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To: politicalcommitteestatus@fec.gov
cc: ajackson@aha.org, mseklecki@aha.org, JCorley@perkinscoie.com

Subject: NPRM re: AHA

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April 9, 2004

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Mr. Lawrence Norton
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Notice of Proposed Rulemaking

Dear Mr. Norton:

I am writing on behalf of the American Hospital Association ("AHA") in response to the request for comments on the Notice of Proposed Rulemaking ("NPRM") on Political Committee Status issued by the Federal Election Commission ("FEC") on March 11, 2004.

AHA is a national trade association representing hospitals of all types, health care networks, patients and their communities. AHA has close to 5,000 institutional members and 37,000 individual members. AHA's membership is geographically diverse and includes large and small, for-profit and not-for-profit institutions. AHA itself and its affiliated state associations are organized as 501(c)(6) trade associations under the Internal Revenue Code ("IRC"). Many of AHA's member hospitals are organized as charitable institutions under section 501(c)(3) of the IRC. While AHA and several of its affiliated state associations have formed separate segregated funds under the federal campaign laws, by and large, AHA members do not have separate federal political committees.

AHA and its members have over the years participated actively in the public debate on issues of concern to the hospital community. Typical of the types of programs undertaken are:

- Discussions through membership communications and public communications of issues affecting hospitals and their communities including information about positions that public officials have taken on those issues;
- Efforts to educate the public on issues related to the hospital's role in the community including information about positions that public officials have taken on those issues;

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- Similar efforts to mobilize support or opposition to legislative or governmental policies or proposals;
- Efforts to encourage registration and voting on a nonpartisan basis.

If the rulemaking were to result in rules in the form proposed in the NPRM, AHA, its affiliated state associations and most of its member hospitals would qualify as federal political committees. The activities described above could only be done with funds raised under the federal campaign laws. In the alternative, they would be required to significantly alter the way they have handled public policy matters over the years and curtail programs that have been a major part of their community outreach efforts.

The NPRM proposals to expand the definition of the term "expenditure" and the definition of what constitutes a "political committee" would, in effect, prevent AHA, its state affiliates and members from participating in any type of issue discussion that referenced a federal officeholder and could be viewed as promoting, supporting, attacking or opposing that officeholder. Without a clear definition of what constitutes promoting, supporting, attacking or opposing, organizations like AHA would not be willing to take the risk of falling into the definition of political committee. The dollar thresholds for making this determination are so low, it requires very little activity to push an organization over the limits and into political committee status. AHA's charitable hospital members would be precluded from virtually any public policy speech because of the risk that making any "expenditure" under the federal campaign laws would result in the loss of their tax exempt status.

This result raises significant First Amendment concerns and flies in the face of the Supreme Court's recognition that there is "a profound commitment to the principle that debate on public issues should be uninhibited, robust and wide-open and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials." NY Times v. Sullivan, 376 US 254, 270 (1964). By restricting or, in effect, prohibiting, the type of issue communication traditionally undertaken by AHA, its state affiliates and members, as well as by other organizations similarly situated, the FEC would limit the public's access to information and views that are critical to a clear understanding of the issues facing the country today.

Further, the rules would discourage efforts by organizations like AHA, its state affiliates and members to encourage participation in the electoral process that is so urgently needed in our country today. By treating voter registration and GOTV

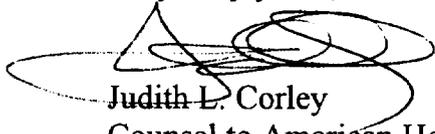
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activities as "expenditures," the Commission ensures that these activities will be done only by those entities willing to become political committees.

It is not clear that the FEC has the authority to make such sweeping changes to the law without action from Congress. In the recent campaign finance reform law, Congress addressed the raising and spending of "soft" money (funds not regulated by federal campaign finance laws) by party committees and federal officeholders and candidates. Congress did not extend, as the NPRM proposes to do, these restrictions to all organizations.¹ The sweeping changes proposed in the NPRM that so significantly affect the role of AHA, its state affiliates and members in the public debate should only be addressed after careful inquiry and consideration by the Congress.

AHA appreciates the Commission's consideration of these comments and notes that from AHA's perspective, there is no need to issue any new rule at this time.

Very truly yours,



Judith L. Corley
Counsel to American Hospital Association
Jcorley@perkinscoie.com

cc: Al Jackson, AHA

¹ With respect to groups other than parties and federal officeholders, Congress addressed only a very limited restriction on the use of corporate or labor funds during the period immediately preceding an election.