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Subject: Comments on Proposed FEC Rule Changes

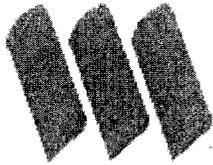
To:  
Ms. Mai T. Dinh, Acting Assistant General Counsel

From:  
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See attached public comment on proposed FEC rule changes.



- FEC Public Comment.doc



## Wisconsin Energy Conservation Corporation

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**Date: April 9, 2004**

**To: Ms. Mai T. Dinh, Acting Assistant General Counsel**

**From: Janet Brandt, Executive Director**

**Subject: Comments on Proposed Rule Changes That Threaten Non-Profit Advocacy Rights**

I am outraged and appalled at the completely inappropriate process being used by the FEC to dramatically change and reduce the long-established and legislated advocacy rights of non-profit organizations in the United States. It is my understanding that proposed FEC rule changes to the definition of "political committees" related to campaign finance would include non-profit organizations. As Executive Director of a 25-year old non-profit organization I believe this proposed change is illegal and subversive. On behalf of our organization and the Board of Directors, I completely oppose this rule change. If other organizations like ours were aware of this proposed change and its implications, you would be flooded with letters of opposition.

Please consider the following points:

- These rules would shut down the legitimate advocacy activities of nonprofit organizations of all kinds that the FEC has NO authority to regulate.
- Nothing in the McCain-Feingold campaign reform law or the Supreme Court's decision upholding it provides any basis for these rules. That law is only about banning federal candidates from using unregulated contributions ("soft money"), and banning political parties from doing so, because of their close relationship to those candidates. It's clear that, with one exception relating to running broadcast ads close to an election, the new law wasn't supposed to change what independent nonprofit interest groups can do, including political organizations (527's) that have never before been subject to regulation by the FEC.
- The FEC should not change the rules for nonprofit advocacy in the middle of an election year, especially in ways that Congress has already repeatedly considered and rejected. Implementing these changes now would go far beyond what Congress decided and the Supreme Court upheld.
- The FEC can't fix the problems with these proposed rules just by imposing new burdens on section 527 groups. They do important issue education and advocacy as well as voter mobilization. Congress clearly decided to require those groups to fully and publicly disclose their finances, through the IRS and state agencies, not to restrict their independent activities and speech. The FEC has no authority to go further.
- In the McConnell opinion upholding McCain-Feingold, the U.S. Supreme Court clearly stated that the law's limits on unregulated corporate, union and large individual contributions apply to political parties and not interest groups. Congress specifically considered regulating 527

organization three times in the last several years - twice through the Internal Revenue Code and once during the BCRA debate - and did not subject them to McCain-Feingold.

- The FEC should not, in a few weeks, tear up the fabric of tax-exempt law that has existed for decades and under which thousands of nonprofit groups have structured their activities and their governance. The Internal Revenue Code already prohibits 501(c)(3) charities from intervening in political candidate campaigns, and IRS rules for other 501(c) groups prohibit them from ever having a primary purpose to influence any candidate elections -- federal, state, or local.
- As an example of how seriously the new FEC rules contradict the IRS political and lobbying rules for nonprofits, consider this: Under the 1976 public charity lobbying law, a 501(c)(3) group with a \$1.5 million annual budget can spend \$56,250 on grassroots lobbying, including criticism of a federal incumbent candidate in the course of lobbying on a specific bill. That same action under the new FEC rules would cause the charity to be regulated as a federal political committee, with devastating impact on its finances and perhaps even loss of its tax-exempt status.
- The chilling effect of the proposed rules on free speech cannot be overstated. Merely expressing an opinion about an officeholder's policies could turn a nonprofit group OVERNIGHT into a federally regulated political committee with crippling fund-raising restrictions.
- Under the most draconian proposal, the FEC would "look back" at a nonprofit group's activities over the past four years -- before McCain-Feingold was ever passed and the FEC ever proposed these rules - to determine whether a group's activities qualify it as a federal political committee. If so, the FEC would require a group to raise hard money to repay prior expenses that are now subject to the new rules. Further work would be halted until debts to the "old" organization were repaid. This rule would jeopardize the survival of many groups.
- The FEC's proposed rule changes would dramatically impair vigorous debate about important national issues. It would hurt nonprofit groups across the political spectrum and restrict First Amendment freedoms in ways that are unhealthy for our democracy.
- Any kind of nonprofit -- conservative, liberal, labor, religious, secular, social service, charitable, educational, civic participation, issue-oriented, large, and small -- could be affected by these rules. A vast number would be essentially silenced on the issues that define them, whether they are organized as 501(c)(3), 501(c)(4), or 527 organizations.

I ask that you make the right decision and modify the proposed rules to eliminate this threat to non-profit organizations mission-based advocacy.

Cc: Representative Tammy Baldwin  
Senator Herbert Kohl  
Senator Russ Feingold