



February 4, 2004

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By Electronic and Hand Delivery  
Commission Secretary  
Federal Election Commission  
999 E. Street, N.W.  
Washington, D.C. 20463

RE: Draft Advisory Opinion 2003-37

Dear Commission Secretary:

The following comments are being submitted by the Service Employees International Union ('SEIU') in response to the General Counsel's draft of Advisory Opinion 2003-37. SEIU joins in the comments to the draft Advisory Opinion filed by the AFL-CIO and a number other Unions ("AFL-CIO Comments"). However, we are writing separately to emphasize the impact of the draft Advisory Opinion on SEIU's ongoing public communications program on issues of concern to our members and their families.

As discussed in the AFL-CIO Comments, the General Counsel's draft would expand the Federal Election Campaign Act's definition of "expenditure", 2 U.S.C. 431(9), to include any "public communications that promote, support, attack or oppose a federal candidate." See. G.C, Draft at 3. Not only is this interpretation a radical departure from existing case law and the clear terms of the Act, it raises constitutional issues that the drafters of the BCRA sought to avoid and that the Supreme Court in *McConnell v. Federal Election Commission*, 540 U.S. \_\_\_, 124 S. Ct. 619 (2003) did not have to address. The constitutional issues raised by the General Counsel's effort to effectively amend Section 431(9) are illustrated by SEIU's public issue communications which are financed with non-Federal funds but, if the General Counsel's views were to prevail, could be argued must be paid for exclusively with Federal funds.

The SEIU is the largest affiliate of the AFL-CIO with over 1.5 million members employed in health care, public service, and building service. A significant number of SEIU members are recent immigrants to this country. SEIU regularly engages in public communications on issues of concern to its members and their families. These communications include press releases, free and paid media, direct mail and the distribution of handbills. SEIU's public communications often focus on actions or policies of the Federal Government or legislation pending in the U.S. Congress and are often critical of the actions taken by Federal office holders who may be candidates for reelection. SEIU attempts to educate the public on these issues and to mobilize public support for or against pending legislation or

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government policy. SEIU's public communications on these issues do not expressly advocate the election or defeat of any candidate or support or opposition of any political party. They are aimed at affecting legislation or executive actions, not federal elections.

In the past year, SEIU has issued public communications, which could be claimed to fall within the General Counsel's definition of "expenditure", challenging President's Bush's proposal to grant temporary status – without a path to citizenship - for immigrant workers; attempting to organize public opposition to President Bush's Medicare Drug Plan and criticizing the plan after its passage by Congress; soliciting public support for a Senate filibuster to block President's Bush's proposal to limit overtime pay; and challenging the Bush administration's plan for mass smallpox vaccinations for health care workers. Samples of these public communications are attached to this submission.

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For the reasons state above, and in the AFL-CIO Comments, we respectfully submit that the Commission should not adopt the draft Advisory Opinion.

Respectfully submitted,

Judith A. Scott  
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Orrin Baird  
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Associate General Counsel  
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# What does Bush's 'temporary immigrants' proposal mean to you?

President Bush often gives speeches praising immigrants. But his "temporary immigrant" proposal is not what immigrant or native-born workers need.

## Temporary Status—Not Citizenship

- Immigrants already working and paying taxes in the U.S. would not be able to become citizens and would not get green cards.
- Instead, they could get a temporary visa to work.
- When their visa expires, they would have to go back to their original country.
- New immigrants could come to the U.S. legally only to work for a specific employer who wants them.

## Lower Wages and Benefits, Less Job Security for All

- A worker who is no longer wanted by their employer would have to find a new willing employer or they would have to leave the U.S.
- That gives employers total power over workers. If you speak up against low pay, lack of health coverage, unsafe conditions, or other abuses, you risk losing your temporary visa.
- This pool of temporary workers with no rights would be used by employers to drive down pay and benefits for all workers -- immigrant and native-born.

