



Kathi Gwynn <kgwynn@kirschfoundation.org> on 03/30/2004 06:44:52 PM

To: "Politicalcommitteestatus@fec.gov" <Politicalcommitteestatus@fec.gov>
cc:

Subject: March 2004 Notice of Proposed Rulemaking

Please add the attached letter to the public comments.

<<To FEC Ass't General Counsel 3-30-04.doc>>
Thank you.

Sincerely,
Kathleen (Kathi) Gwynn
President & CEO
Steven and Michele Kirsch Foundation
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. To FEC Ass't General Counsel 3-30-04.doc

March 30, 2004

Ms. Mai T. Dinh
Acting Assistant General Counsel
Federal Election Commission
Politicalcommitteestatus@fec.gov

Re: FEC's March 4, 2004, Notice of Proposed Rulemaking

Dear Ms. Dinh:

On behalf of the Steven and Michele Kirsch Foundation, I am writing to express concern over the Federal Election Commission's (FEC) March 4, 2004, Notice of Proposed Rulemaking. The Foundation joins with many other nonprofit organizations in sharing our great unease regarding the scope and potential implications of the proposed rule.

As a 501(c)(3) public charity, we are legally and actively engaged in educating the public and advocating positions on legislative and policy issues related to our charitable mission. Furthermore, we provide grants to nonprofit organizations that are also engaged, or seek to be engaged, in these permissible activities.

I am concerned that the proposed rulemaking broadly threatens nonprofits' abilities to engage in critically important legislative advocacy and nonpartisan voter education activity. These changes would have a devastating impact on the Constitution's guarantees for free speech, not only in elections, but also beyond them. The proposed rule would impoverish political debate and could act as a *de facto* "gag rule" on public interest organizations, including ours.

When Congress passed campaign finance reform, it did so carefully and deliberately. Nothing in the McCain-Feingold campaign reform law, or the Supreme Court's decision upholding it, provides any basis for the proposed rules. The law is only about banning federal candidates from using unregulated contributions, and banning political parties from doing so, because of their close relationship to those candidates. With one exception relating to running broadcast ads close to an election, the new law was not supposed to change what independent nonprofit interest groups can do, including political organizations (527's) that have never before been subject to FEC regulation.

Now, without an act of Congress, the FEC is attempting to circumvent Congress and the thoughtful consideration of the Supreme Court by treating nonprofits that engage in specific advocacy activity as political committees. The Federal Election Commission has no legal right to treat non-profit interest groups as political committees. Congress and the courts have specifically considered and rejected such regulation.

In light of the above comments, I believe that the FEC should go back to the drawing board. It should develop rules that fall clearly within the Commission's jurisdiction and that are consistent with the law and Supreme Court interpretation.

Sincerely,
Kathleen Gwynn
President & CEO
kgwynn@kirschfoundation.org