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To: politicalcommitteestatus@fec.gov

cc:

Subject: FEC NPRM 2

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CELEBRATING 25 YEARS

April 9, 2004

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

Dear Ms. Dinh,

These comments are submitted on behalf of the New York State Coalition Against Domestic Violence ("NYSCADV") and its New York State member organizations in response to the Notice of Proposed Rulemaking ("NPRM") issued by the Federal Election Commission ("FEC") on March 11, 2004. The FEC has requested comments on proposed changes to the definition of a "political committee," for the purposes of regulation under the Federal Election Campaign Act ("FECA") (as amended by the Bipartisan Campaign Reform Act of 2002 ("BCRA")). NYSCADV welcomes this opportunity to express its concerns to the FEC. NYSCADV has serious concerns that the proposed changes to the definition of a "political committee" may inadvertently capture issue advocacy activities undertaken by groups such as NYSCADV, seriously impeding our and their ability to carry out its important mission.

The New York State Coalition Against Domestic Violence (NYSCADV) is a non-profit membership organization whose mission is to eradicate domestic violence and to ensure the provision of effective and appropriate services to victims of domestic violence through community outreach, education, training, technical assistance, and the development of strategies for the prevention of domestic violence. Since its inception in 1978, the NYSCADV has been the driving force behind the development of hundreds of programs providing services to abused women and their children.

NYSCADV engages solely in issue advocacy regarding domestic violence and serves as the statewide voice of women who are abused and their children and those who provide direct services to them. From testifying before the State Legislature on domestic violence issues to assisting programs in better serving the needs of the victim community, NYSCADV is a state leader in efforts to assist women who are abused in protecting themselves and their children.

NYSCADV, as well as many other issue advocacy groups, relies heavily on the contributions of individuals and corporations for its survival and ability to effectively carry out its mission. The classification of a group as a "political committee" imposes an array of restrictions on fundraising

activities under the FECA and the BCRA, including significant restrictions on precisely the sources of funding on which NYSCADV depends for its success. In *Buckley v. Valeo*¹, the Supreme Court cautioned that regulation of contributions and expenditures by organizations participating in the Federal election process should not reach groups engaged in purely issue discussion. NYSCADV urges the FEC to approach changes to the definition of a "political committee" in light of the *Buckley* Court's warning, so that NYSCADV, and similar issue discussion groups whose activities are not intended to influence Federal elections, are not inadvertently captured by an overly broad definition of what activities make an organization a "political committee".

Pursuant to the NPRM the FEC is considering amending its definition of "expenditure" to reflect that certain communications and voter drive activities have the purpose and effect of influencing Federal elections. When determining what types and amounts of expenditures will count towards the threshold that an organization can spend on certain activities before it is deemed a political committee, the FEC wants to change the regulations to include public communications that promote, support, attack, or oppose a clearly identified candidate.

NYSCADV neither endorses nor contributes to the campaigns of individuals running for Federal office. NYSCADV's issue advocacy regarding domestic violence, however, involves significant encouragement and criticism of the policies of the Federal government regarding this issue. As currently drafted, NYSCADV's support or criticism of the domestic violence policies of the Federal government could be construed as support or criticism of the elected individuals promulgating those policies, inadvertently classifying NYSCADV as a "political committee". A communication that promotes, supports, attacks or opposes a clearly identified candidate may be a clear example of issue advocacy and not intended to influence a Federal election. As a result, NYSCADV strongly suggests that the proposed change, by itself, is overbroad and will cause significant injury to the ability of groups to engage in issue advocacy, precisely the harm that the *Buckley* Court foretold.

The FEC has also requested comment on whether it should incorporate the "major purposes" test into the definition of "political committee". In addition, if the "major purposes" test is incorporated into the definition of "political committee", the FEC has requested comment on whether the indefinite article "a" can be used in lieu of "the" to modify "major purpose".

