



promoting, supporting and protecting nonprofit advocacy and lobbying

September 29, 2005

Mai T. Dinh, Assistant General Counsel
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

RE: Notice of Proposed Rulemaking on Electioneering Communications (11 C.F.R. 100.29) 70
Fed. Reg. 163, 49506 (Aug 24, 2005).

Dear Ms. Dinh:

The Center for Lobbying in the Public Interest is a national 501(c)(3) organization founded in 1998 to promote, support and protect nonprofit advocacy and lobbying in order to strengthen participation in our democratic society and advance charitable missions. We work with It is with significant concern that we today offer comments regarding the Federal Election Commission's recent Notice of Proposed Rulemaking. The rule as currently proposed will have a chilling effect on the efforts of charitable and educational organizations to organize and effectively communicate with the public on all manner of public policy matters. The proposed rule will stifle public debate and communication on the otherwise legal and constitutionally-protected activities of groups organized under section 501(c)(3) of the Internal Revenue Code. Accordingly, the Commission should recognize the legitimate issue education activities of these organizations and exempt those activities from the scope of the electioneering communications provisions.

BCRA was never intended to stifle legitimate public policy debates. Since 501(c)(3) organizations are strictly prohibited from participating in any partisan activities, their activities are, *by the specific legal limitations governing 501(c)(3) charities*, restricted to legitimate policy debates. The penalties for violating this prohibition are significant, potentially leading to revocation of the organization's tax-exempt status and a complete loss of viability for the organization. Hence, as a matter of law, 501(c)(3) organizations cannot distribute the kinds of "sham issue ads" BCRA was rightly intended to eliminate. Congress and the IRS have taken a stringent approach to prohibiting and enforcing the ban on partisan electoral activities. There is no de minimus exception and no "intermediate sanction" short of revocation of the violator's tax-exempt status. However, the Government has also long recognized the fundamental right – and enormous benefit to the public -- of 501(c)(3) organizations participating in the legislative process. The legislative history on the enactment of sections 501(h) and 4911 of the Code in 1976 are particularly instructive on this point.

Section 501(c)(3) organizations across our nation and the globe address societal problems, big and small. They feed the hungry, respond to disasters and provide care to children in need. They are responsible for identifying and analyzing the ramifications of societies' actions, both good

and bad, and assisting us to recognize and implement solutions to those ramifications. Frequently, the only way to communicate effectively about these issues is through a broadcast communication as defined in the proposed rule. These communications further public understanding of important policy debates and can result in more efficient administration of programs and wiser use of federal funding. The current rule would effectively kill this important public discourse at least three months out of every federal election year, because organizations will fear that attacking or praising a policy or specific legislation put forward or supported by an officeholder who happens to be a candidate might be interpreted as promoting, attacking, supporting or opposing that individual.

The U.S. District Court in *Shays v. FEC*, 337 F. Supp. 2d. 28 (D.D.C. 2004) indicated that the Administrative Procedure Act does not allow the Commission to defer to the Internal Revenue Service for enforcement of BCRA without developing an administrative record specifically exploring and justifying such a delegation. However, the court did recognize the authority of the Commission to adopt its own rule regarding enforcement and allowed that such rule may provide limited exemptions, so long as the exemption is not an abdication of the responsibility of the Commission to enforce the provisions in BCRA. It is in this vein that we encourage the Commission to consider adopting a rule which retains oversight responsibility, in compliance with the court's decision in *Shays*, but exempts any broadcast communications made by charities.

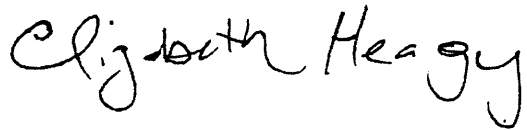
We believe this exemption is certainly consistent with a constitutional reading of the statute, and may also be constitutionally compelled. See *Wisconsin Right to Life, Inc. v. FEC*, Sup. Ct. No. 04-1581, (order noting probable jurisdiction entered Sep. 27, 2005). As a policy matter, this exemption is warranted on the grounds that charitable activities already must be intended to address proposed and specific legislation or policy, irrespective of the relationship of the legislation or policy to an individual's candidacy.

By exempting communications by 501 (c)(3) organizations that comment on the value or merit of proposed legislation or policy, the Commission can meet its obligation to enforce BCRA in a manner consistent with the Constitution, by ensuring that the protected right and public necessity of communication between nonprofit organizations and government is maintained.

In addition, the adoption of such a final rule will eliminate the potential for unnecessarily redundant or conflicting enforcement efforts by the Federal Election Commission and the Internal Revenue Service. The proposed rule, as currently drafted, lends itself to the possibility that an organization may be in compliance with one agency standard, while violating another. The law should seek consistency to ensure compliance. The addition of an entirely new body of oversight responsibility upon such a large and critical segment of society cries out for such consistency more than most. This objective can best be achieved by exempting communications by section 501(c)(3) organizations from the definition of "electioneering communication."

Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Heagy". The signature is written in a cursive, flowing style.

Elizabeth M. Heagy, Esq.
President