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MEMORANDUM

TO: Howard Rich, Chairman
Bill Wilson, President
Americans for Limited Government

FROM: Frank M. Northam

DATE: September 22, 2008

RE: Heightening Awareness of Political Activity

COPY

The federal election laws require the reporting and disclosure of the identities of contributors to political candidates, political parties and politically active organizations that are subject to regulation by the Federal Election Commission. In addition, publicly available reports to the Federal Election Commission contain the names of individuals and organizations that provide services or other support to PAC's and advocacy groups. Section 527 organizations file publicly available reports with the Internal Revenue Service that disclose the identities of all of the contributors to those 527 organizations.

The mandated public disclosure of this information is intended to provide the public with valuable assistance in exercising the right to vote and, as the Supreme Court has acknowledged, is "fundamental to the political process."

Because information concerning political contributors and activities is fundamental, the public may freely discuss and comment upon those individuals and organizations that engage in political activity. The "transparency" sought to be achieved by disclosure, is intended to encourage open discussion and debate concerning politicians and issues, as well as the proponents and opponents on each side. The intended result will be an "informed electorate."

Undisclosed Political Activity

Despite the mandatory disclosure rules, there are many 527 groups and nonprofit organizations that engage in fundraising and political activity without filing reports with the Federal Election Commission or the Internal Revenue Service. In fact, in recent years, the Federal Election Commission has been recovering record amounts of fines and civil penalties in large part due to 527's and nonprofits that violated the law by collecting and expending millions

of dollars that should have been fully disclosed. In many of those cases, the FEC investigations that led to the imposition of fines and penalties were instigated by complaints filed by nongovernmental watchdogs.

The federal election laws expressly anticipate active citizen oversight of the Federal Election Commission and its enforcement role and encourage citizens to monitor political activities and to make their own reports/complaints to the FEC. Any citizen may file a complaint with the FEC, alerting the Commission to alleged violations of the election laws, and the FEC must take some action on the complaint.

Although the Federal Election Commission may initiate investigations and compliance proceedings on its own, the Commission is also reliant on nongovernmental individuals and entities to alert the Commission to election law violations.

Individuals and groups, engaging in political activity that is not reported or disclosed to the FEC or IRS, may be discussed and commented upon just as much as those individuals and entities that do file reports and make disclosures. If the non-reporting individuals or groups do violate the election laws, they can be subject to severe monetary penalties, as well as other sanctions.

Election Law Violations

In the 2004 election cycle, there were several 527 organizations and other nonprofits that collected substantial sums of money, in violation of the federal contribution limits, by advising contributors that the monies being solicited were not subject to FEC regulation. In actuality, as later determined by the FEC, those monies were subject to regulation and exceeded contribution and expenditure limitations.

The FEC exacted substantial monetary penalties in resolving the investigations of those entities and imposed severe restrictions on their continued existence and operations. During the investigations, the FEC also utilized its extensive law enforcement authority to delve into the files and bank account records of individuals who had made contributions to the groups that were under investigation.

The FEC has broad investigative authority, including subpoena power which permits the Commission to subpoena records from virtually any person who actively contributes to or participates in an organization or group under investigation. The FEC may also force people to provide depositions and testimony under oath.

Both civil and criminal penalties may be pursued for violation of the election laws. Civil penalties in the amount of \$5,000.00 or more per violation may be sought by the Commission; if the amount of money involved in a violation exceeds \$5,000.00, then the Commission may seek that greater amount. The Commission may also seek injunctive relief imposing restrictions on a person's future political activity.

By their nature, many FEC investigations and enforcement proceedings drag on for years and the individuals involved in the matter being investigated will be subject to having to respond to inquiries and requests for records throughout the investigation.

Both governmental enforcement of election laws and the exposure of illegal political activity by civic-minded individuals serve to promote informed public opinion and to prevent misuses of the political process and abuses of the laws governing political activity.