



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Rosemary Smith
Associate General Counsel

FROM: Office of the Commission Secretary *MWD*

DATE: April 2, 2004

SUBJECT: *Ex Parte* Communication regarding Political Committee
Status Rulemaking

Attached is an e-mail received by Commissioner Thomas from Wes Boyd of Move.On.org by Betty King regarding the above-captioned matter.

cc: Commissioners
Staff Director
General Counsel
Press Office
Public Disclosure

Attachment






FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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COMMISSION
SECRETARIAT

2004 APR -2 A 9:12

MEMORANDUM

TO: MARY DOVE
COMMISSION SECRETARY

FROM: SCOTT E. THOMAS 
COMMISSIONER

SUBJECT: EX PARTE COMMUNICATION
RE. POLITICAL COMMITTEE STATUS RULEMAKING

DATE: APRIL 1, 2004

The attached e-mail which originates from Wes Boyd of MoveOn.org was sent to me by Betty King.

Subj: **Republicans trying to gag nonprofits (fwd)**
Date: 3/31/2004 8:25:35 AM Eastern Standard Time
From: b-king
To: sthomas@fec.gov
CC: setewk

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2004 APR -2 A 10: 13

My Darling Scott: I had no idea you were so WICKED!!! XOXO Betty

--
Betty King
4233 Royal Palm Avenue
Miami Beach, FL 33140-3016

From: "Wes Boyd, MoveOn.org" <moveon-help@list.moveon.org>
To: "Betty King"
Subject: Republicans trying to gag nonprofits
Date: Tue, 30 Mar 2004 21:38:32 +0000
Content-Type: Multipart/alternative;
boundary="NextPart_Webmail_9m3u9jl4l_24327_1080739496_1"

Dear MoveOn member,

Are you involved in a local or national non-profit or public interest organization? As a leader or board director or member? Please read this message carefully, because your organization could be facing a serious threat.

The Republican National Committee is pressing the Federal Election Commission ("FEC") to issue new rules that would cripple groups that dare to communicate with the public in any way critical of President Bush or members of Congress. Incredibly, the FEC has just issued – for public comment – proposed rules that would do just that. Any kind of non-profit – conservative, progressive, labor, religious, secular, social service, charitable, educational, civic participation, issue-oriented, large, and small – could be affected by these rules.

By the way, one thing FEC's proposed rules do not affect is the donations you may have made in the past or may make now to MoveOn.org or to the MoveOn.org Voter Fund. They are aimed at activist non-profit groups, not donors.

Operatives in Washington are displaying a terrifying disregard for the values of free speech and openness which underlie our democracy. Essentially, they are willing to pay any price to stop criticism of Bush administration policy.

We've attached materials below to help you make a public comment to the FEC before the comment period ends on APRIL 9th. Your comment could be very important, because normally the FEC doesn't get much public feedback.

Public comments to the FEC are encouraged by email at

Wednesday, March 31, 2004

politicalcommitteestatus@fec.gov

Comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must include the full name, electronic mail address, and postal service address of the commenter.

More details can be found at:

<http://www.fec.gov/press/press2004/20040312rulemaking.html>

We'd love to see a copy of your public comment. Please email us a copy at FECcomment@moveon.org.

Whether or not you're with a non-profit, we also suggest you ask your representatives to write a letter to the FEC opposing the rule change.

Some key points:

- Campaign finance reform was not meant to gag public interest organizations.
- Political operatives are trying to silence opposition to Bush policy.
- The Federal Election Commission has no legal right to treat non-profit interest groups as political committees. Congress and the courts have specifically considered and rejected such regulation.

You can reach your representatives at:

Senator Bob Graham
Phone: 202-224-3041

Senator Bill Nelson
Phone: 202-224-5274

Congressman Peter Deusch
Phone: 202-225-7931

Please let us know you're calling, at:

<http://www.moveon.org/callmade.html?id=2541-1232104-uZ.plv4ebKK.Fs1gPOgQgg>

In a non-election year, this kind of administrative overreach would never find support. It goes far beyond any existing law or precedent. It is a serious threat to the fundamental checks and balances in our system. But because of an unholy alliance between a few campaign reform groups and GOP partisans, this rule change could actually happen if we don't act now.

I've attached more details below, prepared by our attorneys and by the FEC Working Group – a group of more than 500 respected non-profit organizations.

If you run a non-profit, don't assume this change doesn't apply to you. First check out the **EXAMPLES OF SPECIFIC CONSEQUENCES FOR NONPROFIT GROUPS** section below. It's outrageous.

