

September 30, 2005

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

Re: Notice of Proposed Rulemaking on Electioneering Communications (11 CFR 100.29) Federal Register Vol. 70 No.163 Page 49506 (August 24, 2005)

Dear Ms. Dinh,

The undersigned organizations, all recognized by the Internal Revenue Service (IRS) as exempt nonprofits under Section 501(c)(3) of the federal tax code, urge the Federal Election Commission (FEC) to retain the 501(c)(3) exemption under the electioneering communications rule. The ability of nonprofits to use broadcast media for genuine issue advocacy and to encourage citizen participation in public policy debates would be severely limited if broadcasts by 501(c)(3) organizations are included in the definition of electioneering communications. FEC rules should regulate federal campaign finance, not legitimate public policy debates.

501(c)(3) organizations do not engage in partisan political activities.

The FEC should retain the 501(c)(3) exemption because the Internal Revenue Code (IRC) already clearly prohibits religious, charitable, scientific, and educational organizations from engaging in partisan electioneering. IRC Section 501(c)(3) states that we must "not participate in, or intervene in (including publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

Neither federal law or IRS rules contain any exceptions or exemptions for de minimis partisan activity. In addition, this total ban on political intervention applies to elections at the local, state and federal levels.

Compliance with such an absolute prohibition virtually guarantees that a 501(c)(3) organization would not engage in activity that comes within the jurisdiction of the Federal Election Commission or that is covered by the purposes of the Federal Election Campaign Act.

Nonprofit law expert Bruce Hopkins says, "The requirement that a tax-exempt charitable organization not engage in political campaign activities is relatively clear as to its meaning. Because of this relative clarity, the matter has infrequently been the subject of discussion in court opinions or in IRS rulings." Charitable and religious organizations know what they can and cannot do, and take pains to comply with the law, since the sanctions for violations are significant. These sanctions range from excise taxes on the organization and its managers to loss of tax-exempt status.

There is no record of abuse of the 501(c)(3) exemption.

501(c)(3) organizations are permitted to engage in issue advocacy supporting or opposing legislation or policy proposals. Research on so-called "sham issue advocacy" has never uncovered abuses by 501(c)(3) organizations.

There is no available objective or anecdotal record from the 2004 election that indicates such abuse. Absent a record of abuse, there is no justification for limiting fundamental constitutional speech rights of these organizations. Speculation about the potential for loopholes does not equal a record of abuse. Indeed, restrictions aimed at preventing an unthreatened harm amounts to an unconstitutional prior restraint on speech.

Issue advocacy and grassroots lobbying are protected speech.

Issue advocacy and grassroots lobbying by religious, charitable, scientific, and educational organizations has long been recognized by Congress as protected speech that provides valuable information and insight to the public and to elected officials. This legitimate activity poses no meaningful risk of intervening in federal elections.

However, silencing this speech, even if only for the limited time periods defined by "electioneering communications," poses a substantial risk of chilling legitimate grassroots advocacy year-round. The NPRM asks if charities' general unfamiliarity with campaign finance law would cause them to stop advertising advocacy messages that refer to federal candidates. The answer is that yes, this is likely to happen if the FEC does not retain the exemption and adopt IRS standards to define partisan activities by 501(c)(3) organizations.

The NPRM also asks to what extent grassroots lobbying would result in a communication that "promotes, attacks, supports or opposes" a federal candidates. Because the FEC has declined to offer a definition of this standard, the question is impossible to answer. If the IRS rules are used, the answer is that no grassroots lobbying communications will "promote, attack, support or oppose" federal candidates. However, these communications are very likely to "promote, attack, support or oppose" public policies and ideas. But regulation of ideas is not within the jurisdiction of the FEC.

IRS enforcement of ban on intervention in elections is compatible with FEC enforcement of campaign finance laws.

Since 501(c)(3) organizations have been following the IRC prohibition for over 50 years, it makes sense for the FEC to incorporate IRS rules and standards into its exemption to the electioneering communications restrictions. The IRS rulings and materials interpreting this ban on intervention in elections have historically defined intervention very broadly, including both direct and indirect intervention. This leaves no room for "loopholes" that would result in partisan broadcasts by 501(c)(3) organizations during the 60/30 day blackout period.

