

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

NORTH CAROLINA RIGHT TO)	
LIFE, INC., et. al.,)	Civil Action No. 5-99-CV-798-BO(3)
)	
Plaintiffs,)	STATEMENT OF THOMAS E. MANN
)	PURSUANT TO 28 U.S.C. § 1746 IN SUPPORT
v.)	OF DEFENDANTS' MOTION FOR SUMMARY
)	JUDGMENT
LARRY LEAKE, et. al.,)	
)	
Defendants.)	
)	

Pursuant to 28 U.S.C. § 1746, I hereby state the following:

1. My name is Thomas E. Mann. I am the W. Averell Harriman Chair and Senior Fellow at the Brookings Institution. I served as Director of the Governmental Studies Program at Brookings between 1987 and 1999 and as Executive Director of the American Political Science Association from 1981 to 1987. I earned my Ph.D. in political science at the University of Michigan in 1977, specializing in elections, parties, public opinion, Congress, and American political behavior. A copy of my complete CV is attached.
2. I have written or edited numerous books and articles on these and related subjects. I have taught at Princeton University, Johns Hopkins University, the University of Virginia, Georgetown University and American University and delivered invited lectures at many other colleges and universities and at scholarly meetings. I was elected a Fellow of the American Academy of Arts and Sciences and presented with the Charles E. Merriam Award (for “a significant contribution to the art of government through the application of social science research”) and the Frank J. Goodnow Award (for “distinguished service”) by the American Political Science Association.
3. Over the last decade, much of my research and writing has focused on campaign finance in the United States and in other countries. In 1995, I assembled a Brookings Working Group on Campaign Finance Reform to evaluate alternative approaches to reform (Brookings 1996). I also started a campaign finance reform Web site at Brookings, which is regularly updated with materials on campaign finance law, administration, and politics (www.brookings.edu/campaignfinance). After the 1996 elections I joined several other scholars in analyzing the most serious problems with the campaign finance regulatory regime and in formulating a strategy to deal with those problems. We produced a report entitled “Five Ideas For Practical Campaign Reform,” which was widely circulated in the policy community (Ornstein et. al. 1996). Based on this work, I took an active role in the public debate on

campaign finance reform over the last six years. In 1997, I co-edited *Campaign Finance Reform: A Sourcebook*; in 2002, I co-authored a reformatted and updated edition of this volume, which is being published by Brookings as *The New Campaign Finance Sourcebook*. In the last five years, I have testified as an expert only in *McConnell v. FEC*, 540 U.S. 93 (2003), the case upholding the major provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA).

4. Since the Supreme Court sustained the major provisions of BCRA in *McConnell v. FEC*, 540 U.S. 93 (2003), particularly the provisions banning soft money, donations to so-called 527 organizations (527s) have increased dramatically. (527s are political organizations organized under § 527 of the Internal Revenue Code.) A recent study found that total contributions to 527s rose from \$151 million in 2002, which includes donations of \$37 million to congressional leadership PACs later abolished by BCRA, to \$405 million in 2004—an increase of over 168 percent. Steve Weissman & Ruth Hassan, *BCRA and the 527 Groups* at 2, in *The Election After Reform: Money, Politics and the Bipartisan Campaign Reform Act* (Michael J. Malbin ed., forthcoming 2005), *currently available at* http://www.cfinst.org/studies/ElectionAfterReform/pdf/EAR_527Chapter.pdf. This study is the type which experts usually rely upon in forming their opinions or drawing inferences in the field of campaign finance and I attach a copy of their draft chapter dated Feb. 9, 2005 as an exhibit to this statement.

5. Donations from individuals made up much of this increase. From 2002 to 2004, individual contributions to 527s jumped from \$37 million to \$256 million—an increase of over 590 percent. *Id.* at 11. This increase was funded in major part by very large donors. According to the Weissman-Hassan study, 1,232 individuals made an average contribution of \$30,112 in 2002, while in 2004 1,887 individuals (an increase of over 50 percent) contributed on average \$135,805—an increase of 350 percent. *Id.* at 13. Contributions by “superdonors” increased at an even larger rate. From 2002 to 2004, the number of contributors who gave \$100,000 or more to 527s grew from 66 to 265—an increase of 301 percent. *Id.* In the same period, the number of contributors of \$2 million or more grew from 0 to 24. In 2004, in fact, the top 25 donors to 527s contributed 56 percent of the funds 527s received from individuals. *Id.* Two individuals—George Soros and Peter Lewis—by themselves contributed over \$46.5 million to 527s. *Id.* at 14.

