



KKennedyMD@aol.com on 04/09/2004 12:47:49 PM

To: politicalcommitteestatus@fec.gov  
cc:

Subject: Public Comment

Dear Ms. Dinh:

I am attaching my comments on the proposed FEC rule changes. I will also e-mail my comments in a second e-mail (within the body of the e-mail) in case there is any difficulty with downloading these comments.

Thank you again for the opportunity to comment on these proposed rule changes.

Sincerely,  
Katherine Kennedy



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April 9, 2004

Ms. Mai T. Dinh  
Acting Assistant General Counsel  
Federal Election Commission

Via electronic mail at: [politicalcommitteestatus@fec.gov](mailto:politicalcommitteestatus@fec.gov)

Re: Proposed Rule Change to amend the definition of “political committee”

Dear Ms. Dinh:

I am writing to provide my comments on the proposed rule change by the Federal Election Commission (FEC) to amend the definition of “political committee.” Thank you for this opportunity to provide public comment.

For the record, I am unequivocally opposed to the proposed FEC rule changes. I will detail my reasons in the following comments:

**1. Implementing these proposed rule changes would go far beyond what Congress decided and the Supreme Court upheld.**

First, Congress has decided to require nonprofit organizations to fully and publicly disclose their finances, through the IRS and state agencies. Congress has specifically not restricted the independent activities and speech of nonprofit organizations.

Second, 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. 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. The sole exception has to do with running broadcast ads close to an election. The intent of McCain-Feingold was NOT 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 and perform important issue education and advocacy as well as voter mobilization.

**2. The FEC’s proposed rule changes would impair vigorous debate about important national issues and insulate public officials from substantive criticism for their positions on policy issues.**

If the proposed rules were adopted, many nonprofit organizations – such as those that advocate for cancer research, gun and abortion restrictions OR rights, fiscal discipline, tax reform, poverty issues, immigration reform, the environment, or civil rights or liberties -- would be transformed into federal political committees if they criticize or

commend members of Congress or the President based on their official actions or policy positions.

As a result of this change, these nonprofit organizations would therefore be ineligible to receive grants from any corporation, even an incorporated nonprofit foundation, from any union, or from any individual in excess of \$5,000 per year. Many of these nonprofit organizations would not be able to continue at the same level of advocacy or possibly at all. Losing their voices would impoverish political debate and could act as a de facto “gag rule” on public policy advocacy. This would effectively diminish civic participation in government rather than strengthen it -- the opposite result intended by most supporters of campaign finance reform.

Finally, this kind of government regulatory gag rule is at the top of a slippery slope into fascist government control – certainly the antithesis of our American democratic ideals.

### **3. Free speech would be imperiled.**

The chilling effect of the proposed rules on free speech cannot be overstated. It would hurt nonprofit groups across the political spectrum and restrict First Amendment freedoms in ways that are unhealthy for our democracy and move us towards a fascist state.

Campaign finance reform was not meant to gag public interest organizations. Any kind of nonprofit across the political spectrum—conservative, liberal, labor, religious, secular, social service, charitable, educational, civic participation, issue-oriented, large, and small—could be affected by these rules. Merely expressing an opinion about an officeholder’s policies could turn a nonprofit group --whether they are organized as 501©(3), 501©(4), or 527 -- into a federally regulated political committee with crippling fund-raising restrictions. Such changes would cripple the ability of groups to raise and spend funds in pursuit of their mission and could be so ruinous that organizations would be forced to back away from meaningful conversations about public policies that affect millions of Americans. A vast number of nonprofit organizations would be silenced by the proposed rule changes.

### **4. The FEC should not tear up in a few weeks 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©(3) charities from intervening in political candidate campaigns, and IRS rules for other 501© groups prohibit them from ever having a primary purpose to influence any candidate elections—federal, state, or local.

### **5. Furthermore, the FEC should not change the rules for nonprofit advocacy in the middle of an election year, especially in ways that Congress already considered and rejected.**

**6. The proposed rule changes violates our constitutional right of due process if the 4 year “look-back” rule is included.**

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 4 year “look back” rule would jeopardize the survival of many groups by causing a nonprofit group that criticized or praised the policies of Bush, Cheney, McCain, or Gore in 2000, or any Congressional incumbent candidate in 2000 or 2002, to be classified as a political committee now, even though the group has not done so since then. This severely violates our constitutional guarantees of due process.

**In summary, Congress and the courts have specifically considered and rejected regulations that would hinder the work of nonprofit public policy groups. The Federal Election Commission should do the same. Non-profit public interest groups should not be treated as political committees. If these rule changes are implemented, our democracy runs the risk of heading down a slippery slope towards a fascist state.**

Respectfully submitted,

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