The IRS has a rigorous enforcement program that monitors and enforces the campaign intervention prohibition under federal tax law. To bolster this enforcement, the Political Intervention Project (PIP) was established in June 2004 to "fast track" any election-time violations by 501(c)(3) groups.

The IRS is focused on taking action against alleged violations as they become aware of them and has indicated that they will continue to use PIP in 2006.

Even given the IRS's enhanced enforcement of political intervention violations, nothing in the current 501(c)(3) exemption prevents the FEC from initiating an enforcement proceeding if a group were to expressly endorse or oppose a federal candidate.

We urge you to:

- . Exempt 501(c)(3) organizations that are in compliance with IRS rules as part of your own enforcement program;
- . Use Internal Revenue Service rules to define what is and is not a partisan broadcast communication for a 501(c)(3) organization so there will be one, consistent body of law governing our communications.

If you propose a definition under the "promote, support, attack, or oppose" standard publish a new proposed rule for public comment.

Yours truly,

California

California Association of Nonprofits
Kenneth M. Larsen
Director of Public Policy
520 S. Grand, #695
Los Angeles, CA 90071
213-347-2070

Canal Alliance
Tom Wilson
Executive Director
91 Larkspur Street
San Rafael, CA 94901
415-306-0426

Center for Human Development
Coretta MacLean

Fiscal Director
931 Taylor boulevard, Suite 120
Pleasant Hill, CA 94523
925-687-8844 ext 230

Community Recovery Services
Joan Kiley
3101 Telegraph Ave
Berkeley, CA 94705-1919
510-548-9822

Health Administration Responsibility
Project, Inc.
Harvey S. Frey MD PhD Esq.
Director
552 12th St.
Santa Monica, CA 90402-2908
hsfrey@harp.org

Rose Foundation for Communities and the Environment

Tim Little
Executive Director
6008 College Ave., Ste. 10
Oakland, CA 94618
510-658-0702
tlittle_rose@earthlink.net

United Cerebral Palsy of Orange County

Paul Pulver
Executive Director
230 Commerce, Suite 190
Irvine, CA 92602
714-200-2624

Women Organizing Resources, Knowledge and Services (W.O.R.K.S.)

Channa Grace, Executive Director
1139 West 6th Street
Los Angeles, CA 90017
213-202-3930 ext. 28

The Vote Solar Initiative

Adam Browning
Director of Operations
182 Second Street, Suite 400
San Francisco, CA 94105
415-874-7434

Zimmerman Lehman

Ann Lehman
Planning Specialist & Executive Coach
582 Market Street, Suite 1112
San Francisco, CA 94104
415-986-8330

Delaware

American Lung Association of Delaware

Deborah Brown
1021 Gilpin Avenue, Ste 202
Wilmington, DE 19806

Georgia

Southeastern Legal Foundation

Shannon L. Goessling, Esq.
Executive Director
6100 Lake Forrest Drive, Suite 520
Atlanta, GA 30328
404-257-9667

Illinois

Rogers Park Community Action Network

Jonathan Roth
1545 W. Morse
Chicago, IL 60626
773-973-7888

Indiana

James Madison Center for Free Speech

James Bopp, Jr.
General Counsel
1 South 6th Street
Terre Haute, IN 47807
812-232-2434
jbboppjr@aol.com

Iowa

Iowa Environmental Council

Richard Leopold
Executive Director
711 East Locust, Des Moines, IA 50309
515-244-1194, ext. 11
leopold@earthweshare.org

Maryland

1000 Friends of Maryland

Dru Schmidt-Perkins
1209 North Calvert Street
Baltimore, MD 21202
410-385-2910

Massachusetts

Greater Boston Legal Services
Robert Sable
Executive Director
197 Friend Street
Boston, MA 02114

Michigan

Humanics Nonprofit Management Program
Grand Valley State University
Annie Davies MacLachlan, Director
228C DeVos, 401 W. Fulton
Grand Rapids, MI 49504
616-331-2362
maclacan@gvsu.edu

