



Votermarch / Voter Registration Committee
1583 Solano Ave. #434
Berkeley, CA 94707
voterregistration@votermarch.org

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VIA FAX: (202) 219-3923

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

Ms. Dinh and Commissioners:

We are writing concerning the rulemaking noticed by the Commission regarding "political committee status," Notice 2004-06, 69 Fed. Reg. 11736 (March 11, 2004). The proposal should be entirely withdrawn as being unnecessary, harmful, and contrary to FEC's mission, on at least the following grounds:

1. **Inappropriate scope as applied to 527 organizations.** Existing law already requires section 527 groups whose major purpose is to influence federal elections to register as federal political committees and to comply with federal campaign finance laws. Additional rulemaking is not required to achieve this result. To the extent that the ruling achieves results not provided by existing law, it contradicts the intent and usurps the authority of Congress. Congress several times considered the status of 527 organizations without ever approaching the rule proposed, and the Supreme Court in *McCormell u FEC* stated that "special interest groups... remain free to raise soft money to fund voter registration, GOTV activities, mailings, and broadcast advertising (other than electioneering communications)."
2. **Inappropriate scope as applied to 501(c) organizations.** The permissible activities of such organizations, specifically including expenditures, are well defined in tax law and if any change were necessary, the change would appropriately be made by statute, not by FEC action.
3. **Specific targeting of voter registration expenditures.** Registering voters is a legitimate public policy goal well supported in law, e.g. the NVRA ("Motor Voter" act). Under the proposed rule, though, voter registration marks an organization as a "political committee". The proposed rulemaking thus restricts nonpartisan groups from promoting precisely the same activity that Congress and elections officials clearly intend to encourage. We are advised by groups working to increase electoral participation, e.g. League of Women Voters, that in their experience voter registration drives are ineffective *except* during the period shortly before an election. This, however, is the period in which the burdens of the proposed rules fall most severely.
4. **Officeholders are candidates.** Most holders of Federal office run for re-election. Most serve two-year terms, whereby re-election occupies an important fraction of each term. It is newsworthy for a Federal officeholder to decide *not* to run for re-election. The proposed rule has the absurd effect of discouraging communications about the actions of elected (but not appointed) officials during the periods when public interest in policy matters is greatest.

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5. **Inability to correctly cite issues of public concern.** Because we have a representative form of government, public policy decisions are made by elected officials. These officials themselves attach their names to their accomplishments (e.g. "McCain-Feingold"), so that to even mention a policy is to name at least some of those responsible for it. Executive Branch actions reported in the press are attributed to an Administration identified by name (e.g. "Bush Administration"). Under the proposed rules, materials that cite an issue of public concern in the same terms used by the general public would mark the authors as a "political committee".
6. **Fundraising communications.** A fundraising communication describes the work which the funds would further. In particular, a fundraising appeal from a group concerned with public policy issues will quite appropriately include a description of the current issues being addressed by the organization. As noted above, to describe those issues in terms meaningful to the public frequently requires using the names of elected officials.
7. **Restrictions on encouraging public participation.** Another major category of communication by organizations is to ask members to contact their representatives. Here again, it is scarcely possible for such a communication to be informative if it avoids referring to the known positions of those representatives on the matter in question. Under the proposed rule, noting a representative's support or opposition to a position taken by the organization would subject the organization to reclassification as a "political committee".
8. **Selective benefit to incumbents.** Incumbent legislators or executives have innumerable avenues for publicizing and attaching their names to popular actions they take. The proposed rule would considerably amplify that advantage by rendering incumbents essentially immune from criticism of their actions in office (by anyone except "political committees"). This raises severe Constitutional problems not only for freedom of speech, but for the right to petition the government for redress of grievances. Essentially, such petitions could not be addressed to anyone standing for re-election, without subjecting the petitioners as a group to being classified as a "political committee" under the proposed rule.
9. **Selective benefit to the present incumbents.** The proposed rules diverge severely from the evident intent of Congress and the courts. Therefore, if the rule were adopted, it would likely substantially modified by legislation or court action, but not until after the current election campaign. The proposed rule would therefore work primarily to the benefit of George W. Bush and other present incumbents in this specific instance, rather than to the benefit of candidates or the public generally over time.

We invite the Commission to consider the implications if we were to distribute this very letter, which responds to the Commission's solicitation and is nonpartisan and entirely proper, during the 120 days prior to the Presidential election. In the last point above, we named a candidate. Further, it could be argued that by noting an unfair advantage which the candidate would obtain under the proposed rules, we thereby characterized him negatively. Supposing then that we were to solicit funds and/or spend them to distribute this letter, and supposing that we also continue to encourage voters to register and vote, we would appear to fall within several of the proposed criteria for a "political committee" even though all of those activities serve nonpartisan public policy ends. Any nonprofit could be the victim of a similarly absurd result under the proposed rule.