

April 6, 2004

Ms. Mai T. Dinh
Assistant General Counsel
Federal Elections Commission
999 E Street N.W.
Washington D.C., 20463

2004-04-06 13:13

Dear Ms. Dinh,

Re: Proposed Additions and Modification to 11

I am writing to express my objections to and concerns about the proposed rule. The overall questions that commenters are asked to answer are: "Does the definition of 'political committee' currently found in the Federal Elections Commission Act, as amended by the provisions of the Bipartisan Campaign Reform Act, adequately encompass all organizations that should be considered political committees,? Should nonprofits previously not covered by the definition of "political committee status" be subject to the limitations, prohibitions and reporting requirements established under the Federal Elections Commission Act?

My overall answer is that, irrespective of the possibility of expanding the definition, no changes should be made to the existing statute regarding "political committee status" and no rules should be adopted making such changes at this time. We are currently in the middle of an election cycle. To adopt new rules at this time would put nonprofit groups in general in a precarious status at a time when the public has a right to depend upon such groups to provide them information on issues supported or not supported by candidates for office.

Nonprofits are currently covered and closely monitored by various provisions of the IRS code. Under this coverage, such organizations have specific rules they must follow in order to release information about candidates, and retain their nonprofit status. These nonprofits have not been covered by the Federal Elections Commission Act. Most of these groups really are issue oriented. For example, one nonprofit group I know of simply releases a record at the end of the Congressional or local legislative session showing how each legislator voted with no further comment. People can make up their own minds about whether to support that candidate when he/she is next up for office. Such organizations might now be considered to be "political committees" and subjected to the very narrow fund-raising requirements that political committees are currently subjected to. While these proposed rules are not fleshed out and actually contain more questions and alternatives than proposed rules, the rules seem to be trying to promote a definition of "communication" as it would apply to a federal candidate, and whether or not such communications would bring the organization under the scope of the "political committee" definition of the FECA. The criteria for a political committee is that such a communication cannot "promote, support, attack or oppose" any political candidate for federal office. There appear to be no clear definitions of what such support or opposition would look like. This would mean fairly subjective criteria used possibly by the FEC subjecting nonprofits indiscriminately to these criteria.

Congress considered expanding the definition of "political committee" to cover other groups at various times when the Bipartisan Campaign Reform bill was being discussed and chose not to make such changes. The changes suggested now would go into effect at the height of election season and might totally quell any efforts by nonprofits to even perform nonpartisan voter registration activities. Even an organization, generally considered nonpartisan, such as the League of Women Voters, could be brought under these regulations if they sent out a letter to their entire mailing list simply telling people to vote and that it was their civic duty to do so.

These criteria seem so far-reaching, that I can't understand why either conservative or progressive organizations would want to see these regulations in place at this time. Under one of the proposals put forth as an alternative, nonprofits would be subjected to the "political committee" criteria if they participated in the last four years, in activities which would now be considered partisan activities. This would mean that an organization would be retroactively subjected to criteria which were not even being considered when the Bipartisan Campaign Reform Act was passed.

In conclusion, I believe that these rules should not be adopted. They are far reaching and could curtail the activities of nonprofits whose purpose is principally to report on issues and candidates. As taxpayers, the public has a right to information about bills their Congress supports or opposes, as well as reports provided by groups such as Common Cause, on how money

is spent. Some of the kinds of things which would now be considered to support or oppose a candidate for federal election, if these rules are passed, are the very kinds of reporting which led to the Bipartisan Campaign Reform Act itself.

What we learned in the last election in 2000 is that there are a fair number of persons who are disenfranchised in the voting process. Organizations which work to bring those people into the voting mainstream could be considered to be focusing on a specific group of people. If the FEC decides that this "group" is more likely to vote one way than another, using stereotypes to apply to broad groups of people, these organizations would be stopped in their tracks. Groups such as the NAACP, which has a voting initiative to register more Black voters, might be held to be bringing in more voters from one party than another, based on voting demographics, even if their get-out-the-vote activities were nonpartisan.

The Help America Vote Act (HAVA) was just passed in 2002. The whole focus of that act is to bring disenfranchised voters of color, as well as voters with disabilities into the voting mainstream. The question then would be whether these rules overrode the requirements of HAVA regarding our mandate to do nonpartisan voter registration and education. Would the FEC determine that voters with disabilities are more likely to belong to one party than another? All of these issues are not adequately addressed or carefully considered in the proposed rule.

We need to encourage people to pay attention to issues, to learn about candidates, to elect them in an informed way. These rules, especially if adopted now, would greatly depress these efforts.

I urge the Commission not to accept these proposed rules, and to reconsider the issue more carefully, perhaps through the Congressional route, after the election is over.

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