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Please respond to  
jasmall@debevoise.com

To ECdef@fec.gov

cc

bcc

Subject Tell The FEC To Keep Exemption for Charities!

Dear Ms. Dinh:

TO: Ms. Mai T. Dinh  
Assistant General Counsel  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463

RE: Comments on FEC Notice of Proposed Rulemaking on 501(c)(3) Electioneering Communications Exemption <ECdef@fec.gov>

Dear Ms. Dinh:

I am writing on behalf of a 501(c)(3) organization, to urge you to exempt issue advocacy broadcasts by charities and religious organizations from the definition of banned electioneering communications.

I am very concerned that you are considering banning broadcast communications that are part of the everyday grassroots lobbying and education carried on by charities and religious organizations. Even if the ban only applies to the 60 days before a federal election or 30 days before a primary, it will have a year round chilling impact. The work of government does not halt during this period, and we, as nonpartisan organizations, should be able to comment on the issues of the day without restraint.

The tax code prohibits charities from intervening in elections. You have asked for comment on another standard - "promote, support, attack, or oppose" a federal candidate  without defining what that means. This is the wrong approach to determine when charities and religious organizations can broadcast grassroots lobbying and other messages about public policies and the positions of elected federal officials. It does not distinguish between a candidate in his or her capacity as a candidate and references to public officials acting in their official capacity. It could mean grassroots lobbying messages that ask people to call a Senator and urge him or her to change a past position on a bill are considered partisan attacks on the Senator.

While drawing the line between electioneering and issue advocacy may be difficult, it is not impossible. Lobbying is not campaigning. The IRS has set out factors that distinguish between electioneering and issue advocacy. For example, factors that indicate nonpartisan communications are those that:

- identify specific legislation or a specific event outside the control of the organization
- are timed to coincide with the specific event
- identify the candidate solely as a government official in a position to act on the policy or specific event

The FEC ignores these distinctions by proposing the vague "promote, support, attack, or oppose" a federal candidate standard. Instead, we ask you exempt 501(c)(3) organizations by using IRS standards in your own enforcement program, so that there will be one set of standards for charities and religious organizations to define what is partisan and what is not. If you propose another definition under the "promote, support, attack, or oppose" standard, it should be published for public comment before being made into a

rule.

Sincerely,

Jonathan Small  
60 East End Ave.--26B

New York, NY 10028