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To: politicalcommitteestatus@fec.gov
cc:

Subject: Proposed FEC regulations of March 4, 2004

See attached comments in PDF format.



- FECpoliticalcommitteeVOP.pdf

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BY ELECTRONIC TRANSFER

April 2, 2004

Mai R. Dinh
Acting Assistant General Counsel
Federal Election Commission
999 E. St, NW
Washington, D.C. 20463

RE: Proposed Regulations, Regarding "Political Committee Status", 11 CFR 100.5a
Issued March 4, 2004

Dear Mr. Dinh:

I am writing on behalf of the Virginia Organizing Project, Inc. (VOP), a not for profit corporation, created under the laws of Virginia, exempt from taxation under § 501(c)(3) of the Internal Revenue Code.

VOP helps provide education and information regarding legislative and legal issues involving social justice in Virginia. As such, VOP does some limited lobbying on legislative issues at the state and local levels, endorsing or opposing some legislation, and informing its members how they can get involved in these and other issues to effect social change. Of course, as a § 501(c)(3) tax exempt organization, VOP never endorses or opposes any candidate for any office, nor involves itself in any election activities or advertising.

VOP opposes the above cited proposed regulations of the FEC regarding its definition of a "political committee". The current law defines a "political committee" as any organization that has \$1,000 in contributions or expenditures and whose major purpose is to elect federal candidates to office. Organizations meeting this threshold have to register with the FEC and are subject to certain fund raising restrictions.

The proposed regulations change the factors that the FEC considers when it decides if an organization is a "political committee". Under the proposal, a § 501(c)(3) charitable organization can be considered a "political committee" for simply either spending

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\$10,000, or 50% of its budget on (1) voter registration within 120 days of an election; (2) get out the vote activity; or (3) voter identification. The FEC will then determine if the "major purpose" of the organization is electing or defeating candidates for federal office. If so determined, the FEC will label such organizations "political committees".

Part of the charitable mission of VOP is to help provide a voice in the legislative and processes to Virginia's poor and disenfranchised. Voter registration activities is part of the civic duty of organizations like VOP.

In addition, under the definition of "expenditure" under the proposed regulations, charitable organizations will be prohibited from spending money on public communications that promote, support, oppose, or attack a candidate for federal office. This includes e-mail alerts, speeches, or any other forms of paid communications.

The FEC has not proposed any definition for whether a communication meets the test of promoting, supporting, opposing, or attacking a candidate for federal office. Therefore, charitable organizations will be chilled from communicating with their members or the public regarding federal public officials and candidates positions on important issues. VOP will not be certain when it communicates support or opposition to issues of concern whether it is engaging in a "political committee" "expenditure".

We consider these proposals outside of the scope of the Bipartisan Campaign Finance Reform Act of 2002.

If an organization is determined to be a "political committee" under these proposed regulations, the organization will have to register with the FEC and report all contributions and expenditures. It will also be unable to accept "soft money" contributions. These contributions are from foundations, corporations, unions, or individuals exceeding \$5,000.

Thus a charitable organization, like VOP, would be unable to accept any foundation grants over \$5,000. VOP depends on such grants to conduct its charitable activities educational and informational activities. If designated a "political committee" VOP would be critically impaired in its ability to function.

In addition, charitable organizations, like VOP, designated "political committees" under these proposed regulations by the FEC, will likely require the professional services of a knowledgeable attorney and accountant to comply with these new regulations. The costs, as well as the limitations on fund raising, will make it very difficult for organizations, like VOP, to exist.

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The FEC must not have the unlimited discretion to designate an organization a "political committee" based on its "major purpose" to support or oppose candidates for federal office. The vagueness of this definition allows for political harassment or favoritism for groups the FEC favors or opposes. Groups that provide information or education regarding the legislative or policy agendas of a candidate for federal office could be subject to retaliation through complaints filed by candidates or their supporters with the FEC, leading to expensive investigations, including possibly expensive legal proceedings. This will have an unconstitutional chilling effect on the exercise of free speech.

The proposals concerning voter registration and get out the vote expenditures again provide an illegal chilling effect on such efforts. VOP considers it part of its charitable mission to engage in voter registration efforts to help the disenfranchised obtain a voice in the legislative process at the state and local levels.

VOP does not currently engage in activities that would likely lead to its being designated a "political committee" under the proposed rules. However, VOP's mission includes standing for the constitutional and legal rights of lower income Virginians to become more informed and involved with issues that affect them. The FEC's proposed rules will illegally and unfairly deter efforts to increase citizen involvement with the legislative and other public policy processes.

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. Implementing these changes now would go far beyond what Congress decided and the Supreme Court upheld.

These rules would shut down the legitimate activities of nonprofit organizations of all kinds that the FEC has no authority at all to regulate.

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. It's clear that, with one exception relating to running broadcast ads close to an election, the new law wasn't supposed to change what independent nonprofit interest groups can do.

The FEC should not, in a few weeks, tear up 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(c)(3)

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charities from intervening in political candidate campaigns, and IRS rules for other 501(c) groups prohibit them from ever having a primary purpose to influence any candidate elections -- federal, state, or local.

As an example of how seriously the new FEC rules contradict the IRS political and lobbying rules for nonprofits, consider this: Under the 1976 public charity lobbying law, a 501(c)(3) group with a \$1.5 million annual budget can spend \$56,250 on grassroots lobbying, including criticism of a federal incumbent candidate in the course of lobbying on a specific bill. That same action under the new FEC rules would cause the charity to be regulated as a federal political committee, with devastating impact on its finances and perhaps even loss of its tax-exempt status.

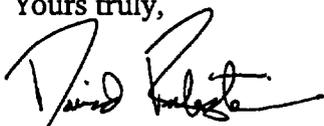
The chilling effect of the proposed rules on free speech cannot be overstated. Merely expressing an opinion about an officeholder's policies could turn a nonprofit group overnight into a federally regulated political committee with crippling fund-raising restrictions.

These changes would impoverish political debate and could act as a de facto "gag rule" on public policy advocacy. They would insulate public officials from substantive criticism for their positions on policy issues. They would actually diminish civic participation in government rather than strengthen it. This would be exactly the opposite result intended by most supporters of campaign finance reform.

The FEC's proposed rule changes would dramatically impair vigorous debate about important national issues. It would hurt nonprofit groups across the political spectrum and restrict First Amendment freedoms in ways that are unhealthy for our democracy.

Thank you for your attention to this matter.

Yours truly,



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