
RIEMER LAW LLC

(443) 266-2937

1125 West Street, Suite 200
Annapolis, MD 21401

Justin@Riemer.law

Written Testimony of J. Justin Riemer

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Chairman Steil, Ranking Member Morelle, and Members of the Committee:

Thank you for the opportunity to discuss long-needed reforms that will help strengthen our nation's political parties, especially at the state and local levels. I have closely observed national, state, and local political parties for 15 years, including until recently as Chief Counsel for the Republican National Committee, where I had a first-hand view of how current federal campaign finance restrictions are hollowing out our state and local parties. This is bad for our political system, but fortunately even relatively modest reforms can provide meaningful relief, ensure better compliance with federal campaign finance laws, and decrease political polarization.

Specifically, I would like to discuss how the Bipartisan Campaign Finance Reform Act of 2002 ("BCRA") has weakened our state and local political parties and organizations by gradually choking off their ability to fundraise and conduct grassroots political programs, and saddling them with byzantine regulations which are difficult, if not impossible, to follow. You do not have to take my word for it. Experts from across the ideological spectrum have noted both the positive role strong political parties play in our nation's democratic process and how BCRA has weakened them. I would like to offer a few suggestions on how Congress could provide meaningful relief.

First, state party fundraising has suffered because their ability to fundraise has eroded in real value each year since the enactment of the current contribution limits set by BCRA in 2003. This is due to Congress's failure to automatically adjust the contribution limits to state parties to account for inflation. They are currently subject to the same \$10,000 per year limits from individuals as they were in 2003. In fact, excluding BCRA's elevation of state party limits from \$5,000 to \$10,000, state parties have had the same contribution limits since 1976.¹

The failure to index for inflation means that a \$10,000 max out contribution made today is worth only approximately 60% of the same contribution made at the time BCRA's limits were enacted.² BCRA did index the contribution limits for national party committees and candidates. For comparison, in 2003, an individual could contribute \$2,000 to each of a candidate's primary and general election accounts and today can contribute \$3,300 to each. An individual could contribute \$25,000 to national parties in 2003 and today \$41,300, and that does not even account

¹ Federal Elections Campaign Act Amendments of 1976, PL 94-283 (S 3065), PL 94-283, May 11, 1976, 90 Stat 475. *See also* CPI Inflation Calculator, available at: https://www.bls.gov/data/inflation_calculator.htm. Note, the elevation of limits from \$5,000 to \$10,000 in 2003 was still an effective lowering of limits in comparison to the \$5,000 limit in place in 1976. In 2003, \$10,000 had the same buying power as \$3,059.99 in 1976.

² *See* CPI Inflation Calculator, comparing buying power of \$10,000 in January of 2003 to March of 2023.

for contribution limits of \$123,900 each for national parties' separate national party headquarters, recount, and convention accounts that are unavailable to state parties.

By not indexing for inflation, BCRA left the state parties behind at the same time it imposed other restrictions limiting party fundraising and spending. Further exacerbating this problem is the fact that the costs of campaigning have increased each cycle even when accounting for inflation. State parties face higher costs generally due to the increasing sophistication of our elections, contending with an ever-expanding election calendar from more early and mail voting, and their need to invest in emerging technologies to keep pace.

Yes, the emergence of super PACs and other outside groups has certainly contributed to the rise in campaign spending and helped reduced the relevance of state parties as a more serious political force, but their inability to remain competitive preceded *Citizens United* and was accurately predicted by opponents of BCRA.

It is only fair to raise the state party contribution limits and to index them for inflation moving forward. Otherwise, these disparities will only continue to grow worse with each passing election cycle. Doing so has little downside since state parties are also one of our most transparent political entities. They publicly report their contributions and expenditures to both the Federal Election Commission (FEC) and state regulators for disclosure and are otherwise more heavily regulated than other political organizations.

