Linda Czipo <lczipo@njnonprofits.org> on 04/08/2004 12:04:50 PM

To: politicalcommitteestatus@fec.gov
cc:

Subject: Comments - Notice of Proposed Rulemaking, Political Committee Status, 69 Fed. Reg. 11736

Ms. Mai T. Dinh

Acting Assistant General Counsel

Federal Election Commission

999 E Street, NW

Washington, DC 20463

Dear Ms. Dinh:

Attached, in Adobe PDF Format, are the comments of the Center for Non-Profit Corporations in response to the Commission's March 11, 2004, Notice of Proposed Rulemaking regarding political committee status. For the reasons detailed in our statement, we are profoundly concerned about the NPRM and its potential impact on non-profit organizations, particularly 501(c)(3) charities.

My contact information appears below and in our attached comments.

Thank you for your consideration.

Very truly yours,

Linda M. Czipo

Executive Director

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The Center for Non-Profits
Helping organizations build a better New Jersey

April 8, 2004

Via electronic mail to politicalcommitteestatus@fec.gov

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

Re: Notice of Proposed Rulemaking (NPRM) on Political Committee Status, 69 Fed. Reg. 11736

Dear Ms. Dinh:

On behalf of the Center for Non-Profit Corporations, a 501(c)(3) umbrella organization serving New Jersey's charitable non-profit community including over 620 member organizations, I am writing to express our deep concern regarding the above-referenced proposal regarding political committee status. The Center's membership consists almost entirely of 501(c)(3) organizations. Our members represent a broad spectrum of charitable activity including human services, arts and culture, housing, community development, faith-based organizations, environmental protection, health care, and many others. Although the NPRM raises serious questions on many levels, our comments focus primarily on its negative impact on 501(c)(3) organizations.

The Center appreciates the chance to comment on this proposal, and expresses the following concerns:

501(c)(3) organizations should be excluded entirely from the scope of these regulations.

As you know, interactions between 501(c)(3) public charities are already subject to strict federal laws and regulations. Private foundations are prohibited from lobbying, and influencing legislation may comprise no more than an "insubstantial part" of a public charity's activities. Attempting to influence the outcome of a political campaign is expressly prohibited. Failure to adhere to these standards can result in stiff excise taxes or loss of tax exemption. The Commission itself recognized this important distinction in its own "Electioneering Communications" rules, 67 Fed. Reg. 65190, 65200 (October 23, 2002), in which it explicitly sought to protect advocacy communications by 501(c)(3) organizations.

We have seen no evidence of abuse of existing laws and regulations that would justify subjecting 501(c)(3) organizations to the confusion and draconian consequences posed under the NPRM. To the contrary, in our experience, charities are so concerned about these restrictions that they are too often reluctant to exercise their rights to participate in the public policy arena within their legal limits. We therefore urge you to continue to recognize the special nature of 501(c)(3) organizations as you proceed with any rulemaking.

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There needs to be a clear distinction between partisan and nonpartisan activity.
The NPRM raises the very real possibility that any organization, whether 501(c)(3) or other types, could be penalized retroactively for conducting non-partisan voter education, registration and mobilization activities. This prospect flies in the face of established law and policy designed specifically to encourage increased civic participation by disenfranchised populations. At a time when our country is facing record lows in election turnout, we cannot afford to adopt policies that would chill efforts to encourage more people to vote.

The terms "promote, support, attack or oppose" a candidate for federal office are undefined.
Effective advocacy – and indeed, clear communication – often requires that public officials be identified by name. Yet the NPRM definitions provide no exclusion or safe harbor for naming the sponsor of legislation or the architect of an initiative, even if that person is mentioned in their current capacity as an officeholder and not a candidate. For instance, if a 501(c)(3) issues a communication encouraging readers to contact President Bush to oppose or support his proposed tax cuts, under the NPRM this communication, if issued too close to an election, could be seen as opposing or supporting CANDIDATE George W. Bush. Similarly, if Governor John X has declared his candidacy for the U.S. Senate, a 501(c)(3) organization could be placing itself in jeopardy simply by asking its members to thank Governor X for signing a key piece of legislation into law. Under the NPRM, any expenditure for such activities would become illegal for any non-profit corporation based on the Federal Election Campaign Act (FECA), which already prohibits corporations from making contributions or expenditures "in connection with any election to any political office." It would have the dangerous effect of silencing charitable organizations for up to three months of an election year (including primaries and general elections), leaving opponents free to push through policies with little opposition.

The NPRM would have devastating consequences for 501(c)(3) organizations.
For 501(c)(3)'s which have, under other areas of the law, been repeatedly reassured that a wide variety of nonpartisan advocacy and voter activities are perfectly appropriate, the excessively broad definitions under the NPRM would be profoundly crippling. The classification as a political committee would effectively end a charity's ability to raise funds from corporations, larger individual gifts and grants from foundations – many of whom are unaware that they can legally fund an organization whose activities include advocacy and lobbying. The NPRM in current form would effectively force 501(c)(3)'s to choose between seeking a grant and engaging in policy work, a decision no charity should be forced to make.

The NPRM extends far beyond the scope initially anticipated under the BCRA, and its constitutionality is questionable.
In passing the Bipartisan Campaign Reform Act of 2002, Congress did not adopt the sweeping definitions being proposed here and chose not to extend it to the communications mechanisms being contemplated under the NPRM. The U.S. Supreme Court in its *McConnell v Federal Election Commission* decision also stated that interest groups were permitted to raise soft money to support

voter registration, get-out-the-vote, broadcast advertising and mailings. The NPRM significantly oversteps these boundaries far beyond those authorized by Congress and the Supreme Court, posing a fundamental threat to free speech.

The proposed timing of the NPRM and its retroactive application are unworkable and inappropriate.

The idea that any organization can be classified as a political committee based on the activities of 3-4 years ago under different rules is patently unfair. It is inappropriate to retroactively penalize groups by changing the rules in the middle of the current election cycle as has been proposed. Furthermore, given the complexity and potential breadth of the NPRM, as well as the myriad questions and alternatives it offers for consideration, it would be impossible for covered groups to comply in the current election year.

Conclusion

The charitable community has a long tradition of working in partnership with government to identify and address public needs. This relationship depends upon the ability of both partners to exchange information, ideas and recommendations freely. The NPRM in its current form would significantly hamper efforts to build and sustain these vital public/private partnerships. It would pose unintended, severe consequences on non-profit groups, and would effectively stifle their ability to communicate on behalf of some of society's most vulnerable people. If this happens, the real losers will be children, low-income people, the elderly, mentally and physically disabled and other disadvantaged people for whom non-profits often serve as their only voice to policymakers.

We respectfully urge you to withdraw this proposal, allow sufficient time to develop rules that relate more directly to the BCRA without overreaching its original intent, and preserve the ability of 501(c)(3) organizations to advocate within their current legal limits.

Thank you for your consideration.

Very truly yours,

Linda M. Czipo
Executive Director