

2004 APR -7 P 2:03

Advancing Your Success

April 7, 2004

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

2004 APR -7 P 2:48
FEDERAL ELECTION COMMISSION
OPERATIONS CENTER

**Re: Notice of Proposed Rulemaking on the Definition of Political
Committee Status (Notice 2004-6)**

Dear Ms. Dinh:

These comments are submitted by the American Society of Association Executives ("ASAE") in response to a Notice of Proposed Rulemaking ("NPRM" or "proposed rule") issued on March 11, 2004 to address Political Committee Status. For the reasons set forth below, ASAE wishes to express profound concern over the significant changes being proposed by the Federal Election Commission ("FEC" or "Commission") that will severely impact legitimate legislative activities conducted by nonprofit corporations. We urge the Commission to refrain from amending the definition of the term "political committee" without further guidance from Congress and opportunity for full debate; especially at this time, in the middle of a Federal election year.

ASAE is a Washington, D.C. based association comprised of approximately 24,000 professionals who manage trade, individual, and voluntary organizations and suppliers offering products and services to the association community. Almost all of the associations represented by ASAE's membership are exempt from taxation under Sections 501(c)(3), 501(c)(4), or 501(c)(6) of the Internal Revenue Code. While ASAE and its membership support recent actions to reduce the perception of corruption in the nation's present system of funding political campaigns, we are concerned that the NPRM would adversely impact fundamental principles of political equality and freedom of speech.

One of the proposals included in the NPRM, would revise the current definition of "political committee" by broadening the types of Federal election activities and electioneering communications to be counted toward the \$1,000 expenditure threshold. Under the proposal, the term "expenditures" would be expanded to include all communications that "promote, support, attack, or oppose" a candidate for Federal office,

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including incumbent Members of Congress. Such a change in the definition would provide significant impediments for nonprofit organizations that would chill advocacy and dramatically restrict the ability of associations to communicate with members and others.

Effective education and advocacy requires references to the elected officials who support or oppose legislation. Such references may be made in newsletters, on websites, or even in connection with awards or events honoring elected officials for past actions or positions affecting the association's constituency. Under the proposed rule, nonprofit organizations would not be able to hold events, grant awards, or compose articles honoring a sitting member of Congress for his/her efforts regarding legislation affecting civil rights, environment, or other issues, for fear that the financing of such activities could be considered electioneering "expenditures." In fact, if adopted as drafted, the proposed rules would transform many nonprofit organizations into federally regulated political committees overnight. There is a clear failure to acknowledge a difference between speech that promotes, supports, attacks, or opposes a candidate and that which praises or criticizes the actions of a candidate for President or Congress.

Associations are a vital resource of research, data, and information. ASAE and other 501(c) nonprofit organizations are actively engaged in educating members and the general public and advocating positions on legislative and policy issues related to the missions and the people we serve. By collecting and disseminating information on industries, issues, and trends, nonprofit organizations provide valuable background for legislation and Congressional testimony. Most importantly, however, associations serve as essential platforms for ensuring that the voices and concerns of their members and the general public are presented to the Federal government. To cut off such an invaluable means of communication at a time in our nation's history when voter turnout and public interest in the political process are strikingly low is clearly contrary to the public interest.

With respect to the treatment of tax-exempt organizations, the NPRM asks whether certain tax-exempt organizations should be provided an exemption from the proposed major purpose tests. Federal tax law already requires that Section 501(c)(3) organizations refrain from any participation or intervention in political campaigns on behalf of (or opposition to) candidates for Federal office. The penalties of violating such rules can be severe. At this time, it is clear that many questions must still be answered and legal issues must still be considered prior to addressing your proposed question. In general, however, we encourage the Commission to carefully assess the possible ramifications of its actions before implementing any final rule that would create

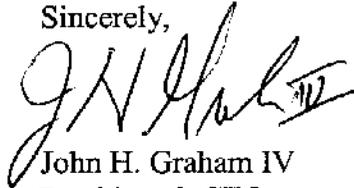
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insurmountable obstacles for organizations seeking to comply with both tax and election laws.

Moreover, the proposed rule appears to exceed carefully constructed statutory limits by revisiting language that could have been modified with the passage of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), but was not. As such, we urge you to take no action toward limiting speech that Congress chose not to limit.

Though we recognize that the line of distinction may not always be clear, the rules currently being proposed do not provide an effective means of distinguishing between issue or public advocacy and political activity. Not all advocacy constitutes political activity, even when it is being conducted in close proximity or timing to a federal election. Preserving the ability to praise or criticize the American government is a fundamental right that should not be chilled or denied.

Sincerely,

A handwritten signature in black ink, appearing to read "John H. Graham IV". The signature is fluid and cursive, with a prominent "J" and "G".

John H. Graham IV
President & CEO

cc: Jerald A. Jacobs, Esq.
Jefferson C. Glassie, Esq.
Lauren W. Bright, Esq.