



"MACKEY, Sue" <smackey@audubon.org> on 04/09/2004 03:20:09 PM

To: politicalcommitteestatus@fec.gov

cc:

Subject: NPRM comments

Attached are regarding political committee status NPRM.



- FEC NPRM Comments.doc



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April 9, 2004

Via Electronic Mail

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

Re: Comments on Notice of Proposed Rulemaking on Political Committee Status

Dear Ms. Dinh:

National Audubon Society (“Audubon”) submits the following comments in response to the Federal Election Commission’s (FEC) March 11, 2004 Notice of Proposed Rulemaking on Political Committee Status (NPRM). Because it is Audubon’s interpretation that the NPRM could prohibit some activities in which Audubon currently engages that are permitted activities of a 501(c)(3) organization, and that have long been authorized as an exercise of free speech, Audubon objects to the NPRM and requests the FEC withdraw the NPRM and take no further action.

Founded in 1905, Audubon is a not-for-profit corporation that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code. Audubon’s mission is to conserve and restore natural ecosystems, focusing on birds, other wildlife and their habitats for the benefit of humanity and the earth’s biological diversity. Audubon has approximately 500,000 members nationwide and over 500 local chapters, most of which are independently organized 501(c)(3) organizations.

Audubon pursues its mission through a number of activities including issue advocacy and educating its members within the guidelines of a 501(c)(3) organization. Under this NPRM, however, some of those activities could be prohibited. Of particular concern to Audubon is the proposal to broaden the definition of “expenditure” so that a non-profit organization such as Audubon would be considered a political committee and subject to FEC regulation if it spent

\$50,000 in any one of the previous four years on communications that “promote, support, oppose or attack” a candidate for federal office. However, the NPRM fails to clearly define “promote, support, oppose or attack” making this proposed change so vague that it would give FEC considerable discretion in determining what communications fall within this new definition and thus what activity can lead to an organization being regulated by the FEC. Audubon regularly communicates with its members and the public about legislation or policies that affect birds or other wildlife, and these communications often include information as to where lawmakers may be positioned on those issues. These non-partisan communications are a critical part of our issue advocacy activities. The most effective way for Audubon to convey its concerns with or support of legislation or policies is to communicate that information to our members who can then directly express their concern with their elected officials who are charged with making those decisions. Our members rely on Audubon to provide them this information so they can effectively engage in advocacy with their lawmakers on issues of concern to them relating to birds and other wildlife. Under the NPRM, these non-partisan communications could be interpreted by the FEC as promoting, supporting, opposing or attacking a “candidate for federal office” if, for example, they include information about an incumbent lawmaker’s position on an issue of concern to Audubon’s membership. Because Audubon would not want to risk the possibility of being subject to FEC regulation, the lack of clarity in the NRPM may lead to Audubon and other organizations abandoning these types of communications. Without the ability to inform our members of their lawmakers’ positions on legislation or issues of concern to Audubon, our issue advocacy will be curtailed with the result that we will be less effective in achieving our organizational mission.

Audubon and its chapters also, on occasion as a public service to our supporters, engage in non-partisan voter registration and get-out-the-vote activities within the established guidelines of a (501(c)(3) organization. These activities would also be effectively prohibited by the NPRM.

Another concern is the NPRM’s proposed changes would apply retroactively because they allow the FEC to consider an organization’s activities over the past four years. Thus, even if an Audubon were to choose to limit its activities in the future it could nonetheless be considered a political committee subject to FEC regulation based solely on past actions.

As a final matter, we object to the short 30-day comment period provided for this NPRM. This proposal includes potentially sweeping changes to long-standing 501(c)(3) activities currently coordinated by Audubon, its chapters and other similar non-profit organizations. 30 days is insufficient time for many organizations, particularly those small organizations like many of our chapters, with limited resources, to obtain information about this NPRM, analyze the complex definitional changes and comment.

Because the proposed changes in the NPRM could force Audubon to limit its non-partisan issue advocacy and voter participation activities, Audubon objects to the NPRM and requests the FEC to withdraw it and take no further action.

Sincerely,

Bob Perciasepe

Bob Perciasepe
Chief Operating Officer