



Lisa Danetz <ldanetz@nvri.org> on 09/25/2003 02:14:32 PM

To: mailinglists@fec.gov
cc:

Subject: Comments on Notice 2003-17

Dear Ms. Dinh,

I attach a cover letter and comments regarding Notice 2003-17. Do not hesitate to contact me with any questions.

Sincerely,
Lisa J. Danetz, Staff Attorney
National Voting Rights Institute
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- Cover Letter 2003-17.pdf



- Comments re Notice 2003-17.pdf



September 25, 2003

VIA E-MAIL

Ms. Mai T. Dinh
Acting Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Notice 2003-17: Mailing Lists of Political Committees

Dear Ms. Dinh:

The National Voting Rights Institute welcomes the opportunity to submit comments in response to the Notice of Proposed Rulemaking regarding Mailing Lists of Political Committees. The notice was published at 68 *Fed. Reg.* 52531 (September 4, 2003).

Respectfully Submitted,

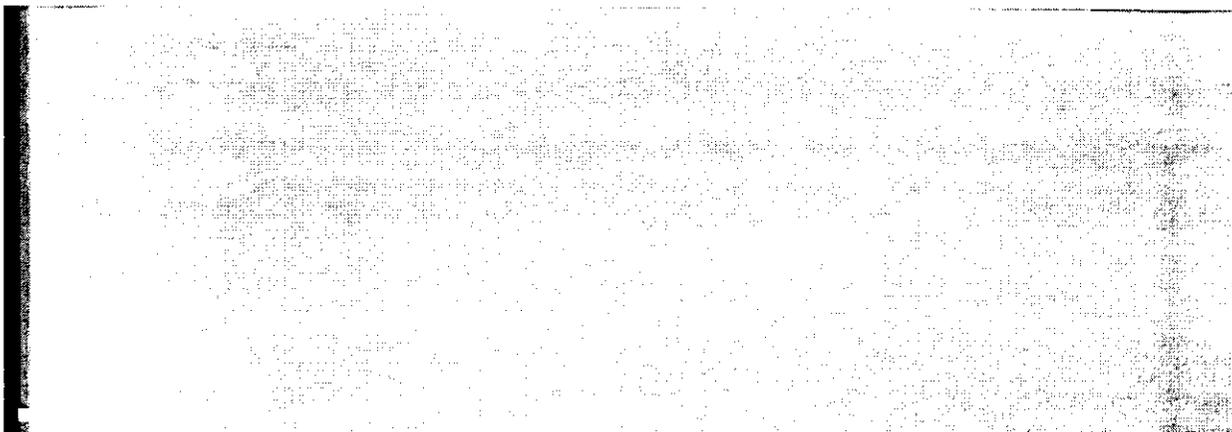
A handwritten signature in cursive script, appearing to read "Lisa J. Danetz".

Lisa J. Danetz
Staff Attorney
National Voting Rights Institute
27 School Street, Suite 500
Boston, MA 02108
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Attachment

NATIONAL VOTING RIGHTS INSTITUTE

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BEFORE THE FEDERAL ELECTION COMMISSION

NOTICE 2003-17

MAILING LISTS OF POLITICAL COMMITTEES

Comments of the National Voting Rights Institute

I. Introduction

The National Voting Rights Institute (“NVRI”) submits these comments in response to the Federal Election Commission’s Notice of Proposed Rulemaking regarding Mailing Lists of Political Committees. NVRI is a nonprofit, nonpartisan organization dedicated to protecting the constitutional right of all citizens, regardless of economic status, to equal and meaningful participation in every phase of electoral politics. Through litigation and public education, NVRI works to promote reform of our campaign finance system to ensure that those who do not have access to wealth are able to participate fully in the political process.

NVRI is a complainant in pending FEC MUR 5181, alleging that the campaign committee and leadership PAC of current-Attorney General John Ashcroft violated campaign finance regulations by, *inter alia*, the transfer of a mailing list during his 2000 Senate campaign. NVRI also currently serves as lead counsel for the plaintiffs in *Alliance for Democracy v. FEC*, a lawsuit in which the plaintiffs (three of NVRI’s co-complainants) have challenged the FEC’s failure to act in MUR 5181.