Thanks for all you do,

Sincerely,
–Wes Boyd
MoveOn.org
March 30th, 2004

Wednesday, March 31, 2004

EXAMPLES OF SPECIFIC CONSEQUENCES FOR NONPROFIT GROUPS

Under the proposed rules, nonprofit organizations that advocate for cancer research, gun and abortion restrictions or rights, fiscal discipline, tax reform, poverty issues, immigration reform, the environment, or civil rights or liberties - all these organizations could be transformed into political committees if they criticize or commend members of Congress or the President based on their official actions or policy positions.

Such changes would cripple the ability of groups to raise and spend funds in pursuit of their mission and could be so ruinous that organizations would be forced to back away from meaningful conversations about public policies that affect millions of Americans.

If the proposed rules were adopted, the following organizations would be treated as federal political committees and therefore could not receive grants from any corporation, even an incorporated nonprofit foundation, from any union, or from any individual in excess of \$5,000 per year:

- A 501(c)(4) gun rights organization that spends \$50,000 on ads at any time during this election year criticizing any legislator, who also happens to be a federal candidate, for his or her position on gun control measures.
- A "good government" organization [§501(c)(3)] that spends more than \$50,000 to research and publish a report criticizing several members of the House of Representatives for taking an all-expense trip to the Bahamas as guests of the hotel industry.
- A fund [§527] created by a tax reform organization to provide information to the public regarding federal candidates' voting records on budget issues.
- A civil rights organization [§501(c)(3) or §501(c)(4)] that spends more than \$50,000 to conduct non-partisan voter registration activities in Hispanic and African-American communities after July 5, 2004.
- An organization devoted to the environment that spends more than \$50,000 on communications opposing oil drilling in the Arctic and identifying specific Members of Congress as supporters of the legislation, if those Members are running for re-election.
- A civic organization [§501(c)(6)] that spends \$50,000 during 2004 to send letters to all registered voters in the community urging them to vote on November 2, 2004 because "it is your civic duty."

Other potential ramifications include the following situations:

- A religious organization that publishes an election-year legislative report card covering all members of Congress on a broad range of issues would be unable to accept more than \$5,000 from any individual donor if the report indicated whether specific votes were good or bad.
- A 501(c)(3) organization that primarily encourages voter registration and voting among young people will be required to re-create itself as a federal PAC.
- A 501(c)(4) pro-life group that accepts contributions from local businesses would break the law by using its general funds to pay for any communications critical of an incumbent Senator's position on abortion rights after the Senator had officially declared himself for reelection more than a year before the next election.
- A 501(c)(3) civil rights group that has been designated as a political committee can no longer hold its annual fundraiser at a corporate-donated facility, and it must refuse donations or grants from donors that have already given \$5,000 for that year.

BRIEFING ON THE PROPOSED RULE CHANGES

Under federal campaign finance laws, federal "political committees" must register and file reports with the FEC and can accept contributions only from individual persons (and other federal committees), and only up to \$5,000

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per year from any one donor ("hard money"). The FEC is now proposing to redefine "political committee" to include any group that:

1. Spends more than \$1,000 this year on nonpartisan voter registration or get out the vote activity or on any ad, mailing or phone bank that "promotes, supports, attacks or opposes" any federal candidate; and
2. Supposedly has a "major purpose" of election of a federal candidate as shown by:
 - (a) Saying anything in its press releases, materials, website, etc. that might lead regulators to conclude that the group's "major purpose" is to influence the election of any federal candidate; or
 - (b) Spending more than \$50,000 this year or in any of the last 4 years for any nonpartisan voter registration or get out the vote program, or on any public communication that "promotes, supports, attacks or opposes" any federal candidate.

What's more, any group that gets turned into a federal "political committee" under these new rules has to shut down all its communications critical of President Bush (or any other federal candidate) until it sets up "federal" and "non-federal" accounts; and raises enough hard money contributions to "repay" the federal account for the amounts spent on all those communications since the beginning of 2003.

These proposed rules would apply to all types of groups: 501(c)(3) charitable organizations, 501(c)(4) advocacy organizations, labor unions, trade associations and non-federal political committees and organizations (so-called "527" groups, as well as state PACs, local political clubs, etc.).

The new rules, including those that apply to voter engagement, cover all types of communications – not just broadcast TV or radio ads – but messages in any form, such as print ads, mailings, phone banks, email alerts like this one, websites, leaflets, speeches, posters, tabling, even knocking on doors.

The FEC will hold a public hearing on April 14 & 15. Written comments are due by April 5 if the group wants to testify at that hearing; otherwise, by April 9. The FEC plans to make its final decision on these proposed rules by mid-May and they could go into effect as early as July, right in the middle of the election year, potentially retroactive to January 2003.

It's clear that these rules would immediately silence thousands of groups, of all types, who have raised questions and criticisms of any kind about the Bush Administration, its record and its policies.

