

Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

2004 APR -7 A 10: 34

Dear Ms. Mai T. Dinh, Acting Assistant General Counsel

My wife and I are deeply disturbed by the recent proposal to change the rules for nonprofit advocacy in the middle of an election year. 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, including political organizations (527's) that have never before been subject to regulation by the FEC.

The FEC can't fix the problems with these proposed rules just by imposing new burdens on section 527 groups. They do important issue education and advocacy as well as voter mobilization. And Congress clearly decided to require those groups to fully and publicly disclose their finances, through the IRS and state agencies, not to restrict their independent activities and speech. The FEC has no authority to go further.

In the McConnell opinion upholding McCain-Feingold, the U.S. Supreme Court clearly stated that the law's limits on unregulated corporate, union and large individual contributions apply to political parties and not interest groups. Congress specifically considered regulating 527 organization three times in the last several years - twice through the Internal Revenue Code and once during the BCRA debate - and did not subject them to McCain-Feingold.

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) 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.

Under the most draconian proposal, the FEC would "look back" at a nonprofit group's activities over the past four years - before McCain-Feingold was ever passed and the FEC ever proposed these rules - to determine whether a group's activities qualify it as a federal political committee. If so, the FEC would require a group to raise hard money to repay prior expenses that are now subject to the new rules. Further work would be halted until debts to the "old" organization were repaid. This rule would jeopardize the survival of many groups.

The 4 year "look back" rule would cause a nonprofit group that criticized or praised the policies of Bush, Cheney, McCain, or Gore in 2000, or any Congressional incumbent candidate in 2000 or 2002, to be classified as a political committee now, even though the group has not done so since then. This severely violates our constitutional guarantees of due process.

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.

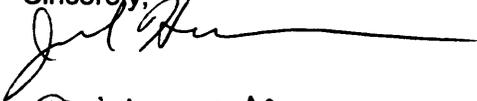
The FEC's proposed rule changes would dramatically impair vigorous debate about important national issues. It would hurt nonprofit groups across the political spectrum and restrict First Amendment freedoms in ways that are unhealthy for our democracy.

Any kind of nonprofit -- conservative, liberal, labor, religious, secular, social service, charitable, educational, civic participation, issue-oriented, large, and small -- could be affected by these rules. A vast number would be essentially silenced on the issues that define them, whether they are organized as 501(c)(3), 501(c)(4), or 527 organizations.

Already, more than five hundred nonprofit organizations - including many that supported McCain-Feingold - have voiced their opposition to the FEC's efforts to restrict advocacy in the name of campaign finance reform.

We want to encourage you to reject this obviously partisan attempt to muzzle free speech, and opposition to official policy. It is deeply disturbing to see such a terrifying disregard for the values of free speech and openness which underlie our democracy. We do not believe that such a price, in order to stop criticism of administration policy, is worth paying. Please reject these new rule changes.

Sincerely,



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