



Bob Smucker <bob@clpi.org> on 04/08/2004 04:55:16 PM

To: politicalcommitteestatus@fec.gov
cc:

Subject: Federal Election Commission (FEC) Considering Action that Will Reintroduce Ambiguity to Charity Lobbying



- Federal Election Commission 32303.doc

Draft

April 7, 2004

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

Via electronic mail: politicalcommitteestatus@fec.gov

Re: Notice of Proposed Rulemaking on Political Committee Status, 69 Fed. Reg.
11736 (March 11, 2004)

Dear Ms. Dinh:

Charity Lobbying in the Public Interest (CLPI) urges the Federal Election Commission (Commission) to exclude 501(c)(3) organizations from the definition of "political committee." This letter outlines the reasons for our recommendation.

In order to strengthen participation in our democratic society, CLPI works to promote, support and protect nonprofit advocacy and lobbying to aid charities in achieving their mission. Much of our work involves helping charities understand the importance of lobbying, how to lobby, and the enormous value of legislation passed in 1976 related to charity lobbying.

Congress worked diligently from 1969 to 1976 to enact legislation that would clarify the law regarding the latitude permitted charities to engage in lobbying. Landmark legislation accomplishing that objective was signed into law on October 6, 1976. The proposed rulemaking by the FEC now threatens to undermine the clarity achieved by that measure.

Prior to 1976, charities were prohibited from conducting more than "insubstantial" lobbying. "Insubstantial?" No one knew what that meant. Could the local mental health association appear before the county Board of Supervisors to urge increased funding for programs for people who were mentally ill? Could the National Audubon Society lobby the Wyoming legislature for protection of the timber wolf? Could a coalition of social service organizations work with the Congress on welfare reform? No one really knew.

Efforts to have the law clarified were initiated by 87 national organizations, the Coalition of Concerned Charities, which included the American Cancer Society, American Heart Association, Association of Schools of Public Health, Big Brothers of America, Campfire Girls Inc., Council for Advancement and Support of Education, Family Service Association of America, Goodwill Industries of America, National Audubon Society, National Council on the Aging, National Health Council, National Mental Health Association, and the YWCA of the USA.

It was clear that leading members of Congress supported the idea of clarifying the law so that charities would not be hesitant about speaking out on issues of public interest. During the four sets of public hearings held in 1972, 1973, 1975 and 1976 key legislators commented on the importance and value of charities engaging in the public policy arena. Following are related statements:

Senator Dole (R-KS):

- “Charities can be and should be important sources of information on legislative issues.” 121 Cong. Rec. 42032 (1975).

Representative Conable (R-NY):

- “The role of the charities in a pluralistic society – something we are all dedicated to – is constructive and the charities should not be muzzled.” 119 Cong. Rec. 42632 (1973).

Senator Muskie (D-ME):

- “It makes no sense to decide that these organizations operate in the public interest and grant them tax-exempt status and then silence them when they attempt to speak to those who must decide public policy.” 117 Cong. Rec. 8517 (1971).
- “These organizations can be a valuable source of information; they can broaden legislation, and they can suggest valuable legislative alternatives.” 121 Cong. Rec. 42028 (1975).

Senator Nelson (D-WI)

- “The present law governing legislative activities of public charities is unduly restrictive, difficult to administer, and undemocratic. The present law effectively inhibits a diverse, informed and important segment of our society from presenting its views either to Congress or State and local legislative bodies, and deprives legislators of the experience and knowledge of these charities.” 119 Cong. Rec. 5746 (1973).
- “[Charities] represent the public in many important areas such as health, education, and the environment. These groups have much information to contribute and a wide range of helpful experience that could greatly assist the consideration and enactment of this country’s laws.” 119 Cong. Rec. 5749 (1973).

Congress removed the ambiguity in the law by stating clearly which activities constituted lobbying and by defining expenditure limits. Congress indicated that *direct lobbying* means communications that an organization has about legislation (1) with legislators or government officials who participate in the formulation of legislation and (2) with its own members. *Grassroots lobbying* refers to any attempt to influence legislation through an attempt to affect the opinion of the general public. The law also provided lobbying expenditure limits based on an organization’s annual exempt purpose expenditures. Subsequently, regulations issued by the Internal Revenue Service added greatly to the clarity of the law. Charities have found the law and the regulations exceedingly helpful in understanding which legislation related activities constitute lobbying.

Under the proposed FEC rules, this clarity would be lost. Nonprofits would be prohibited from spending money on public communications that promote, support, oppose, or attack a candidate for public office. The enormous difficulty in defining the circumstances under which those terms would apply to lobbying by charities will reintroduce the same uncertainty and ambiguity that Congress, after seven years of hearings and a number of legislative proposals, effectively addressed in 1976.