6. Many of these “superdonors,” moreover, had given very large amounts of soft money to political parties before BCRA outlawed the practice. Of the 113 people who contributed at least \$250,000 to 527s in the 2004 election cycle, 73 (over 64 percent) had been active soft money players. *Id.* at 16. In the previous two election cycles, these 73 had given over \$49 million in soft money to national political party committees. *Id.* Revealingly, only 11 of these 73 superdonors had given to 527s in 2002 and then only a total of \$4 million. *Id.*

7. In response to BCRA’s ban on giving soft money to political parties, many donors have simply shifted their soft money donations to 527s, while at the same time greatly increasing their total donations. *Id.* As the Weissman and Hassan study puts it, for those former soft money donors who started giving to 527s, “a river of party soft money has turned into an ocean of 527 money.” *Id.* at 17. In other words, many individual donors are using 527 donations to circumvent BCRA’s prohibition against giving soft money to parties.

8. Several of the most important 527s were organized not to make contributions to parties and political candidates but to make *only* independent expenditures instead. These so-called “Independent Expenditure Political Committees” (IEPCs) played a critical role in the November, 2004 election. Although these IEPCs were set up to be officially independent from the parties

and their candidates, the two major parties played a large role in their creation, management and funding. The Media Fund on the Democratic side and Progress For America (PFA) on the Republican side well illustrate this close connection.

9. The Media Fund was a 527 organized to run political advertising to aid Democratic candidates. As detailed in Weissman and Hassan's study, *id.* at 6-8, the Media Fund resulted from a BCRA task force established by Democratic National Committee (DNC) Chairman Terry McAuliffe. Leading members of the task force included Harold Ickes, President Clinton's former Deputy Chief of Staff, a paid advisor to the DNC chairman, and a member of the DNC Executive Committee; Minyon Moore, DNC Chief Operating Officer; Josh Wachs, DNC Chief of Staff; Joseph Sandler, DNC counsel; and former White House officials John Podesta and Doug Sosnik. In October, 2002, McAuliffe discussed with Democratic donors plans for the Media Fund, which Ickes later was named to head.

10. Ickes obtained legal advice before attending any public meetings after BCRA came into effect and ended some, but not all, of his formal consulting for the DNC. In particular, although he stopped consulting on campaign finance matters, he continued to offer advice in other areas, such as the DNC national convention, nominating rules, and general political matters. His DNC consultancy continued until February, 2004 and his firm received at least \$112,521 in 2002 and \$123, 860 in 2003-04 from the DNC.

11. Ickes had much credibility with potential Democratic donors. His long history of work within the party, his current associations with it, and his ties to prominent Democratic Party leaders, like President Clinton, all worked to establish a reliable connection between the party and the Media Fund in the eyes of many donors. As described by Weissman and Hassan, Ickes's message was "We don't talk to the campaigns, are not connected with them, but they know and appreciate us and contributions are part of the public record." *Id.* at 8. A more formal connection to the party was not necessary for the Media Fund's donors to be remembered by the DNC.

12. The Media Fund also brought in even heavier Democratic hitters to raise money on its behalf. Weissman and Hassan describe how President Clinton encouraged both those donors interested in furthering their ideological views and those interested more with access and influence to contribute to the Media Fund:

It quickly became clear that more political clout was needed with both major categories of potential donors: those, like Soros, seeking to realize "ideological" goals by getting rid of Bush and those interested in "access" to potential decision-makers. (This distinction should not be taken as absolute. Soros, for example, told reporter Jane Mayer, "I would be very happy to advise Kerry, if he's willing to listen to me, and to criticize him, if he isn't. I've been trying to exert some influence over our policies and I hope I'll get a better hearing under Kerry.") It was decided to bring in former President Bill Clinton who was extremely active in Democratic National Committee fundraising and spoke "frequently" to Terry McAuliffe whom he had selected as DNC chief. In other words, Clinton was not only the best known Democrat but "a major force" in the DNC. The goal was "to show the donors this was the real deal," to communicate, "I know them, you can trust them, this is the strategy." In October 2003—the same month in which he starred in fundraisers in New York and Washington, D.C.—the former President attended a dinner meeting of about 15 people, mostly potential donors, at Soros'

5th Avenue New York City apartment. He told them that ACT[, another Democratic 527,] met a critical need, and that if Act had existed in 2000 the Democrats would have won. As one of the 527 group leaders put it, “He koshered us. He gave the donors confidence, both ideological ones and the access ones.” Clinton also encouraged about a dozen potential donors to the Media Fund at a meeting in Los Angeles in February 2004, a year in which he energetically raised money for both the DNC and Senator John Kerry’s presidential campaign.

Id. at 8 (footnotes omitted).

13. As reported by various sources, Ickes was very visible during the national Democratic convention soliciting party donors for the Media Fund and circulating with party officials. At that time, he was a DNC delegate and a member of the DNC Executive Committee. He ran the Media Fund’s convention activities from an office in the Four Seasons Hotel in Boston down the hall from the DNC finance division, which focuses on large Democratic donors. In the eyes of potential large contributors, the Media Fund appeared closely tied to the DNC indeed. Its nominal independence from the Democratic party and its candidates did not dull its effectiveness.

