"Greeno, Sue" <sgreeno@UFSCLT.ORG> on 04/07/2004 02:32:53 PM

To: politicalcommitteestatus@fec.gov
cc:

Subject: FEC Letter

Please see the attached letter. Thank you.

Sue Greeno

Executive Secretary

United Family Services

601 E 5th Street, Suite 400

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- FEC Letter Final.doc

April 6, 2004

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

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

Dear Ms. Dinh:

United Family Services urges the Federal Election Commission (Commission) to exclude 501(c)(3) organizations from the definition of "political committee."

United Family Services is a multi service human service agency serving over 20,000 people each year in Mecklenburg, Cabarrus, Union and South Iredell Counties. Our services include counseling and education, child abuse prevention, rape crisis, domestic violence including a shelter for women and children, consumer credit counseling, and victim assistance.

The democratic process depends not only on citizens voting, but also on people and nonprofit organizations being actively engaged in and informed about the issues of the day, including pending legislation and acts by public officials. The charitable sector has a long and distinguished history of promoting citizen engagement. The Constitution protects such advocacy from being burdened by laws and regulations unless a compelling state interest justifies it. At a time in our history with the lowest level of voter participation, we should avoid new government rules that would discourage citizens and nonprofit organizations from participating in the democratic process.

The new rules that the Commission is considering may prevent nonprofit organizations from fulfilling our important role in advocacy.

Nonprofits are clearly prohibited from engaging in direct partisan political activities. Nonprofit leaders and boards of directors are well aware of this limitation and are careful not to cross the line into impermissible activities.

The Commission's definition of a "political committee" should not be expanded to incorporate or encroach on the legitimate, nonpartisan activities of 501(c)(3) organizations. Activities in which 501(c)(3) organizations engage are more appropriately characterized as lobbying or nonpartisan voter activation. These nonprofit activities allow more people to participate and more voices to be heard, and this helps to achieve the ultimate purpose of the Bipartisan Campaign Reform Act (BCRA).

The Commission has already stated, "The purpose of BCRA is not served by discouraging such charitable organizations from participating in what the public considers highly desirable and beneficial activity." We ask the Commission to remain consistent with its earlier decision.

If 501(c)(3) organizations were deemed to be political committees, most of the 501(c)(3) community could no longer conduct advocacy activities unless we raised and spent funds in accordance with the source and contribution limits of the Federal Election Campaign Act (FECA). FECA prohibits contributions over $5,000 from individuals as well as grants and contributions from corporations and foundations. Yet these are the primary sources of funding for most 501(c)(3) organizations. Consequently, 501(c)(3) organizations, often the only voice for the voiceless on all sides of the political spectrum, would be severely hampered in their efforts to conduct worthy efforts.

Any rule must define clearly what speech and activities fall within the ambit of "promotes, supports, attacks, or opposes" a candidate for federal office. The Commission itself has recognized that it is difficult to make such definitions.

Likewise, any rule must distinguish between speech that "promotes, supports, attacks, or opposes" a policy position of an elected official acting in her official capacity and speech that praises or criticizes a candidate for public office, even if already an elected official. Of course, federal law, through the tax code, already prohibits 501(c)(3) organizations from participating in, or intervening in political campaigns on behalf of (or opposition to) candidates for public office. However, that same law allows for criticism and support of the actions of elected officials.

The scope of activities that may meet this vague test is very broad. For example, they could include:

- A 501(c)(3) community-based organization holds a briefing to educate its members about a proposal to cut the Earned Income Tax Credit (EITC) and the significant negative impact such cuts would have on millions of low-income working people. Congressman A, a strong proponent of the EITC who is also up for reelection this year, will speak about his views on the proposal. An invitation was sent to his opponent to offer his views, but the invitation was declined. By having Congressman A speak at the briefing, the organization may be considered to be promoting or supporting him.
- A 501(c)(3) educational organization encourages its members to oppose a bill sponsored by state senator B that would cut state funds for child abuse prevention. State senator B is a candidate for the U.S. Congress. Such advocacy efforts, even though targeted at a state-level legislative issue, may be seen as opposing or attacking state senator B, a candidate for federal office.

The proposed rule would have a strong chilling effect on 501(c)(3) organizations. Stifling voter education and get-out-the-vote activities is not in the best interest of our democracy, which depends on an educated and informed electorate. Any rules should be carefully crafted to avoid discouraging genuine advocacy on important public issues as well as nonpartisan efforts to encourage voting. This can only be done if the Commission defers action until 2005, and takes the time to sort through the issues more carefully. Rules of such significant consequence should not be rushed. This proposed rule would impact organizations that do not even realize they

could be subjected to the Commission's regulation. New rules should not take effect until all those potentially affected have an opportunity to be fully informed and educated about them.

This rulemaking raises legal issues about whether the Commission has the authority to regulate constitutionally protected speech. Deference should be given to protecting the First Amendment right of free speech and association. Where ambiguity in the law exists, regulation or restriction of speech not expressly provided in the Bipartisan Campaign Reform Act of 2002 or in the Federal Election Campaign Act should be considered by Congress, not through administrative rulemaking.

Again, we urge the Commission not to apply the rules to the 501(c)(3) community.

Sincerely,

Mark J. Pierman
President/CEO