



FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, DC 20463

Statement on Tribal Political Contributions by Commissioner Hans A. von Spakovsky February 8, 2006

On Wednesday, February 8, 2006, FEC Chairman Michael Toner and Vice Chairman Robert Lenhard testified before the Senate Indian Affairs Committee at the invitation of Chairman John McCain about the treatment of political contributions by Indian tribes under the Federal Election Campaign Act of 1971 ("FECA").

FECA bars corporations and labor unions from making political contributions under the reasoning that such money flowing into the political process would lead to "corruption or the appearance of corruption." Since the passage of FECA, a "loophole" - whether intended or unintended - has existed that allows Indian tribes to be treated as persons for political contributions, yet the aggregate limit in FECA that applies to individual contributors does not apply to Indian tribes because the tribe is an organization rather than a human individual. Individuals face both a candidate contribution limit of \$2,100 per election and an aggregate contribution limit on contributions to all candidates of \$101,400 in a two-year period. While the candidate limitation of \$2,100 applies to Indian tribes, the aggregate limit of \$101,400 does not, allowing Indian tribes to give the maximum contribution to as many candidates as they want. This has resulted in Indian tribe contributions outpacing both the defense industry and manufacturers. "Tribes' donations since 1999 top \$25M," Roll Call, January 30, 2006.

It is true that the aggregate contribution limit also does not apply to Political Action Committees ("PAC's"). However, PAC's must register with the FEC and report all of their financial contributions and expenditures to ensure transparency in their involvement in the political process - Indian tribes do not.

One of the obvious reasons for the huge increase in tribal donations is due to funding generated by casino gambling on Indian reservations. Political campaigns are thus the recipients of gambling funds - but only gambling funds from unincorporated Indian tribes, and not gambling funds from other corporations. Although Congress probably did not contemplate this issue in 1971, will it now regulate Indian tribes? If not, why not? Is the political speech of Indian tribes involved in the gambling business not as "corrupting" as that of corporations or labor unions? Is there greater value on their speech versus the speech of other groups and individuals?

The main excuse given for not applying the FECA restrictions to Indian tribes is that they are "sovereign" governments. That status gives them the right to impose tribal laws on their members and on their reservations. But when they leave tribal lands, they have to abide by the same laws and regulations that apply to everyone else - and that should be particularly true when they participate in political campaigns that affect how all citizens are governed.

If Indian tribes are to be treated as individuals under FECA, then the individual aggregate limit should apply. If tribes are not going to be subject to the aggregate limit, then they should have to register and report their financial contributions and expenditures with the FEC just like a PAC. Similarly, all restrictions imposed on corporations that are involved in the gambling industry should apply to tribal organizations that are involved in the gambling industry. This is a matter of fundamental fairness and equity.

However, if Congress decides that there is no corruption justifying applying the same restrictions to Indian tribes that everyone else has to live with, perhaps Congress should also question why others have those restrictions. Only Congress can correct this statutory glitch - the FEC does not have the ability to change the statutory provisions that created this loophole. Congress could have fixed this in 2002 when it passed the McCain-Feingold campaign reform law that amended FECA but chose not to - will it finally remedy this problem now?

"Bad laws are the worst sort of tyranny." Edmund Burke, 1780.

(Please see the reverse side)

Your Help Needed Now To Pass the Vitter Amendment – To Make Campaign Finance Laws Apply to Everyone

FOR IMMEDIATE RELEASE,

Contact: Barb Lindsay, National Director & Spokesperson for One Nation United at 805-523-0524.

One Nation United Urges Sen. Vitter to Try Again On His Amendment

40 votes in U.S. Senate shows growing support for campaign finance transparency

WASHINGTON—January 14, 2007—One Nation United, a nonpartisan, public educational umbrella group representing more than 300,000 concerned citizens, community organizations, state and national trade groups, local governments, law enforcement organizations, businesses large and small, and elected officials in thirty-seven states applauds Sen. David Vitter (R-Louisiana) for his continuing efforts to pass an extremely important amendment to define tribal governments as corporations under the Federal Election Campaign Act. The Senate vote on January 10, 2007, on an amendment offered by Sen. Vitter shows there is growing awareness among members of Congress that the playing field needs to be leveled between Indian tribal businesses and U.S. corporations who are currently prevented from contributing directly to federal candidates of their choice.

Vitter's amendment - - "To modify the application of the Federal Election Campaign Act of 1971 to Indian tribes" - - was offered as Amendment 5 to Amendment 3 of Senate Bill 1. Sadly, a majority of the Senate voted to table Vitter's amendment, which was offered as the Senate debated an ethics and lobbying reform package, stated to be a high priority of the new Democratic majority.

But the show of support for it - - 40 votes in favor - - demonstrates that members of Congress are coming to see the vital need to make tribal contributions subject to the same rules everyone else must follow. We're now within striking distance of true reform! ONU urges Sen. Vitter to try again soon to attach his amendment to another piece of campaign finance reform legislation.

Sen. Vitter offered the same amendment last year, but tribes defeated it by arguing (as they did again this year) that limiting tribal campaign contributions would somehow curb Indian participation in the political process. Yet no other governments in America can contribute to federal election campaigns nor can any U.S. corporations give directly to federal candidates. Tribes do this regularly, however, using both corporate Indian casino profits and tribal government funds which, of course, include taxpayer grant allocations.

This amendment is vitally needed and entirely appropriate for inclusion in ethics and lobbying reform legislation. Increased transparency of our campaign finance system demands that tribal government-owned business campaign contributions (especially those by tax-exempt Indian casinos) be subject to the same aggregate limits and reporting requirements as all other American businesses involved in political giving. Tribes are now by far the biggest campaign donors in most states, so this legislation is urgently needed. Everyone must play by the same rules. See the FEC letter on the reverse side of this sheet for details and reasons why we must pass this important amendment. Top staff in Sen. Vitter's Office tells us that he'll be trying again to attach his amendment to another campaign finance reform bill.

If your two U.S. Senators are NOT listed below, it means that they voted with the tribes to prevent adoption of the Vitter Amendment.

Please contact both of your Senators, urging them to support the Vitter Amendment when it next comes up for a vote. We urgently need your help to get it passed. Thanks!

Voting to end the exemption for Tribes

Alexander (R-TN) Allard (R-CO) Bennett (R-UT) Bond (R-MO) Bunning (R-KY) Burr (R-NC)
Chambliss (R-GA) Coburn (R-OK) Cochran (R-MS) Corker (R-TN) Cornyn (R-TX) Craig (R-ID)
DeMint (R-SC) Dole (R-NC) Ensign (R-NV) Enzi (R-WY) Graham (R-SC) Grassley (R-IA)
Gregg (R-NH) Hagel (R-NE) Hatch (R-UT) Hutchison (R-TX) Inhofe (R-OK) Isakson (R-GA)
Kyl (R-AZ) Landrieu (D-LA) Lott (R-MS) Lugar (R-IN) Martinez (R-FL) McCain (R-AZ)
McConnell (R-KY) Roberts (R-KS) Sessions (R-AL) Shelby (R-AL) Specter (R-PA) Sununu (R-NH)
Thune (R-SD) Vitter (R-LA) Voinovich (R-OH) Warner (R-VA)

P.S. Send letters and faxes and follow up with phone calls! You can speak with the office of your U.S. Senators or your Representative by calling 202-224-3121. You can also get full contact information for your Senators at: http://www.senate.gov/general/contact_information/senators_cfm.cfm or your Representative at: <http://www.house.gov/house/MemStateSearch.shtml>. You've all been doing a great job of educating Congress –keep it up! Let's close the tribal donation loophole!