14. Republicans started their IEPC effort later. (This history is more exhaustively detailed in the Weissman and Hassan study, *id.* at 8-10, on which this narrative is largely based.) They focused their attention on a group called Progress For America (PFA), which was organized initially under the tax laws as a 501(c)(4). From the start, it had very close ties to the Republican National Committee (RNC), the Bush administration, and well-known Republican political consultants. It was founded in 2001 by Tony Feather, Political Director of the 2000 Bush-Cheney campaign and partner at Feather, Larson, Synhorst—DCI (FLS-DCI), which had ties to the RNC. Through 2003, PFA paid no salaries, benefits, or occupancy costs.

15. To maintain PFA’s official independence from other Republican groups, Feather gave up his leadership position within PFA when BCRA came into effect. He picked Chris LaCivita, former political director of the National Republican Senatorial Committee, to be PFA’s new president. While serving as president, LaCivita was a paid contractor with a consultancy group, DCI Group (DCI), which shared a partner with FLS-DCI—Tom Synhorst. Synhorst too had long-standing and close ties to the Republican party. He had advised the Bush-Cheney 2000 campaign and held important roles in the 1996 and 2000 Republican conventions. LaCivita left PFA in spring 2004 to work on two Republican senate campaigns and was replaced by DCI partner Brian McCabe.

16. The relationships among PFA, FLS-DCI, and DCI were close. As described by Weissman and Hassan:

By the late Spring of 2004, FLS-DCI, DCI Group and PFA were all involved in the Bush campaign. FLS-DCI conducted message phone calls and telemarketing, respectively, for the Bush and RNC campaigns for which it was ultimately paid at least \$19 million. DCI Group had a small contract for services at the Republican convention. And PFA had decided to reorganize as a pro-Bush 527 in May 2004, following the FEC’s decision not to regulate 527s. While each of these organizations was a separate unit with distinctive functions, they also had important relationships. The linchpin was FLS-DCI partner Tom Synhorst. He

had established, and was a partner in, DCI Group, which frequently used FLS-DCI as a vendor for phone work. Synhorst was also a “strategic advisor” and leading fundraiser for PFA both before and after it converted from a 501(c)(4) “advocacy” group to a 527 political organization. Like Harold Ickes, Synhorst maintained that his personal 527 group work was in a separate “silo” from his firm’s (FLS-DCI) work for the Party and campaign. And like Ickes’ efforts, Synhorst’s activities were certainly visible to his firm’s political clients and his political relationships were presumably known to many potential donors.

Id. at 9.

17. The RNC initially made fundraising somewhat difficult for PFA and other Republican-associated IEPCs. Responding to 527 efforts on the Democratic side, the RNC had asked the FEC to regulate the financing of 527s. Its request created some legal uncertainty and policy confusion among Republican donors. On May 13, 2004, however, RNC Chairman Ed Gillespie and Bush-Cheney campaign chairman Marc Racicot publicly declared that the FEC’s inaction “has given the green light to all non-federal 527s to forge full steam ahead in their efforts to affect the outcome of this year’s Federal elections, and, in particular the presidential race The 2004 elections will now be a free-for-all. Groups like the Leadership Forum, Progress for America, the Republican Governor’s Association, GOPAC and others now know that they can legally engage in the same way Democrat leaning groups ... have been engaging.” Because PFA was the only one of the four groups named that was focusing on the presidential contest, the joint announcement represented a particular blessing for it. As one key strategist is reported to have commented, “If we weren’t on the list, it would have been over. Our message had been we don’t like 527s. Then the Republican Party and campaign said, ‘Don’t fight them anymore.’ From there it was all up. We didn’t have a Clinton to encourage donors like the Democrats had.” *Id.* at 10.

18. The parties’ IEPC strategies were similar. They encouraged people closely and visibly associated with them to form and operate officially independent IEPCs, which the party through its officials and leading members could then identify to donors as appropriate funding vehicles. Those IEPCs could, in turn, because of their management by people so intimately familiar with the needs and aims of the party effectively aid a campaign without any formal coordination. The risk for any donors seeking access and influence was slight. Who contributed was a matter of public knowledge and their money would be, so far as the party itself was concerned, well spent.

19. IEPC activities can undermine democratic politics by creating corruption or the appearance of corruption. Some contributions are so large—witness George Soros’s—that they would certainly be remembered vividly by party officials and cast doubt in the public’s eye that the contributor enjoyed no special influence over or access to the party and its candidates. Spending by IEPCs, moreover, greatly benefits federal candidates and thus has great value to them. Nothing suggests, in fact, that it is much less effective than spending by the parties themselves. Given the close ties between those who manage

the most influential IEPCs, like the Media Fund and AFP, and the major political parties and their candidates, actual coordination between the IEPCs and the parties and candidates is unnecessary.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27th day of February, 2005.

/s/ Thomas E. Mann
Thomas E. Mann