The charity lobbying activities that would become subject to the proposed FEC rules apparently would encompass many of the current lobbying activities permitted under the 1976 legislation. Organizations across the ideological spectrum have raised serious concerns about the impact the rules would have on engaging in public policy.

It's clear that turning back the clock to the uncertainty that prevailed before 1976 would seriously impede lobbying by 501(c)(3) organizations. What difference would that make? Here are just several examples of how much charity lobbying has enriched our national life:

Foster Care: More than half a million American children are in foster care. Of these, the average child spends three years in foster care and experiences more than three placements. Every year more than 20,000 children who turn 18 leave the foster care system without an adoptive family or permanent home.

Frustrated by this country's slow-moving foster care systems, the **Child Welfare League** and other charitable groups lobbied the federal government to pass a law that would push states to speed up the process and get more children adopted. Passed in 1997, the law helped 8,000 more children find permanent homes in 1998, a 28 percent increase. Pushed by local advocates, many states have done exceptionally well. Illinois, for example, tripled the number of adoptions from 1997 through 1999 and reduced the number of children to foster care by 13,000, or nearly 25 percent.

Highway Safety: One of the most powerful images of someone who needs and deserves our help is a person who has been disabled by a car accident. Many charities provide valuable support for accident victims and their families. But the best support for future victims would be finding ways to prevent such accidents. This is exactly what charitable organizations such as the **Center for Auto Safety** and **Mothers Against Drunk Driving** have done.

The Center, working with many other advocates, helped pass numerous laws requiring that cars be safer. These laws have helped cut the death rate on America's roads to less than a third of what it was in 1969, saving tens of thousands of lives and preventing tens of thousands of people from becoming disabled. Another reason for this dramatic reduction in the death rate on America's roads is MADD's lobbying for stricter drunk-driving laws. This helped reduce drunk-driving deaths by 30 percent between 1982 and 1996.

Hazardous Waste: Few things touch us more deeply than cancer in children. Every year there are 8,000 new cases of childhood cancer, according to the National Cancer Institute. Making sure these children and their families get the best possible health care and support – services that charities often provide – is critical. So too is doing all we can to *prevent* childhood cancer, especially if there is something we are doing that is causing some of these cancers.

Lois Gibbs, the founder of the Love Canal Homeowners Association and the **Center of Health, Environment and Justice (CHEJ)**, believes that one cause of childhood cancer and other severe health problems is hazardous waste. She came to believe this by living near a site – Love Canal – into which a chemical company had poured 20,000 tons of dioxin and other chemicals. Her son – and many other people living in the community – were struggling with a range of severe, unexplained health problems.

Gibbs, who was a 27-year-old housewife when the Love Canal story began, helped get 900 families living in Love Canal moved. She also helped spark a worldwide movement to confront the legacy of decades of unrestricted disposal of industrial waste. The scope of this problem is enormous in the United States alone, more than four million children live within one mile of a known hazardous waste site, according to the Environmental Protection Agency.

Thanks to the work of Gibbs and CHEJ – along with many other charitable organizations focused on environmental issues – hundreds of hazardous waste sites are being cleaned up. Just as important, thousands more sites have not been created because of much stricter laws regarding hazardous waste. Once again, lobbying by charitable organizations has made a difference in the lives of children and their families.

Parkinson's Disease Research: For years the thousands of people with Parkinson's disease suffered in silence, hoping that somehow a cure would be found. But with little money devoted to research on this neurological disorder, that cure never came. In 1991, one person with Parkinson's, Joan Samuelson, began the **Parkinson's Action Network** to bring more attention and research funding to what she calls "the invisible disease."

"To change that, our community has to step forward, talk about our suffering and demand federal attention," she said. This is exactly what has happened, with Congress recently setting aside \$75 million for Parkinson's research, a huge increase. With recent breakthroughs in understanding the brain, researchers say we may be only five years away from a cure.

"The realization of the Network's vision of inspiring Parkinson's patients to become involved in grassroots lobbying is an extraordinary accomplishment,"
says Dr. J. William Langston, president of the Parkinson's Institute.

Charities understand very well that they may not engage in partisan political activity – that to do so endangers their tax exemption. Charity Lobbying in the Public Interest invites questions from charities about lobbying and a large percentage of the inquiries we receive come from charities that want to be certain that none of their activities would be viewed as partisan. Charities don't engage in partisan activity. The risk is too great.

To include the vague "promote, support, oppose, attack" language and apply it to nonpartisan lobbying in the proposed FEC rulemaking would represent an attempt to fix a problem that doesn't exist. It will take charities back to pre-1976 days when they could not be certain about the amount of lobbying they could conduct. It will discourage charities from speaking out in the public interest. The Federal Election Commission should not include 501(c)(3) organizations in its proposed regulations.

Sincerely,

A handwritten signature in cursive script that reads "Bob Smucker".

Bob Smucker
Executive Director