SOME TALKING POINTS

- The FEC should not change the rules for nonprofit advocacy in the middle of an election year, especially in ways that Congress already considered and rejected. Implementing these changes now would go far beyond what Congress decided and the Supreme Court upheld.
- These rules would shut down the legitimate activities of nonprofit organizations of all kinds that the FEC has no authority at all to regulate.
- Nothing in the McCain-Feingold campaign reform law or the Supreme Court's decision upholding it provides any basis for these rules. That law is only about banning federal candidates from using unregulated contributions ("soft money"), and banning political parties from doing so, because of their close relationship to those candidates. It's clear that, with one exception relating to running broadcast ads close to an election, the new law wasn't supposed to change what independent nonprofit interest groups can do, including political organizations (527's) that have never before been subject to regulation by the FEC.
- The FEC can't fix the problems with these proposed rules just by imposing new burdens on section 527 groups. They do important issue education and advocacy as well as voter mobilization. And Congress clearly decided to require those groups to fully and publicly disclose their finances, through the IRS and state agencies, not to restrict their independent activities and speech. The FEC has no authority to go further.

- In the McConnell opinion upholding McCain-Feingold, the U.S. Supreme Court clearly stated that the law's limits on unregulated corporate, union and large individual contributions apply to political parties and not interest groups. Congress specifically considered regulating 527 organization three times in the last several years - twice through the Internal Revenue Code and once during the BCRA debate - and did not subject them to McCain-Feingold.
- The FEC should not, in a few weeks, tear up the fabric of tax-exempt law that has existed for decades and under which thousands of nonprofit groups have structured their activities and their governance. The Internal Revenue Code already prohibits 501(c)(3) charities from intervening in political candidate campaigns, and IRS rules for other 501(c) groups prohibit them from ever having a primary purpose to influence any candidate elections - federal, state, or local.
- As an example of how seriously the new FEC rules contradict the IRS political and lobbying rules for nonprofits, consider this: Under the 1976 public charity lobbying law, a 501(c)(3) group with a \$1.5 million annual budget can spend \$56,250 on grassroots lobbying, including criticism of a federal incumbent candidate in the course of lobbying on a specific bill. That same action under the new FEC rules would cause the charity to be regulated as a federal political committee, with devastating impact on its finances and perhaps even loss of its tax-exempt status.
- The chilling effect of the proposed rules on free speech cannot be overstated. Merely expressing an opinion about an officeholder's policies could turn a nonprofit group OVERNIGHT into a federally regulated political committee with crippling fund-raising restrictions.
- Under the most draconian proposal, the FEC would "look back" at a nonprofit group's activities over the past four years - before McCain-Feingold was ever passed and the FEC ever proposed these rules - to determine whether a group's activities qualify it as a federal political committee. If so, the FEC would require a group to raise hard money to repay prior expenses that are now subject to the new rules. Further work would be halted until debts to the "old" organization were repaid. This rule would jeopardize the survival of many groups.
- The 4 year "look back" rule would cause a nonprofit group that criticized or praised the policies of Bush, Cheney, McCain, or Gore in 2000, or any Congressional incumbent candidate in 2000 or 2002, to be classified as a political committee now, even though the group has not done so since then. This severely violates our constitutional guarantees of due process.
- These changes would impoverish political debate and could act as a de facto "gag rule" on public policy advocacy. They would insulate public officials from substantive criticism for their positions on policy issues. They would actually diminish civic participation in government rather than strengthen it. This would be exactly the opposite result intended by most supporters of campaign finance reform.
- The FEC's proposed rule changes would dramatically impair vigorous debate about important national issues. It would hurt nonprofit groups across the political spectrum and restrict First Amendment freedoms in ways that are unhealthy for our democracy.
- Any kind of nonprofit - conservative, liberal, labor, religious, secular, social service, charitable, educational, civic participation, issue-oriented, large, and small - could be affected by these rules. A vast number would be essentially silenced on the issues that define them, whether they are organized as 501(c)(3), 501(c)(4), or 527 organizations.
- Already, more than five hundred nonprofit organizations - including many that supported McCain-Feingold like ourselves - have voiced their opposition to the FEC's efforts to restrict advocacy in the name of campaign finance reform.

FOR MORE INFORMATION

Resources on FEC Proposed Rule Changes Threatening Nonprofit Advocacy
 FEC Working Group
<http://www.pfaw.org/pfaw/general/default.aspx?old=14670>

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From two prominent reform organizations:

Soft Money and the FEC

Common Cause

<http://www.commoncause.org/news/default.cfm?ArtID=282>

Public Campaign Statement regarding FEC Draft Advisory Opinion 2003-37

Public Campaign

<http://www.publiccampaign.org/pressroom/pressreleases/release2004/statement02-17-04.htm>

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