



February 4, 2004

Commission Secretary
Federal Election Commission
999 E Street, NW
Washington, DC 20463

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

Re: Draft Advisory Opinion 2003-37, Americans for a Better Country

Dear Commissioners:

As 501(c)(3) nonprofit organizations, our activities include public education and advocacy concerning the issues that our organizations were created to address. To carry out our purposes, we often describe pending legislation or proposed legislation and its impact. As 501(c)(3) organizations, we do not engage in any electioneering activity nor do we oppose or support any candidate for election to public office. We are also strictly nonpartisan organizations that encourage and welcome support for our goals and policy proposals from all policymakers and members of the public regardless of political party or affiliation. The Campaign for Tobacco-Free Kids is a nonprofit 501(c)(3) corporation that works to promote public policy changes that will prevent and reduce tobacco use and related harms, especially among kids. The American Lung Association is a nonprofit 501(c)(3) organization that works to prevent lung disease and promote lung health.

We realize that the draft advisory opinion in response to the request from Americans for a Better Country (ABC) is only an *advisory* opinion that technically applies only to the specific facts and circumstances presented by the ABC request. But we are concerned that the advisory opinion's broad and far-reaching interpretation of existing law constitutes a radical change to existing interpretations of federal election law that could have a chilling effect on the vigorous exchange of ideas and information regarding federal policymaking that is required for the healthy operation of our democratic system.

More specifically, current law prohibits 501(c)(3) nonprofits from making any "contribution or expenditure in connection with any election to any political office" (FECA Sec. 441b); and existing interpretations of this restriction have not in any way curtailed the ability of these nonprofits to notify the public about public policy deliberations in Congress, inform them of the related positions or actions of their elected representatives, and encourage members of the public to contact their elected representatives to thank them for past actions, educate them about pending legislative matters, or even to urge them to support or oppose pending legislation (within the limitations placed on lobbying by 501(c)(3) nonprofits). But the draft advisory opinion

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not only defines "expenditure" to include any communication that "promotes, supports, attacks, or opposes" a candidate for federal office but appears to interpret that new definition broadly to include any communication that identifies an elected official facing reelection and refers to that elected official in either a positive or negative way – even if the communication makes absolutely no direct or indirect mention of any upcoming election and makes no statement of general support or opposition regarding the official.

Such an interpretation has no basis in existing statutes or judicial interpretations, and its practical application would be disastrous. It could, for example, prohibit nonprofit 501(c)(3) charitable and educational organizations from making any communications that inform members of the public of the current positions of their elected officials on pending legislation relating to the nonprofit's key issues of concern. Such a constraint would not only severely limit the existing rights nonprofit organizations have to engage in nonpartisan efforts to inform and influence federal policy making but would also inevitably reduce public knowledge about their elected representatives and their positions.

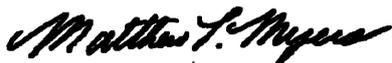
Legal interpretations in other portions of the draft advisory opinion could similarly restrict the existing right of 501(c)(3) nonprofits to engage in other nonpartisan activities.

We ask the Commission to reject the current draft advisory opinion and ensure that the final opinion does not in any way curtail the existing right of 501(c)(3) nonprofits to engage in nonpartisan communications and other activities that are not meant directly or indirectly to oppose or support the election of any candidate for political office. Besides stating that the final opinion does not apply to 501(c)(3) nonprofits and is not meant to curtail their existing rights, the final ruling also should not contain any interpretations of existing law that are inconsistent with that position.

Respectfully submitted,



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Chief Operating Officer
American Lung Association



Matthew L. Myers
President
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