



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
FEC PRESS OFFICE
FEC PUBLIC RECORDS

FROM: OFFICE OF THE COMMISSION SECRETARY *MWD*

DATE: April 14, 2004

SUBJECT: *Ex Parte* COMMUNICATION
RE: AOR 2003-37 AMERICANS FOR A BETTER COUNTRY

Transmitted herewith is a letter from Dwight H. Bateman, Executive Director of Disability Resource Agency for Independent Living., to Commissioner Thomas regarding the above-captioned matter.

Attachment



"Empowering
Persons with
Disabilities in the
Heart of California"

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Kenny Brown

March 31, 2004

Federal Election Commission
Bradley A. Smith Commission Chairman
999 E. Street, NW
Washington, DC 20463

Re: Draft Advisory Opinion 2003-37

Dear Mr. Smith, Commission Chairman:

Disability Resource Agency for Independent Living (DRAIL), a non-profit organization that covers the six counties of Amador, Calaveras, Mariposa, San Joaquin, Stanislaus, and Tuolumne, is writing to express our strong concern regarding the scope and implications of the General Counsel's draft Advisory Opinion 2003-37 prepared in response to a request by Americans for a Better Country ("ABC").

The DRAIL is organized as nonprofit corporations under state law and is exempt from federal income taxation under sections 501(c)(3) of the Internal Revenue Code. Therefore, actively engaged in educating the public and advocating positions on legislative and policy issues related to their charitable missions, often referencing current elected federal officeholders who have supported or opposed those positions—activities that the Commission noted in its October 23, 2002, rules on "electioneering communications" are considered by the public to be "highly desirable and beneficial."

Although this advisory opinion is given in response to a request from a political committee, many of the activities that the opinion would treat as expenditures under the Act seem strikingly similar to activities of 501(c)(3) and 501(c)(4) organizations that had not been previously treated as expenditures, including activities more appropriately characterized as lobbying or fundraising or nonpartisan voter activation. In its attempts to regulate these activities of political committees, it is critical and essential that the Commission clarify that this will not apply to legitimate, nonpartisan activities by 501(c) organizations.

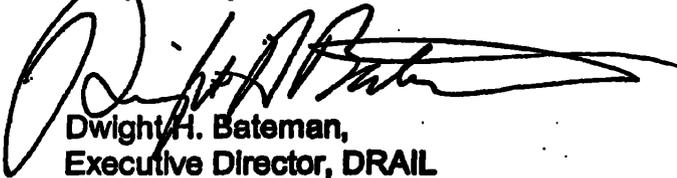
Effective advocacy work generally requires references to the elected officials who have sponsored or led efforts to support or oppose particular legislation, yet this opinion appears to define any communication that includes criticism or praise of an elected federal official who is running for re-election as an expenditure that is subject to FECA rules.

As the Commission recognized in its BCRA rulemaking, federal tax law requires that 501(c)(3) organizations refrain from any indication of support or opposition for candidates, and thus any ruling that legitimate 501(c)(3) activities might also be an expenditures under the Act would create enormous complications for charitable organizations seeking to comply with both tax and election laws.

DRAIL shares the concerns expressed in comments submitted by a coalition of nonprofit organizations including the Alliance for Justice, Leadership Conference on Civil Rights, League of Conservation Voters, NAACP, NARAL, Pro-Choice America, People for the American Way, Planned Parenthood Federation of America, and Sierra Club. We are particularly troubled by the suggested restrictions on voter registration efforts and fundraising communications, and the implied prohibition on contributions by foreign nationals to any nonprofit organizations engaged in voter registration, get-out-the-vote and other activities in connection with a federal, state, or local election for public office. These nonpartisan activities are vital to increasing civic participation by all citizens. Given the disturbingly low levels of participation by qualified citizens in the elections, encouraging greater participation is an important responsibility of our voluntary organizations.

For all of these reasons, we strongly urge the Commission not to issue the draft opinion in its present form. Please feel free to contact me if you have questions or would like further information at (209) 521-7260 or email dwight@drail.org.

Respectfully submitted,



Dwight H. Bateman,
Executive Director, DRAIL

CC: Commissioner Ellen L. Weintraub
Commissioner Bradley A. Smith
Commissioner David M. Mason
Commissioner Danny L. McDonald
Commissioner Scott E. Thomas
Commissioner Michael E. Toner