II. Comments

Two political committees connected to current-United States Attorney General John Ashcroft are the subject of a pending administrative complaint before the Federal Election Commission (“FEC”). That pending complaint specifically alleges the illegal transfer of a mailing list developed and created by Ashcroft’s leadership PAC to his 2000 campaign committee. NVRI is concerned that the proposed rulemaking, which eases the rules applicable to the transfer of such mailing lists, comes in the context of an ongoing complaint involving a high-level, high-profile government official whose campaign committee and leadership PAC appear to have violated those rules. The seeming relaxation of rules in the wake of alleged violations by political committees connected to the Attorney General is not a recipe for public confidence in the FEC’s commitment to strict and impartial enforcement of the nation’s campaign finance laws.

Enforcement under the Federal Election Campaigns Act (“FECA”), 2 U.S.C. § 431 *et seq.*, is about ensuring candidates’ adherence to law, and therefore keeping them accountable to the public. Because the Federal Election Commission (“FEC”) has near-exclusive civil enforcement jurisdiction with respect to FECA, *see* 2 U.S.C. § 437d(e), it is *especially* important that the agency maintain its focus on accountability. If the agency

loses this focus, and becomes too solicitous to the regulated community, the public has no alternative means to ensure adherence to our nation's campaign finance laws, which help safeguard American democracy.

The proposed rule, as applied to the sale or rental of mailing lists between political committees, could be used to circumvent other campaign finance regulations, especially those that limit contributions to campaign committees. NVRI is particularly concerned that, under the rule proposed, third parties would be able to circumvent the contribution limits to campaign committees by donating money to the same candidate's leadership PAC.

To the public at large, there is little difference between a leadership PAC associated with a particular officeholder and that officeholder's campaign committee. Both political committees are associated with the same candidate/officeholder; someone who supports the politics of the campaign committee is also likely to support the politics of the leadership PAC, and vice versa. Notwithstanding this impression by the public at large, of course, a leadership PAC and campaign committee are not identical. As the most obvious example of the difference, a contributor generally may donate only \$2000 per election to the campaign committee but may donate \$5000 to the leadership PAC. *Compare* 2 U.S.C. § 441a(a)(1)(A) *with* 2 U.S.C. § 441a(a)(1)(C). *But see* 2 U.S.C. § 441a(i) and 2 U.S.C. § 441a-1. Moreover, like any other PAC, the leadership PAC is limited to making a \$5000 contribution to the campaign committee during a particular election.

There are many ways by which the limits on contributions to campaign committees may be circumvented by the proposed rule. One example is that excessive contributions may be laundered through the leadership PAC to the campaign committee. If the leadership PAC is in the process of developing a mailing list, for example, third parties may donate money to the leadership PAC knowing that the campaign committee will benefit. This is because the identity of interests between a campaign committee and leadership PAC means the leadership PAC's mailing list will have an extraordinarily high value to the campaign committee – much greater than the value would be for virtually any other entity. Thus, even if the campaign committee purports to pay the “fair market value” of the mailing list, that “fair market value” will be lower than the list's actual value to the campaign committee.

Because of this disparity in pricing, a third party may donate funds to the leadership PAC, purportedly to help pay the costs of developing a mailing list, all the while expecting the campaign committee to be able to take advantage of the contribution. In addition, the leadership PAC may effectively circumvent the permissible \$5000 limit on contributions to the campaign committee by selling or renting its list to the campaign committee at a price that is likely to undervalue the list.

III. Conclusion

NVRI urges the FEC not to relax current campaign finance regulations regarding the sale and rental of mailing lists. To the extent any changes are made, transfers between leadership PACs and campaign committees should remain subject to the strictest safeguards because of the uniquely close relationship between those entities and the substantial risk of abuse and circumvention created by such transfers.