FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE

FROM: COMMISSION SECRETARY

DATE: June 9, 2004

SUBJECT: COMMENT: PROPOSED AO 2004-12

Transmitted herewith is a timely submitted comment from Mr. Neil Reiff regarding the above-captioned matter.

Proposed Advisory Opinion 2004-12 is on the agenda for Thursday, June 10, 2004.

Attachment

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June 9, 2004

example. It does not make sense to reduce the amount of the contribution for each participant based upon donor history for one of the participating Committees. Similarly, a donor who had given the maximum amount to one state party committee should be entitled to still contribute $8,889 to DFW's federal account. Of course all contributions would be subject to the aggregate, biennial per cycle, limit of $37,500.

Second, draft opinion incorrectly applies to appearances at state party fundraising events

AGENDA DOCUMENT NO. 04-49

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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AGENDA ITEM
For Meeting of: 05-13-04

SUBMITTED LATE

MEMORANDUM

Date: May 12, 2004

To: The Commission

From: Vice Chair Ellen L. Weintraub EW

Re: Agenda Document No. 04-44 – Public comment received

I offer the attached comments from the Coalition to Protect Nonprofit Advocacy for consideration as part of the administrative record.

May 10, 2004

Via Electronic Mail and Hand Delivery

Vice Chair Ellen L. Weintraub
Federal Election Commission
999 E Street, NW
Room 924
Washington, DC 20463

Dear Vice Chair Weintraub:

As civil rights, environmental, civil liberties, and other nonprofit organizations that submitted comments on April 5 on the FEC's March 11 Notice of Proposed Rulemaking on Political Committee Status ("NPRM"), including several that testified at the Commission's hearings on April 14 and 15, we are writing with respect to the proposed final regulations submitted by Commissioners Toner and Thomas on April 30 ("4/30 proposal"). Although the scope of the 4/30 proposal is certainly reduced compared to the NPRM, the 4/30 proposal raises a number of the same concerns. Most notably, despite efforts to reduce the scope of the proposed regulations, 501(c) groups remain potentially subject to the definition of political committee in the 4/30 proposal, and other serious potential harm to nonprofit groups remains. The proposal appears to be the result either of an inadequate understanding of the impacts of such rules on the nonprofit community or, conversely, a disregard for the testimony of April 14 and 15 that highlighted the effects of the proposed rules on nonprofit advocacy. We respectfully submit that neither the NPRM nor the 4/30 proposal should be adopted by the Commission.

As with the NPRM, the 4/30 proposal would harm many nonprofits by creating a catch-22 dilemma. To comply with federal tax law they would be required to create a separate segregated fund ("SSF") under section 527 of the Internal Revenue Code in order to protect their federal tax exemption or to avoid paying federal income tax on permissible election-related activities. But the 4/30 proposal could cause the resulting SSF to be subject to regulation by the FEC as a federal political committee regardless of the scope of activity. Many activities by such 527 SSFs sponsored by 501(c)(4) groups, such as grassroots lobbying and distribution of voters guides focused on specific issues, are not in fact designed to promote the election of federal candidates. These activities could nonetheless transform such connected 527 SSFs into federal political committees under the 4/30 proposal. As explained at page 4 of our April 5 comments, the result would

be to seriously impede the sponsoring 501(c)(4) organizations.

In addition, as with the NPRM, the 4/30 proposal would threaten nonpartisan voter participation activities by nonprofits by altering the definition of such activity. In particular, the 4/30 proposal would effectively prohibit voter participation efforts in which the message urging people to register or vote violates the so-called "psao" (promote, support, attack, or oppose) standard or "promotes or opposes a political party." As explained at page 3 of our April 5 comments, the "psao" standard is vague and overbroad particularly as applied to nonprofits, as the Commission itself has recognized in other contexts. The prohibition on any message that "promotes or opposes a political party" is even broader, and could be construed to ban virtually any communication that urges citizens to vote out of concern for a particular issue on which the parties differ.

As with the NPRM, the 4/30 proposal represents an attempt in the middle of an election year to change the rules and have the FEC take actions exceeding its regulatory authority and capability and usurping Congress' proper role. As explained in our April 5 comments at pages 8-10, Congress made a series of deliberate decisions in enacting recent campaign finance laws, including decisions to subject independent interest groups to very different requirements than those in the NPRM and the 4/30 proposal. The Commission can and should take appropriate enforcement and other actions this year to implement the laws passed by Congress. It should not, however, create new rules never authorized by Congress by adopting the regulations in the NPRM or the 4/30 proposal.

Respectfully submitted,

Alliance for Justice
Leadership Conference on Civil Rights
League of Conservation Voters
NAACP National Voter Fund
NARAL Pro-Choice America
Planned Parenthood Federation of America
People For the American Way Foundation
Sierra Club

cc: All other Commissioners
Office of the General Counsel