

Testimony of

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Before the

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Committee on Indian Affairs

Indian Tribes and the Federal Election Campaign Act

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I would like to thank Chairman McCain and the members of the Committee on Indian Affairs for the opportunity to testify today on tribal campaign contributions and related matters. I want to thank Senator McCain for his strong leadership in campaign finance reform and lobbying reform. You help to build more confidence and trust by the American public in Congress through your reform efforts.

My name is James A. Thurber, Distinguished Professor and Director of the Center for Congressional and Presidential Studies at American University in Washington, DC. I have taught seminars on campaign management and lobbying for over thirty years and I direct the Campaign Management Institute and the Public Affairs and Advocacy Institute at AU. I have just completed a seven year study funded by a grant from the Pew Charitable Trusts on how to improve campaign conduct. In the course of my research and teaching, I have reviewed many campaign and lobbying problems and reform proposals by Members of Congress, including proposals advocating disclosure of campaign conduct and strengthening oversight and enforcement of campaign finance activities.

I would like to express my appreciation to the Chairman for holding these important hearings on Indian Tribes and the Federal Election Campaign Act. This hearing is in the context of the Jack Abramoff scandal and his use or misuse of large sums of Indian tribal money. The focus on lobbyist Abramoff and his use of Indian tribal client funds has led to an inquiry into the issue of the so-called "tribal loophole" in campaign contributions to federal candidates. Indian tribes have been large contributors to Federal election campaigns, PACs, and party committees in the last decade as documented by the Center for Responsive Politics. They have also invested large sums

for grassroots lobbying, coalition building and direct lobbying in Washington. Most of these contributions and investment in lobbying has come from tribes with gambling casinos (or those who would like to have a casino). The loophole in the Federal Election Campaign Act (FEC) that allows tribes to avoid the overall aggregate on what an individual can contribute to Federal candidates, political parties and other political committees is the topic of my testimony.

The Issue

The so-called “tribal loophole” is basically an exemption for Indian tribes from the requirement to report certain kinds of campaign contributions. Under federal election law, Indian tribes are subject to the contribution limits that apply to individual candidates and committees, which is currently \$2,100 per election to federal candidates, \$5,000 per year to PACs, \$10,000 per year to state party federal accounts, and \$26,700 per year to national parties. Unless a tribe is prohibited from making campaign contributions because it is a corporation or federal government contractor, tribes must adhere to these contribution limits. Indian tribes are not required to report these contributions to the FEC; rather, the contributions are disclosed to the FEC on the recipients’ disclosure statements.

In addition to the limits on giving to individual candidates and committees, federal election law also sets an aggregate giving limit of \$101,400 for individuals. This means that an individual donor can only give \$101,400 in a two-year period to any combination of candidates, PACs, or party committees, at the same time adhering to the individual contribution limits imposed on candidates and committees. This requirement applies only to individual donors – not PACs and not Indian tribes. Since 1978, the FEC has considered Indian tribes to be “persons” under campaign finance law, which is

different from the category “individual”¹. In May 2000, the FEC clarified that Indian tribes are not subject to the aggregate individual contribution limit because tribes are organizations, not individual human beings.² Under the Federal Election Campaign Act and as interpreted by the Federal Election Commission, Indian tribes are subject to individual, PAC, party committee limits, except the overall aggregate limit. Tribes can lawfully give an unlimited amount of campaign money in the aggregate. The central question about the “tribal loophole” is why the aggregate limit does not apply to Indian tribes? Is it to protect the sovereignty of American Indian tribes?

There are two problems with the current procedure for making tribal campaign contributions: the unlimited overall contributions and the lack of reporting requirements. These combine to make Indian tribes fertile ground for raising campaign cash by political parties and candidates. The lack of reporting requirements throws a veil of secrecy over the arrangements between Indian tribes and candidates. It is perhaps the last frontier of essentially unregulated campaign cash contributions

One way the contributions are increased is through attributing the gifts to the same individuals and tribes but using different names. Of the more than 200 Indian tribes who have given to candidates, 2000 variations of their names have been used on the checks to candidates. One tribe has used 78 variations of its name.³ No one here would be surprised to learn that that particular tribe was a client of Jack Abramoff.⁴

¹ FEC Advisory Opinion 1978-51.

² FEC Advisory Opinion 2000-5.

³ According to PoliticalMoneyLine, the Agua Caliente Band of Cahuilla Indians used 78 variations of its name for campaign donations. <<http://www.politicalmoneyline.com/cgi-win/indexhtml.exe?MBF=tribal>> Accessed 1/31/06.

⁴ <<http://www.capitaleye.org/abramoff.asp>> Accessed 1/31/06.

