Chris Lihou <clihou@yahoo.com> on 04/05/2004 05:15:32 PM

To: politicalcommitteestatus@fec.gov
cc:

Subject: NPRM: 11 CFR Parts 100, 102, 104, 106, 114

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

April 6, 2004

Dear Ms. Dinh,

REF: FEC-NPRM Pub. Federal Register, March 11, 2004, Pages 11736 and subsequent.

Federal Register P.11738, Col.2: "The Commission further seeks comment on whether, even if it may so amend its regulations, the Commission should refrain from redefining such fundamental and statutorily defined terms, in the absence of further guidance from Congress."

It would be highly advisable for the Commission to defer these rule changes pending clarification by Congress. The opinions of the Justices in Buckley, and in McConnell especially, are shockingly vague and broadly defined. Should the Commission cast these opinions verbatim into regulations, this will open a Pandora's box of unintended consequences.

Federal Election Activities

It is probable that the Justices intended to curtail the practice of non-profit organizations hiding behind their tax-free status to channel tax-deductible money into political issues, by paying for commercial television or print advertising which is intended to influence Federal elections by portraying a candidate as for or against a "hot-button" political issue. Even though this intent to influence the election may not be explicitly stated, the intent and the effect are there. This is a well-recognized phenomenon.

However, instead of explicitly defining the paid advertising in question, the Justices have characterized the third type of Federal Election Activity as a "public communication" "referring to a Federal candidate that promotes, supports, attacks, or opposes a candidate," and defines this "public communication" as "designed to influence federal elections OR, IN FACT, influencing elections."

First, intent is very difficult to prove and often requires review by a court to establish. Aware of this, the Justices have broadened the net to include

all communications which "have the effect" of influencing elections. Second, the term "public communication" is not clearly defined as being restricted to paid advertisements by non-profit entities. HERE IS THE RESULT: Under this astoundingly vague definition, it may be argued that opinions expressed by hosts or guests on any television talk show, such as "The Capital Gang," or any television host who critiques, favorably or unfavorably, the record or positions of political candidates, is engaging in a "public communication" which "has the effect of influencing elections," and must therefore be characterized as a valuable political contribution, subject to all monetary restrictions placed thereon.

Moreover, the Web sites of non-profit advocacy organizations, such as environmental advocates, civil liberties defenders, business advocacy groups, or religious organizations, which draw attention to adverse actions on their favored issues by politicians who happen to be running for an election, would also reach a mass audience and fall under this definition of an "Election Activity." Will these Web sites be required by law to log all their "hits" to see if they exceed the 50,000 threshold in your definition?

Finally, who is going to place a dollar amount on the useful monetary value of these "public communications" to the candidates in question, or their opponents?

Surely the Commission does not wish to infringe on the First Amendment right of any individual citizen to express a political opinion or criticize an elected official in a public forum. However, this overly broad characterization by the Justices does just that.

Electioneering Communications

Again, the proposed rules would define an Electioneering Communication as ANY broadcast, cable, or satellite communication that is "distributed for a fee." By whom do you envision this fee as being paid? Many television networks distribute talk shows produced in the home studios, and expressing political opinions, to a base of franchised local stations, who pay a fee for the use of the shows. By this definition, those fees, in whole or in part - who can determine what percentage? - will fall under the regulations governing political contributions. Is this what you intend? Why can't you say "paid advertising," which is clearly understood in the native language, instead of "public communications distributed for a fee?" That extraordinarily broad definition sounds, again, like a franchised TV talk show, or even a syndicated newspaper column. Is that what you intend to regulate?

Conclusion

The opinions written by the Justices, probably intended to regulate paid advertising by non-profit entities and intended to influence elections, instead are so broadly written that they would cover any opinion expressed by a host or a guest on a television show, or any editorial column or letter in a

newspaper, which has the intended or unintended effect of influencing an election. As written, if taken literally, this opinion by the Justices probably violates the First Amendment. For the Commission to incorporate this vague language into new regulations will open a Pandora's box of unintended consequences, infringing on the right of any individual to express an opinion in a public forum which reaches a mass audience.

It is therefore advised that the Commission should refer this question to Congress for clarification and codification of the probable, or possible, intents of the Justices, if the people's elected Representatives concur with those intents.