Michigan Campus Compact
Amy Smitter
Executive Director
1048 Pierpont, Suite 3
Lansing, MI 48911
517-492-2424

Michigan Neighborhood AmeriCorps
Program
Edward Ginsberg Center for Community
Service & Learning
Addell Austin Anderson, PhD
Program Director
1024 Hill Street
Ann Arbor, MI 48104-3310
734-647-9423
addell@umich.edu

Michigan Nonprofit Association
Erin Skene
Michigan Public Policy Initiative Director
1048 Pierpont Dr, Suite 3
Lansing, MI 48911
517-492-2400
skeneeri@mnaonline.org

United Way of Bay County
Cindy Miller
Director
Volunteer Resource Center
909 Washington Avenue
Bay City, MI 48708
989-893-6060

Volunteer Center of Southwest Michigan,
Niles
Kathryn S. Rossow
Executive Director
1213 Oak Street
Niles, MI 49120
269-683-5464

Volunteer Center of Southwest Michigan,
St. Joseph
Kathryn S. Rossow
Executive Director
605 Pleasant Street
St. Joseph, MI 49085
269-983-0912

Minnesota

Restart Inc.
Jim Jasper
Executive Director
825 So. 8th St. #816,
Minneapolis, MN 55404
612-825-4287

Montana

Clark Fork Coalition
Matt Clifford
Staff Attorney
P.O. Box 7593
Missoula, MT 59807

Montana Conservation Voters Education
Fund
Theresa M. Keaveny
Executive Director

P.O. Box 853
Billings, MT 59103
406-254-1593
tkeaveny@mtvoters.org

Montana Environmental Information Center
James D. Jensen, Executive Director
P.O. Box 1184
Helena, MT 59624
406-443-2520

Park County Environmental Council
Jim Barrett
Executive Director
215 East Lewis Street
P.O. Box 164
Livingston, Montana 59047
406-222-0723

New Jersey

Center for Non-Profit Corporations
Linda M. Czipo
Executive Director
1501 Livingston Avenue
North Brunswick, NJ 08902
732-227-0800

Nevada

Planned Parenthood Mar Monte
Alison Gaulden, MBA
Vice President of Public Affairs
455 West Fifth St, Reno NV 89503
775-688-5560 x255
alison_gaulden@ppmarmonte.org

Rural Communities Workforce Solutions
Virginia Berquist
Executive Director
1301 S Highway 160, 2nd Floor
Pahrump, NV 89048
775-727-8113

New York

American Lung Association
John L. Kirkwood
President and CEO
61 Broadway
New York, NY 10006
212-315-8800

North Carolina

American Lung Association of North
Carolina
Susan King Cope
Vice President Programs and Advocacy
PO Box 27985
Raleigh, NC 27611
919-832-8326 x 22
skingcope@lungnc.org

Conservation Council of NC Foundation,
Inc.
John Runkle
General Counsel
PO Box 12671
Raleigh, NC 27605
919-942-0600

NC Justice Center's Health Access Coalition
Adam Searing
Project Director
224 S. Dawson
Raleigh, NC 27601
919-856-2568
adam@ncjustice.org

N.C. Center for Nonprofits
Sally Migliore
Senior Associate
1110 Navaho Drive, Suite 200

Raleigh, NC 27609
919-790-1555, ext. 106
smigliore@ncnonprofits.org

Ohio

The Center for Community Solutions
John R. Corlett
Senior Fellow and Director of Public
Policy and Advocacy
1226 Huron Road, Suite 300
Cleveland, Ohio 44115
216-781-2944, Ext. 222

National Association of Local Boards of
Health
Jennifer O'Brien
1840 East Gypsy Lane Road
Bowling Green, OH 43402
419-353-7714

Ohio Coalition Against Gun Violence
Toby Hoover
Executive Director
444 Floyd St.
Toledo, OH 43620
419-244-7442

Oregon

Oregon Natural Resources Council
Regna Merritt
Executive Director
5825 N. Greeley
Portland, OR 97217
503-283-6343