When groups advocating good government, the media, or academics try to “connect the dots” to see who is giving campaign contributions to whom and what issues they are lobbying on, it becomes very hard to follow the money. What is the source of the money being contributed by Indian tribes? It is difficult to determine. The only way to follow the money is on the contribution reports from the candidates and on the lobbying registration reports (for lobbying activities covered under the Lobbying Disclosure Act of 1995). This is not transparent because some groups contribute to a candidate using multiple names and the source of the funds is far from clear.

The problem is a lack of transparency and reporting requirements makes attribution of campaign money difficult, if not impossible. Where is the money coming from, incorporated gambling casinos, companies, individuals? There can be no transparency in this “hide the ball environment.” Without rigorous FEC enforcement of prohibited sources of money for campaign contributions or new reporting requirements the non-transparent situation will continue, to no one’s benefit.

Recommendations

Several solutions have been proposed. Some have called for Indian tribes to be considered “individuals” under federal election law, which would force them to adhere to the \$101,400 contribution ceiling for overall giving. I think this designation would unfairly limit tribes – who are obviously not individuals, but groups of many individuals. Forcing entire tribes to adhere to the same contribution limit as an individual would severely diminish their ability to contribute and essentially hold them to limits so strict that they could not hope to have any influence as sovereign governments.

Others have called for Indian tribes to be treated the same as corporations or labor unions, which must form PACs in order to collect checks from individual members to be pooled together to give to candidates. However, tribes are considered sovereign governments under federal law, not corporations or unions, thus the designation would be inappropriate.

I think there is a way to allow tribes to maintain their special status as sovereign nations under campaign finance law, but improve the way money is collected and spent. That is through new reporting requirements. The new requirements for tribal campaign contributions should take some of the requirements that are currently in place for PACs. Like PACs, tribes should be required to register with the FEC before making campaign contributions. The contributions must be reported by the name the tribe uses, not a new name created for this purpose. The source of the funds should also be reported. This will shine a light on what contributions are being made and to whom. It is fair because it is, I believe, the same light that is shone on everyone else who contributes to campaigns.

Like PACs, tribes should create a committee or Board of Directors to decide what contributions will be made each election cycle. Campaign finance law requires PACs to name a treasurer who assumes responsibility for registering and filing contribution reports. Tribes should also be required to name appoint a treasurer who will be responsible for submitting the required information to the FEC.

But tribes are not the same as labor unions, corporations and other groups that must form PACs, and so there should be differences in the treatment of PACs and Indian tribes under campaign finance law. An important difference is that PACs must collect checks from individual members, which they pool together to contribute to campaigns.

Indian tribes should not be required to collect checks from individual members. The source of funds for campaign giving by Indian tribes should be left up to the discretion of tribal leaders, but the source should be reported. Tribes should be allowed to continue to set up their own internal rules and systems for deciding what candidates to give to and how much. If that means writing checks directly from their tribal treasuries with no input from their members, so be it. Campaign finance law should not dictate to the sovereign tribal governments how they spend their money. What campaign finance law should do, however, is require those contributions and their source to be made in full view of the public.

Thank you for holding this hearing and the opportunity to testify. I would be pleased to try to answer any questions related to this proposed reform and other questions you might have with respect to my testimony at this time or after this hearing.



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James A. Thurber is Distinguished Professor of Government and Director of the Center for Congressional and Presidential Studies. He was the principal investigator of a seven year (1997-2004) grant from The Pew Charitable Trusts to study campaign conduct. Dr. Thurber has been a professor at American University since 1974 and was honored as the University Scholar-Teacher of the Year in 1996. He is a Fellow of the National Academy of Public Administration.

He is author, co-author, and editor of numerous books and more than eighty articles and chapters on Congress, congressional-presidential relations, interest groups and lobbying, and campaigns and elections, including *Rivals for Power: Presidential-Congressional Relations*, Third Edition (2005), *Campaigns and Elections, American Style*, Second Edition (with Candice Nelson, 2004), *Congress and the Internet* (with Colton Campbell, 2002), *The Battle for Congress: Consultants, Candidates, and Voters* (2001), *Crowded Airwaves: Campaign Advertising in Elections* (with Candice Nelson and David Dulio, 2000), *Campaign Warriors: Political Consultants in Elections* (2000), *Remaking Congress: The Politics of Congressional Stability and Change* (with Roger Davidson, 1995), *Divided Democracy: Cooperation and Conflict Between Presidents and Congress* (1991), and *Setting Course: A Congressional Management Guide* (with Chaleff, Loomis and Serota, 1988).

Dr. Thurber earned a BS in political science from the University of Oregon and a PhD in political science from Indiana University and was an American Political Science Association Congressional Fellow. He has worked on five reorganization efforts for committees in the US House and US Senate from 1976 to present. He was also Director of the Washington, DC based Human Affairs Research Centers of the Battelle Memorial Institute.

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