



William Hall <HALL.WW@wnj.com> on 09/25/2003 04:28:55 PM

To: mailinglists@fec.gov  
cc: Geoffrey.Neale@farmcreditbank.com, joeseehusen@hq.lp.org

Subject: Comments on Proposed Rulemaking

Please see the attached letter commenting on the proposed rulemaking regarding regulation of mailing list rentals by political committees.

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September 25, 2003

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

BY ELECTRONIC MAIL  
TO [mailinglists@FEC.gov](mailto:mailinglists@FEC.gov)

Re: Proposed Rulemaking -- Mailing Lists of Political Committees

Dear Ms. Dinh:

We represent the Libertarian National Committee, Inc. ("LNC"), a national political party committee registered with the Federal Election Commission ("FEC"). I am writing this letter on its behalf, to comment on the referenced proposed rulemaking.

As detailed in the LNC's request to the FEC that resulted in its Advisory Opinion 2002-14, the LNC has for many years rented its mailing list on an arm's length basis through an independent mailing list broker, at fair market rental rates. On some occasions, it has also directly rented its mailing list to other federal, state and local political committees at market or below-market rates. While the LNC developed its list primarily for its own political purposes, the occasional rental of its list has resulted in the receipt of funds that constitute a valuable addition to the LNC's limited revenues available to spend on its political activities.

Prior to the enactment of the Bipartisan Campaign Reform Act ("BCRA"), the LNC placed all mailing list rentals it received in its soft money account. It did so primarily as an administrative convenience, to avoid the regulatory burden of qualifying those funds as hard money.

The LNC has the following comments in response to the FEC's proposed rulemaking regarding mailing list rentals by political committees:

1. Any requirement that places the burden of proof on a political committee to demonstrate that it is renting its mailing list for a "usual and normal charge", by requiring that the list be included in a particular direct marketing industry publication, be independently appraised, or be valued using some other method, dramatically increases the regulatory cost and burden on that political committee. Specifically, it would disproportionately burden the mailing list rental activities of committees like the LNC (that currently has only 3.5 full-time equivalent employees), and its 51 state party affiliates (only a few of which have even one employee). Contrary to the implication of the FEC's Certification of No Effect Pursuant to 5 U.S.C. 605(b), enactment of such requirements would "have a significant economic impact on a substantial number of small entities."

2. There is no objective evidence that corporations, labor unions or wealthy individuals have, or will, pay to political committees mailing list rentals in excess of a "usual and normal charge", resulting in disguised contributions in violation of the contribution limits and prohibitions under the BCRA. Hence, there is no practical reason to encumber a political committee with the additional cost and administrative burden of documenting and justifying the value of its list, by requiring that the list be included in a particular direct marketing industry publication, be independently appraised, or be valued using some other method.

3. As it happens, the LNC's mailing list is listed in the *SRDS Direct Marketing List Source*. However, the LNC's list broker, Walter Karl, Inc., reports that there are other sources in the direct marketing industry, such as the *MINS System*, that collect and provide information regarding the rental value of mailing lists. Currently, so-called independent appraisals of the rental value of mailing lists are not generally available, particularly on a quick and cost effective basis. As a practical matter, the list broker reports that in trying to judge the value of a mailing list, it typically would review the published sources for mailing lists of other comparable political organizations, and use the quoted rental value of those lists as a guide for valuing a mailing list that is not included in the published sources. If the FEC blesses a single publication as the standard for setting the value of a mailing list, it will deny the great majority of political committees that are not included in such publications the right to rent their mailing lists. For the FEC to require that a committee seek and obtain an independent appraisal, when appraisals are not commonly available at a reasonable cost, ignores the reality of how mailing list rentals work.

4. The LNC developed its mailing list in the course of its political activities over many years, in full compliance with the law. At the time it did so, no legal requirements existed that the LNC keep an accounting of what funds – hard money or soft money – were invested to develop the list. If the FEC were to suddenly require that the LNC account for mailing list rentals as hard money or soft money, in proportion to the character of the funds invested to develop the list, it would be impossible for the LNC to certify what the precise allocation should be. It kept no records from which that information could be derived. The FEC's hard money and soft money reporting requirements did not require sufficient detail in the FEC reports to be able to reconstruct that information at this late date. Under the BCRA, as a national political party committee, the LNC cannot accept or spend soft money. If the FEC insists that the LNC deem a portion of its mailing list rentals to be soft money, and requires the LNC to turn over those funds

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September 25, 2003  
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to the United States Treasury, then the FEC is effectively taking the LNC's funds without just compensation, and prohibiting the LNC from renting its mailing list at the equivalent of a "usual and normal charge." Under those circumstances, the LNC will elect to forego renting its mailing list, and the LNC's political speech will be diminished.

Very truly yours,

A handwritten signature in cursive script that reads "William W. Hall". The signature is written in dark ink and is positioned above the printed name.

William W. Hall

WWH:jg