NYSCADV believes that the "major purposes" test should be incorporated into the definition of "political committee". Incorporation of the major purposes test will help insure that issue discussion groups, such as NYSCADV, will not be subject to the restrictions of the BCRA simply due to the fact that some of their activities tangentially convey a message about a candidate for Federal office. NYSCADV strongly opposes, however, the substitution of the indefinite article "a" for "the" to modify "major purpose". It is certainly possible that an organization may have several stated (and unstated) purposes, all of which may be important to its fundamental goals, and the "major purposes" test as currently written could thwart the ability of the FEC to regulate organizations that are actually intending to influence Federal elections, even if it is not their sole purpose.

¹ 424 U.S. 1 (1976).

NYSCADV has serious concern, however, for the way in which the FEC proposes determining an organization's "major purposes". Of the various methods that the FEC proposes in the NPRM to determine if one of an organization's "major purposes" is the nomination or election of one or more Federal candidates, the most troubling for NYSCADV is the examination of the group's public pronouncements or other communications that promote, attack, support, or oppose a candidate. Under an overly broad definition of which activities promote, support, attack, or oppose a candidate for Federal election, several of NYSCADV's previously described issue activities may mistakenly be seen as satisfying this standard. For example, NYSCADV frequently briefs its member organizations on budgetary and policy decisions of the sitting administration. If the sitting President is up for re-election and NYSCADV advises, via public communication to its member organizations, that a certain budgetary proposal or policy decision is ill-advised or beneficial to its cause, under the broad definition proposed by the NPRM such action may be determined to be intended to influence the Federal election of the President. In the NPRM, the FEC acknowledges the potential for such a scenario, when it specifically asks if there are circumstances where an organization's written public statements, documents, solicitations, and other communications would not be an appropriate measure of its "major purposes".²

There are in fact many circumstances where an organization's written public statements, documents, solicitations, and other communications are not an appropriate measure of its major purposes. Aside from the previous example, there are many other activities that NYSCADV performs that, without further context, would erroneously classify NYSCADV's "major purposes". For example, NYSCADV frequently files comments in rulemaking proceedings conducted by various government agencies. It is possible that the result of this rule change for comments filed by an issue discussion group to be deemed to be for the purpose of attacking or supporting a candidate for Federal office simply because they advocate for a policy decision contrary to or in support of that proposed by the current administration. Such a result not only inappropriately extends the net of regulations under the FECA and the BCRA to snare issue discussion groups, but also hinders the very purposes for which such groups are created.

The FEC must make abundantly clear through the final regulations adopted that in order for a communication to be considered as an attack or in support of a candidate, that candidate must be specifically identified by name. The FEC cannot allow the association of a candidate with existing or proposed governmental policies to suffice for specific identification of a candidate. In other words, public communications by issue discussion groups that make statements, positive or negative, about a policy decision by the sitting administration cannot be deemed to be supporting or attacking the sitting President who may be up for re-election.

Finally, the FEC asks whether it should apply a different standard to organizations that engage in grassroots lobbying designed to affect upcoming legislative or executive actions. The FEC proposes adding additional standards for determining if an organization's purpose is to promote, support, attack or oppose a candidate for Federal office applicable to 501(c) organizations³. NYSCADV supports the application of these additional standards to 501(c) organizations to add yet

² Political Committee Status, 69 Fed. Reg. 11,736 (Mar. 11, 2004).

³ Additional bases include: 1) reference to the clearly identified candidate as a candidate; 2) reference to the election or to the voting process; 3) reference to the clearly identified candidate's opponent; or 4) reference to the character or fitness for office of the clearly identified candidate. Id.

another layer of protection against inappropriate regulation for groups that do not have as their major purpose the election of a candidate for Federal office, but whose public communications tangentially appear to promote or attack a candidate.

In conclusion, NYSCADV urges the FEC to take every measure possible to follow the advice of the *Buckley* Court and insure that the proposed changes to the regulations are not over-inclusive so as to ensnare NYSCADV and other issue discussion groups within the FECA and the BCRA's net of regulations. Allowing the funding and expenditure restrictions contained in the FECA and BCRA to apply to issue discussion groups would have a devastating impact on such groups, virtually guaranteeing a drastic reduction of their effectiveness or perhaps even their extinction. NYSCADV's work as the voice for victims of domestic violence is too important to be caught up in such restrictive regulations.

Sincerely,

Sherry Frohman
Executive Director

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