Real immigration reform would let hard-working, taxpaying immigrants in the U.S. become citizens with permanent legal status. That would protect pay and benefits for all workers.

**Together, we can win immigration reform that  
benefits working people—not just big corporations.**

1. Register to vote if you're eligible.
2. Join our union's Fight for the Future Campaign.
3. Call President Bush at (202) 456-1111 Tell him to keep his promise to let hard-working, taxpaying immigrants earn permanent legal status.



## Bush's Medicare Drug Plan Could Have Serious Side Effects for Seniors

**Campaign  
Launched:**  
October 29, 2003

Congress is considering prescription drug legislation that could make things worse, not better, for seniors struggling to afford the high cost of medications. The radical changes being proposed could hurt current and future retirees, including you. **Please send a fax to your U.S. senators today.**

**Sample letter for Campaign**

**Subject: Stop Medicare Privatization**

**Dear [ Decision Maker ] ,**

I am writing to oppose the prescription drug legislation the U.S. House of Representatives and Senate are considering right now.

Privatizing Medicare will be a boon for HMOs, but it won't help millions of retirees struggling to pay for prescriptions. It will increase out-of-pocket premiums and do absolutely nothing to hold down runaway prescription drug costs.

Half of all seniors won't save any money at all on their prescriptions. What's worse, the current plan supported by President Bush and many Republicans in Congress could cause some employers to drop coverage for retirees -- making millions of people worse off than they are today.

It is outrageous that so many seniors must pay so much for the prescription drugs they need. I hope you will do the right thing and only vote for prescription drug legislation that makes things better, not worse.

Any form of Medicare privatization is the wrong direction to go.

**Sincerely,  
[Your Name]  
[Your Address]**

**Get more information**

**They're coming after Medicare—just like overtime pay.**

**This week the Bush administration and its allies in Congress are targeting Medicare-- just as they have targeted overtime pay and good jobs. Behind closed doors, a final proposal to add a prescription drug benefit to Medicare is being hammered out--and tragically, the deal being hatched is a trick proposal that would radically change Medicare and harm more than help America's current and future retirees.**

**The proposed changes in Medicare would:**

- **Privatize Medicare and put seniors at the mercy of insurance companies.**
- **Leave millions of seniors with huge drug costs despite a 50% Medicare premium increase.**
- **Threaten employer-provided prescription drug coverage--4 million retirees who have coverage now could lose it.**
- **Increase future premiums by 25 percent if you stay in the Medicare you know with the doctor of your choice.**
- **Prevent our government from reining in prescription drug prices.**

**Half of all seniors won't save any money on their drug costs. Isn't a prescription drug benefit supposed to save seniors money? Every retiree should have prescription drug coverage under Medicare.**

**You can take action to stop these cynical changes before they become law. Please take one minute right now to send your U.S. senators a fax.**

**FOR MORE INFORMATION ABOUT THE MEDICARE ISSUE VISIT THE  
[AFL-CIO'S WEB SITE](#)**

# Who is Looking Out for You? Bush Tells Employers How to Avoid Paying Overtime

**Campaign  
Launched:  
January 08, 2004**

**As if the assault on overtime was not enough, now the Bush Labor Department has published tips for employers on how to avoid paying overtime to workers that remain eligible under the new proposed rules. A last stand on overtime is scheduled this week in the Senate as part of the Omnibus spending bill deliberations. Please do TWO things today. Tell your senators that you expect them to protect overtime pay by voting against the Omnibus bill and then use the Tell-A-Friend tool to pass this message to friends, family and co-workers.**

**Sample Letter for Campaign**

**Subject: Protect Overtime Pay!**

**Dear [ *Decision Maker* ] ,**

I urge you to protect workers' paychecks by voting against cloture and continuing to filibuster the omnibus spending bill from which overtime pay protections were dropped. Overtime pay is a critical part of the family income of millions of America's working families. No worker should lose his or her overtime pay or protections.