There is another reform that would further boost ailing state parties. Committee members may know that BCRA permits state parties to have separate accounts to fund state level elections which, in theory, should help them remain competitive with other political organizations. But that is not how it works in practice because BCRA and FEC regulations neutralized that additional fundraising stream by largely federalizing state party political spending in federal election years, even though state and local candidates typically predominate the ballot.³

Specifically, federal regulations require state parties to fund most of their political activities in a federal election year out of their already inflation-depleted federal account. For example, with one relatively minor exception, a state party must use only federal dollars to fund voter registration programs and other basic get-out-the-vote activities for virtually the entire election year. This restriction even applies for grassroots activities that do not mention or reference a specific federal candidate. This means that a state party with few or no competitive federal races but several state and local ones must use entirely federal dollars to register voters or conduct other basic political activities even if they are flush with state account funds.

Making matters worse, compliance with these regulations is impracticable, if not impossible, given their complexity and local parties' limited resources to retain campaign finance attorneys and compliance experts. State and local parties are the most regulated political entities because they must comply with both complex federal and state regulations for their fundraising, spending, and reporting. Ironically, by allowing state parties to have both state and federal accounts, BCRA made things the most complicated for the least resourced political committees. This phenomenon

³ 52 U.S.C. § 30125.

is recognized by election law attorneys on both sides of the aisle who have a front-row seat to their struggles.

It is hard to fathom how these restrictions further any compelling governmental interests. In practice, they only serve to stifle political parties' ability to engage in core First Amendment-protected speech and time-honored local grassroots political activities that are central to American democracy.

It is simply commonsense to provide reasonable regulatory relief to state and local parties by not only raising their contribution limits and indexing them for inflation but by also easing restrictions on how parties can finance these grassroots political activities. The proposal in 2022's American Confidence in Elections (ACE) Act would have done just that by exempting certain state party functions from some federal regulation so long as the activities are not coordinated with federal candidates.

Finally, another practical and overdue reform would be to increase the threshold amount for when federal law deems grassroots political organizations to be "political committees" and subject to BCRA's registration and reporting requirements. Like the state party contribution limits, the initial threshold set by federal law has remained unchanged, and in this case since the 1970s.⁴ For example, local political organizations must register and report as a federal committee if they spend more than \$1,000 in a calendar year on federal contributions or expenditures.⁵

This provision suffers from the same flaws as BCRA's frozen state party contribution limits and federalizing of grassroots political activity. Beyond that, there are likely dozens of local political organizations on both sides of the aisle that have unwittingly triggered these thresholds and not registered, nor can the FEC plausibly police local groups that do. No wonder both Republican and Democrat FEC commissioners have routinely asked Congress to address this issue in the agency's legislative recommendations since at least 2003.⁶ Should the law really penalize a local Republican women's club that spends \$1,001 on federal expenditures, especially when its contributions to federal candidates are already publicly reported?

Raising these trigger limits and indexing them for inflation is another commonsense reform Congress could easily make to ease regulatory burdens and avoid entrapping local political organizations that raise and spend comparatively little but are still important participants in our political process.

I understand these are technical issues and may seem obscure when considering the overall campaign finance landscape, but based on my experience with state and local party organizations, I can assure you they are important. Our state and local political parties are essential players in our political system. Not only do they provide an opportunity for millions of Americans to come together to exercise their First Amendment rights, but they are also instrumental in nominating our candidates for local, state, and federal offices, including for president. Even the Brennan Center,

⁴ Legislative Recommendations 2003, Federal Election Commission, available at:

<https://www.fec.gov/resources/cms-content/documents/legrec2003.pdf>

⁵ 52 U.S.C. §§ 30101(4), 30103(a).

⁶ Legislative Recommendations 2003, Federal Election Commission.

an organization I rarely agree with, noted in its call for easing regulatory burdens, the importance of political parties as “an essential element of our democracy” and a “moderating force responsive to public opinion in their pursuit of broad governing coalitions.”⁷ Easing regulatory burdens on them will not necessarily solve all of their problems, but it will give them a fighting chance.

⁷ Stronger Parties, Stronger Democracy: Rethinking Reform, Ian Vandewalker & Daniel I. Weiner, September 16, 2015, available at: <https://www.brennancenter.org/our-work/research-reports/stronger-parties-stronger-democracy-rethinking-reform>