vets questioning the circumstances under which Kerry rescued a fellow boatman—as inaccurate and unfair, a lower-than-low blow by what they believed to be a not-so-independent group doing the dirty work for the Bush campaign. Of course, the more outrage at the ad—by Democrats and many Republicans alike, including Senator John McCain—the more the media played it. Nothing like free air time on national TV for an ad that originally had a small market. While pundits and politicians debated how-low-can-you-go in negative advertising and how many points Kerry lost in the polls as a result, the lasting impact of the Swift Boat ad is the spotlight it put on independent political groups, or 527s, in the 2004 election.

In accepting his party's nomination with: "I'm John Kerry, and I'm reporting for duty," Kerry's war heroism—the centerpiece of the Democratic National Convention—could arguably be considered an "issue" others cared to weigh in on. But regardless of the fact that Kerry *himself* put his Vietnam record on the table, his campaign seemed to be caught off guard by the Swift Boat attack (clearly the "rapid response team" was not rapidly responding). That's when the finger-pointing began.

Who was behind the ad? Was the Bush campaign involved? (The assumption being that vets—like most Americans—are not necessarily in the financial position to bankroll such an ad on their own.) Bush emphatically denied any ties to Swift Boat Veterans for Truth (although one of his top campaign lawyers took the bullet and resigned when it was made known that he had done some work for the group). Sidestepping calls to denounce the *content* of the ad, Bush instead took the opportunity to denounce *all* ads by such "independent" political groups—the so-called 527s—"shadowy groups" that were bad for the system, in violation of the spirit, if not the letter, of the new campaign finance law.

Did Bush trump the Democrats by taking the high road? Well, not exactly. Bush has been waiting for this public backlash against the 527s for some time. Back in March the president came under relentless attacks by well-funded anti-Bush 527s such as the Media Fund which launched such ads as "No Oil Company Left Behind" and "Bush and Halliburton". The Bush campaign filed a complaint with the FEC, claiming the groups had ties to the Democratic party and thus were operating illegally. The complaint seemed to have fallen on deaf ears in the media and certainly did not light a fire under the pants of the FEC (a commission not exactly known for its speedy decision-making).

The Swift Boat controversy, however, created enough of a national firestorm that the public was now asking: What are these 527s? Are they new to this election? Are they legal under the new campaign finance law? Are they regulated by the FEC? What impact are they going to have on 2004?

By definition, 527s are independent political groups, so-named for the section of the IRS tax code that regulates the financial activities of all political groups whose intent is to influence elections. Section 527 grants these groups exemption from federal taxation. 527s are not new entities. Under the new campaign finance law, however, they have become more powerful and influential than ever before. For the first time in a presidential election, parties and candidates are banned from accepting

unlimited, unregulated donations from corporations, unions, and individuals. But the new law is silent on *independent* groups. So guess who has moved in to accept the six- seven- and even *eight*- figure checks no longer going to the national parties and federal candidates? 527s. As long as the groups do not “coordinate” with the national parties and the candidates, they can raise enormous amounts of money to spend on such activities as vote mobilization and issue ads—as long as the ads do not *explicitly* support the election or defeat of a candidate. (Can you guess who the Swift Boat Veterans for Truth or the Media Fund wants you to vote for? But you said it, not them.)

Thus the rise of 527s is a direct result of BCRA. The law of unintended consequences strikes again. Truth be told, many pundits and arguably the politicians involved in the reform process were well-aware of the possibility that 527s would fill the soft-money void left by the parties. The unknown—the real surprise—was just *how much money* would be raised by the 527s—well over \$200 million so far, according to the Center For Responsive Politics.

Although the pro-Bush Swift Boat group drew media (and thus public) attention to 527s, by far the majority of these groups lean Democratic. Why? One reason is that Democrats have traditionally relied more heavily than Republicans on soft money to fund their campaigns. Faced with the reality of the new ban on soft money, wealthy Democratic individuals and unions poured tens of millions of dollars into the 527 coffers—soft money that would have gone to the party committees in previous elections—to counter the Bush fund-raising machine. Record-breaking donations from wealthy individuals, such as \$12.7 million from financier George Soros and \$14 million from insurance executive Peter B. Lewis, propelled independent Democratic organizations such as the Media Fund, Americans Coming Together (ACT), and MoveOn.org to the top of the 527 list. Although united in their goal to defeat Bush, these groups vary in their tactics. The Media Fund, for example, focuses solely on ads while ACT channels their funds into vote mobilization efforts—voter identification, registration, and canvassing at the grass roots level.