I was angered to learn recently that the Department of Labor has published tips for employers on how to avoid paying workers for their overtime hours. Helping employers cut the paychecks that support working families should not be the role of any part of our government, much less the Labor Department! I hope you were outraged as well and will use your vote to stop the attack on overtime pay.

Please vote against cloture on the omnibus spending bill and support the continued filibuster so you can preserve overtime pay protections for some 8 million workers. This is one of the issues I will use to evaluate your commitment to working families. I urgently await your reply.

**Sincerely,**

**[Your Name]**  
**[Your Address]**

### **Background Information**

Overtime pay cuts being pushed by the Bush administration are slated to go into effect for millions of workers unless Congress acts to block them. These changes would erode the 40-hour workweek and mean that if you receive overtime pay now, you might not in the future. Both the U.S. Senate and the U.S. House previously voted to oppose the Bush overtime pay take-away however President Bush's lobbyists have managed to remove overtime protections from pending legislation.

In addition, the Associated Press has revealed in recent press coverage that the Bush Labor Department is actually helping employers figure out how to reclassify some workers or change jobs around so they don't have to pay overtime. The Bush administration is giving out tips to employers on how to cut workers' paychecks.

Analysis from the Economic Policy Institute shows millions could lose overtime pay, possibly including firefighters, police officers, nurses, retail clerks, certain medical technicians, military reservists, tech workers and many, many more. Under the Bush plan, you still may be forced to work overtime hours—but you might not be paid for the extra hours.

Overtime pay makes up about one-fourth of the average weekly earnings of workers who receive it. That is an average pay cut of \$161 a week and can add up to thousands of dollars a year. Can you imagine the government cutting the pay of a firefighter by thousands of dollars per year? How much would you lose? These overtime

**pay cuts are like a giant new tax on working families by a president who, at the same time, works hard to give tax breaks to millionaires.**

**With a struggling economy, millions out of work and staggering health care and prescription drug costs, this is a burden America's workers should NOT have to bear. The overtime rules protect workers from bosses who would impose unbearably long hours if they didn't have to pay extra for overtime work. Many workers would have less predictable work schedules because of the increased demand for overtime work.**

**The U.S. Senate should again act to block President Bush's overtime pay take-away. Please act today.**

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**FOR IMMEDIATE RELEASE**  
Dec 8, 2003

**CONTACT:**  
TJ Michels  
(202) 898-3321

## - A statement by Andrew L. Stern, President, SEIU, on President Bush's Prescription Drug Bill

"Retirees and people with disabilities have been counting on President Bush and Congress to deliver the prescription drug coverage they need. Instead, they got a lemon of a plan that caters to the interests of drug and insurance companies -- not seniors.

"The bill President Bush just signed does nothing to control skyrocketing drug costs and puts the future of Medicare and the health of our nation's seniors at grave risk. Only about half of America's seniors will receive any benefit at all from the plan, and nearly three million retirees who are covered by employer-provided benefits stand to lose the coverage they have now.

"What's more, this plan puts private insurance companies and HMOs in charge, by allowing them to determine which drugs are covered and how much they will cost.

"Privatizing Medicare and forcing millions of seniors into HMOs is not the affordable prescription drug coverage President Bush promised America's seniors.

"As the nation's largest health care union, the Service Employees International Union's 1.6 million members and retirees will continue the fight in 2004 for President Bush make good on his promise to give America's seniors REAL relief from soaring prescription drug prices."

###

With 1.6 million members including 130,000 retirees, SEIU is the nation's largest and fastest growing union, representing nurses, janitors, and public employees, among others.

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**FOR IMMEDIATE RELEASE**  
Dec 13, 2002

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TALK TO THE PRESS

ARTICLE ARCHIVE

## As Bush Plan for Mass Smallpox Vaccinations Stirs Controversy...

### Nation's Largest Health Care Organization Says Hospital Workers, Patients Will Face Unnecessary Risk

"The Administration and Congress have protected the wealth of the drug companies who produce the vaccine, but not the health of hospital workers and the public. President Bush's smallpox plan will put thousands of Americans at unnecessary risk."