Thank you for this opportunity to comment on the Commission's proposed regulations.
Yours sincerely,

Christopher M. Lihou
1338 28th St. South, Apt. #2
Arlington, VA 22206

Tel: (703) 299-5155
email: clihou@yahoo.com

[ATTACHED BELOW ALSO AS DOWNLOADABLE WORD FILE]

 - Federal Election Commission~Comment~040904.doc

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

April 6, 2004

Dear Ms. Dinh,

REF: FEC-NPRM Pub. Federal Register, March 11, 2004, Pages 11736 and subsequent.

Federal Register P.11738, Col.2: "The Commission further seeks comment on whether, even if it may so amend its regulations, the Commission should refrain from redefining such fundamental and statutorily defined terms, in the absence of further guidance from Congress."

It would be highly advisable for the Commission to defer these rule changes pending clarification by Congress. The opinions of the Justices in *Buckley*, and in *McConnell* especially, are shockingly vague and broadly defined. Should the Commission cast these opinions verbatim into regulations, this will open a Pandora's box of unintended consequences.

Federal Election Activities

It is probable that the Justices intended to curtail the practice of non-profit organizations hiding behind their tax-free status to channel tax-deductible money into political issues, by paying for commercial television or print advertising which is intended to influence Federal elections by portraying a candidate as for or against a "hot-button" political issue. Even though this intent to influence the election may not be explicitly stated, the intent and the effect are there. This is a well-recognized phenomenon.

However, instead of explicitly defining the paid advertising in question, the Justices have characterized the third type of Federal Election Activity as a "public communication" "referring to a Federal candidate that promotes, supports, attacks, or opposes a candidate," and defines this "public communication" as "designed to influence federal elections **OR, IN FACT,** influencing elections."

First, **intent is very difficult to prove** and often requires review by a court to establish. Aware of this, the Justices have broadened the net to include **all communications** which **"have the effect"** of influencing elections. Second, the term "public communication" is not clearly defined as being restricted to paid advertisements by non-profit entities. **HERE IS THE RESULT: Under this astoundingly vague definition, it may be argued that opinions expressed by hosts or guests on any television talk show, such as "The Capital Gang," or any television host who critiques, favorably or unfavorably, the record or positions of political candidates, is engaging in a "public communication" which "has the effect of influencing elections," and must therefore be characterized as a valuable political contribution, subject to all monetary restrictions placed thereon.**

Moreover, the Web sites of non-profit advocacy organizations, such as environmental advocates, civil liberties defenders, business advocacy groups, or religious organizations, which draw attention to adverse actions on their favored issues by politicians who happen to be running for an election, would also reach a mass audience and fall under this definition of an "Election Activity." Will these Web sites be required by law to log all their "hits" to see if they exceed the 50,000 threshold in your definition?

Finally, who is going to place a dollar amount on the useful monetary value of these "public communications" to the candidates in question, or their opponents?

Surely the Commission does not wish to infringe on the First Amendment right of any individual citizen to express a political opinion or criticize an elected official in a public forum. However, this overly broad characterization by the Justices does just that.

Electioneering Communications

Again, the proposed rules would define an Electioneering Communication as **ANY broadcast, cable, or satellite communication** that is **"distributed for a fee."** By whom do you envision this fee as being paid? Many television networks distribute talk shows produced in the home studios, and expressing political opinions, to a base of franchised local stations, who pay a fee for the use of the shows. By this definition, those fees, in whole or in part – who can determine what percentage? – will fall under the regulations governing political contributions. Is this what you intend? Why can't you say "paid advertising," which is clearly understood in the native language, instead of "public communications distributed for a fee?" **That extraordinarily broad definition sounds, again, like a franchised TV talk show, or even a syndicated newspaper column. Is that what you intend to regulate?**

Conclusion

The opinions written by the Justices, probably intended to regulate paid advertising by non-profit entities and intended to influence elections, instead are so broadly written that they would cover any opinion expressed by a host or a guest on a television show, or any editorial column or letter in a newspaper, which has the intended or unintended effect of influencing an election. As written, if taken literally, this opinion by the Justices probably violates the First Amendment. For the Commission to incorporate this vague language into new regulations will open a Pandora's box of unintended consequences, infringing on the right of any individual to express an opinion in a public forum which reaches a mass audience.

It is therefore advised that the Commission should refer this question to Congress for clarification and codification of the probable, or possible, intents of the Justices, if the people's elected Representatives concur with those intents.

Thank you for this opportunity to comment on the Commission's proposed regulations.
Yours sincerely,

Christopher M. Lihou
1338 28th St. South, Apt. #2
Arlington, VA 22206
Tel: (703) 299-5155
Email : clihou@yahoo.com