Under mounting public scrutiny after the Swift Boat controversy and lawsuit threats by the Bush administration and BCRA’s co-sponsors, Reps. Marty Meehan (D-Mass.) and Christopher Shays (R-Conn.), the FEC voted on September 1 to, among other restrictions, cap individual contributions to 527s. The commission, however, remains unwilling to change the rules mid-game—the new restrictions won’t come into play until the mid-term elections of 2006. Thus, the 527s arms race continues, with Republican groups now playing catch up with a vengeance.

The most prominent of the conservative 527s are the Progress for America Voter Fund, the Leadership Forum, and the November Fund. Supported by the U.S. Chamber of Commerce, the November Fund specifically targets John Edwards’ trial lawyer background, aiming to court medical and business votes with fear-mongering ads of malpractice and class-action lawsuits.

But unlike the Democratic groups which rely on wealthy individuals and unions for support, the growing number of Republican 527s *cannot* rely on *their* party’s traditional base of soft-money support—corporations. Companies in 2004 are not handing the same checks out to the 527s that they handed to the parties (heavily to the GOP) in the past. Last week, the *Wall Street Journal* reported that *not one* of the top ten corporate donors in the 2000 campaign has given to a 527. Of course, in the corporate world of “return for your dollar,” this makes perfect sense. How much bang for the buck can a 527 offer when under the new campaign finance

law, no policy makers are even associated with them? Companies want to focus on the rule-makers, those that can promote their interests on the hill—527s don't offer that kind of return.

So are corporations sitting this election out? Has the new ban on soft money translated into less corporate participation in 2004? Not at all. Corporations have reverted to more traditional fund-raising techniques to secure their political interests. They are mobilizing their employees to vote, encouraging them to lobby Congress via email, and, of course, companies are soliciting donations from their employees. Thus, another critical consequence of BCRA, though not necessarily an unintended one, is the revival of corporate PACs, up 30% since 2000 (statistics from *Political Money Line*, reported in the *Wall Street Journal*, 9/9/04).

Instead of writing the big checks to the 527s, companies, through their PACs, can donate smaller amounts—up to \$5,000 per candidate—directly to members of the House and Senate. The politician gets the campaign contribution and the company gets the credit. Fannie Mae's PAC, for example, has given checks to every member (Republican and Democratic) of the House Financial Services Committee. Total gift: \$67,000 (*WSJ*, 9/3/2004), and arguably a better financial investment than a single check to a 527. Corporate PACs are also getting out the vote. For example, the Business Industrial Political Action Committee (BIPAC) aims to mobilize 80,000 local business employees in Ohio who didn't vote in 2000 to get to the polls on November 2 (*WSJ*, 9/3/2004). Thus in many ways, the restrictions on soft money donations have encouraged corporations to get *more* involved. In battleground states, this could make a big difference. (See Jeanne Cummings, "In New Law's Wake, Companies Slash Their Political Donations," *Wall Street Journal*, 9/3/04; and Annys Shin, "Cutting Into the Checks," *Washington Post*, 9/13/04)

So what's the report card so far on BCRA, the first sweeping reform to the campaign finance system in thirty years? Just looking at the sheer amount of money raised so far by the Bush and Kerry campaigns, the national parties, and independent groups may worry many a reformer: \$1 billion—*double* the amount raised by this time in the last presidential election cycle. But a critical goal of BCRA was to get rid of the dependence by parties and politicians alike on *soft money*. 527s have certainly confounded the situation. But take a look at the party coffers. Both the DNC and the RNC have *doubled* their intake of hard money compared to this time in the last election cycle, the DNC so far raising \$230 million, the RNC \$381 million. Not too bad given the combined total is more than the two parties raised in both hard *and* soft money the 2000 election. ("A Reform's Progress," *Washington Post*, 8/27/2004)

BCRA has certainly weaned the parties of their dependence on *soft* money. But there is little expectation for the reform to reign in the staggering cash totals raised in presidential races. As Supreme Court Justices John Paul Stevens and Sandra Day O'Connor wrote for the majority in the decision that upheld the major provisions in BCRA: "Money, like water, . . . will always find an outlet. What problems will arise, and how Congress will respond, are concerns for another day." That day is sure to be in the near future for the 527s.