— Andrew L. Stern, SEIU President

WASHINGTON, DC – Ignoring health professionals' mounting concerns, President Bush confirmed today that health workers will be the first to receive the controversial smallpox vaccine but refused to take steps to protect them, their families, and their patients from unnecessary risks.

"President Bush's smallpox plan puts hospital workers and their patients at unnecessary risk," said Andrew L. Stern, President of the 1.5 million member Service Employees International Union (SEIU), the nation's largest health care organization.

The vaccine is risky for 1 in 6 Americans who are pregnant, suffer from eczema or other skin disorders, or whose immune systems are suppressed because of conditions like HIV, cancer, or transplant treatments, according to the Centers for Disease Control and Prevention. However, Bush's plan fails to provide free, confidential screening for those conditions before workers or the public are given the vaccine. It also does not do enough to safeguard vulnerable patients who could come into contact with the 500,000 hospital workers being asked to volunteer for the vaccine.

"Health care workers want to be able to care for patients if a smallpox outbreak occurs," said Diane Sosne, RN, National Co-chair of the SEIU Nurse Alliance. "But it is wrong to put caregivers, their patients, and their families at risk when there is a safer way."

Although President Bush and Congress protected the drug companies who produce the vaccine from liability, the

administration has refused to ensure that people who receive the vaccine do not face loss of income if they cannot work as a result. Experts say approximately 1 in 3 people vaccinated will feel too sick to work and provide proper patient care for one or more days. As many as 1,000 of every million will suffer serious reactions.

People who are injured by childhood immunizations have a simple and fair way to get help through the Vaccine Injury Compensation Fund, but no such system will be available for people receiving the smallpox vaccine.

After health workers receive the vaccine, the Bush plan calls for millions of firefighters, police, and other "first responders" to be vaccinated. In about a year, the vaccine will be offered to the public.

SEIU has asked President Bush to monitor the initial volunteers to receive the vaccine, track their response, and make that information available so the public can make an informed decision about whether they want to receive the vaccine.

"No one should get this vaccine without getting screened and understanding the risk for themselves and their family," said Stern. "But under this plan, only people who can afford to pay for the tests or whose insurance might cover it will be protected."

SEIU leaders have met with federal, state, and local officials, and nurses and other employees are working together with management in some hospitals to urge them to enact a safe vaccine plan.

See below for more information on what health care workers want in a vaccine plan.

*Nurses, doctors, and other health workers throughout the country are available to talk about their concerns. To schedule interviews, or for more information about how health care workers united in SEIU are working together for a better smallpox vaccination plan, contact TJ Michels at (202) 898-3321.*

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### **A smallpox plan that protects health care workers and their patients would:**

- Educate workers about the risks for them, their patients, and their families, and ensure that they have the freedom to decline the vaccine without being discriminated against at work.
- Provide free and confidential screening for everyone volunteering for the vaccine – to make sure no one who is particularly vulnerable is given the vaccine.
- Protect vulnerable patients from being exposed to workers who have had the vaccine, and inform them of the safeguards that have been put into place.
- Ensure that people who receive the vaccine do not face loss of income if they can't work as a result. Experts say approximately 1 in 3 people who are vaccinated will feel too sick to work and provide proper patient care for one or more days.

- **Compensate people injured by the vaccine.** As many as 1,000 of every million people receiving the vaccine will have a serious adverse reaction, 14 to 52 will have a life threatening reaction, and one to two people are expected to die.

- **Administer the vaccine with safe needles.** The 50 million needles the government plans to ship with the vaccine do not comply with the federal law passed to protect against HIV and hepatitis being transmitted from accidental needle sticks. Individual hospitals can purchase safer needles for only pennies more per needle.

- **Monitor volunteers who receive the vaccine** to protect any accidental transmission of the vaccinia virus and so any adverse effects can be tracked by the federal government so the public can fully evaluate the risk of the vaccine.

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