Pennsylvania

Pennsylvania Association of Nonprofit
Organizations
David Ross
777 East Park Drive, Suite 200,
Harrisburg, PA 17111
717-236-8584

American Lung Association of Pennsylvania
Deborah Brown
3001 Old Gettysburg Road
Camp Hill, PA 17011

Housing Alliance of Pennsylvania
Liz Hersh
Executive Director
2 South Easton Road
Glenside, PA 19038
215-576-7044

Texas

Texas Criminal Justice Coalition
Ana Yáñez-Correa
Executive Director
602 West 7th Street, Suite 104
Austin, TX 78701
512-441-8123 Ex.103

Vermont

Vermont Alliance of Nonprofit
Organizations
Katherine Long
Director of Public Policy
PO Box 8345
Burlington, VT 05402
802.862.0292
Katherinel@vanpo.org

Walk in Balance
Alexander P. Lee
Executive Director
Project Laundry List
P.O. Box 189
South Royalton, VT 05068
603-226-3098

Virginia

Virginia League of Conservation Voters
Education Fund
Lisa M. Guthrie

Executive Director
530 E. Main St., Suite 820
Richmond, VA 23219
804-225-1902
valcvef@aol.com

1629 K Street, NW Suite 503
Washington, DC 20006
202-457-0046
hberger952@aol.com

Washington

Kettle Range Conservation Group
Steve Anthes
Vice President
Board of Directors
600 S. Clark Street
Republic, WA 99166

American Association of University
Professors
Mark F. Smith
Director of Government Relations
1012 14th Street, NW, Suite 500
Washington, DC 20005
202-737-5900, Ext 3042
marksmith@aaup.org

Planned Parenthood of the Inland Northwest
Jet Tilley
Director of Public Policy
123 E Indiana Avenue, Suite 100
Spokane WA 99207
509-241-4156

The American Jewish Committee
Richard T. Foltin
Legislative Director and Counsel
Office of Government and International
Affairs
1156 15th St., NW, Suite 1201
Washington, DC 20005
202-785-5463
foltin@ajc.org

West Virginia

American Lung Association of West
Virginia
Deborah Brown
415 Dickinson Street, 2nd Floor
Charleston, WV 25301

Asian & Pacific Islander American Vote
Bouapha Toommaly
National Director
1001 Connecticut Ave. NW #601
Washington, DC 20036
202-223-9170

Wisconsin

Clean Wisconsin
Becky Weber
Membership & Development Manager
122 State Street Suite 200
Madison, WI 53703
920-725-7020
beweber@cleanwisconsin.org

Campaign for Tobacco-Free Kids
Matthew L. Myers
President
1400 I Street, NW #1200
Washington, DC 20005
202-296-5469

National Organizations

American Association of People with
Disabilities
Helena R. Berger
Chief Operating Officer

Center for Democracy and Technology
James X. Dempsey
Executive Director
1634 I Street, NW
Suite 1100
Washington, DC 20006

202-637-9800

National Council of Nonprofit Associations
Erica Greeley
Director of Strategic Policy Planning
1030 15th Street NW Suite 870
Washington, DC 20005-1525
202-962-0322 ext. 14

National Research Center for Women &
Families
Diana Zuckerman
President
1701 K Street, NW, Suite 700
Washington, DC 20006
202-223-4000

NARAL Pro-Choice America Foundation
Ann Jameson
Assistant General Counsel
1156 15th Street, NW
Suite 700
Washington, DC 20005
202-973-3000

Presbyterian Church (USA)
Rev. Elenora Giddings Ivory
Director, Washington Office
100 Maryland Avenue, N.E., Suite 410
Washington, DC 20002
202-543-1126
eivory@ctr.pcusa.org

Society for Public Health Education
M. Elaine Auld, MPH, CHES,
Executive Director
750 First Street NE, Suite 910
Washington, DC 20002
202-408-9804

United Church of Christ Justice and Witness
Ministries
Rev. Ron Stief

100 Maryland Ave. #330
Washington, DC 20002
202-543-1517