



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**MEMORANDUM**

**TO:** THE COMMISSION  
STAFF DIRECTOR  
GENERAL COUNSEL  
FEC PRESS OFFICE  
FEC PUBLIC RECORDS *MWD*

**FROM:** OFFICE OF THE COMMISSION SECRETARY

**DATE:** August 18, 2004

**SUBJECT:** *Ex Parte* COMMUNICATIONS  
RE: Proposed Final Rules for Political Committee Status

Transmitted herewith is an *ex parte* communication regarding the above-captioned matter.

Proposed final regulations are on the agenda for Thursday, August 19, 2004.

Attachment



## NATIONAL EDUCATION ASSOCIATION

*Reg Weaver, President*  
*Dennis Van Roekel, Vice President*  
*Lily Eskelsen, Secretary-Treasurer*  
*John I. Wilson, Executive Director*

1201 16th Street, N.W.  
 Washington, D.C. 20036-3290

August 18, 2004

Bradley A. Smith, Chairman  
 Ellen Weintraub, Vice Chair  
 David M. Mason, Commissioner  
 Danny L. McDonald, Commissioner  
 Scott E. Thomas, Commissioner  
 Michael E. Toner, Commissioner

Federal Election Commission  
 999 E Street, N.W.  
 Washington D.C. 20463

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Dear Chairman Smith, Vice Chair Weintraub, and Commissioners Mason,  
 MacDonald, Thomas, and Toner:

We are writing on behalf of the undersigned 501(c) organizations and counsel to urge the Commission to postpone consideration of the proposed final rules on "political committee status" that were submitted by the General Counsel's office on August 13, 2004 as an agenda item for the Commission's August 19, 2004 meeting in order to provide adequate notice to the regulated community and allow time for comments to be filed with regard to the proposed final rules.

As Chairman Smith noted in his recent testimony before the Senate Committee on Rules and Administration, the Commission's proposed rules defining "political committee" would, if adopted, represent "the most far reaching expansion of regulation in this area since the 1974 amendments to the Federal Election Campaign Act ("FECA") ...".<sup>1</sup> The importance of this rulemaking was underscored by the overwhelming number of comments – over 150,000 – that the Commission received in response to the Notice of Proposed Rulemaking on this matter.

In light of the far-reaching impact of these regulations, every organization that is potentially affected by the final rules, should be given more than six days notice – less than the time allowed under the regulations to comment on an

<sup>1</sup> Statement of Bradley A. Smith, Chairman of Federal Election Commission, before the Senate Committee on Rules and Administration, Wednesday July 14, 2004.

Advisory Opinion request – to review the draft final regulations and to comment on the impact of the final rules where appropriate. Since the final regulations will not take effect until after the 2004 election, and in the case of the proposed allocation rules until January 1, 2005, there is no reason for the Commission to act precipitously by adopting final rules without the benefit of additional comment.

Moreover, as acknowledged in the General Counsel's memorandum, the draft final rules differ significantly from the proposed rules contained in the Notice of Proposed Rulemaking ("NPRM").<sup>2</sup> The draft final rules create a wholly different standard for determining "political committee" status than that proposed in the NPRM. The draft final rules also amend the allocation rules for separate segregated funds and non-connected committees in an entirely new way.

Because of these significant differences in the scope and effect of the final rules, the Administrative Procedure Act entitles the regulated community to additional notice and additional opportunity to participate in this rulemaking through the submission of comments on the proposed final rules before the Commission may act. See 5 U.S.C. §553(b), (c); see also *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983); *Shell Oil Company v. EPA*, 950 F.2d 741 (D.C. Cir. 1991).

For the foregoing reasons, we ask that the Commission postpone consideration of the draft final rules for political committee status and allow thirty days for comments to be filed on these draft final rules.

Respectfully submitted,



Margaret E. McCormick  
Counsel for NEA

Laurence Gold, Associate General Counsel  
AFL-CIO  
815 16<sup>th</sup> Street, N.W.  
Washington D.C. 20006

Alliance for Justice  
11 Dupont Circle, N.W.  
Washington DC 20036

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<sup>2</sup> See discussion on pages 2 and 3 of Agenda Document No. 04-75, in which the General Counsel's office describes the many ways in which the draft Final Rules differ from the rules contained in the NPRM.

Judith Scott, General Counsel  
Orrin Baird, Associate General Counsel  
Service Employees International Union  
1313 L Street, N.W.  
Washington D.C. 2005

NAACP National Voter Fund  
2001 L St., N.W., Suite 1050  
Washington DC 20036 .

Lyn Utrecht, Esq.  
Eric Kleinfeld, Esq.  
Ryan, Phillips, Utrecht & MacKinnon  
1133 Connecticut Avenue, N.W.  
Suite 300  
Washington DC 20036

Sierra Club  
85 Second Street,  
San Francisco, California 94105

People for the American Way  
2000 M St, N.W.  
Washington DC 20036

Michael B. Trister, Esq.  
Holly Schadler, Esq.  
Lichtman, Trister, & Ross  
1666 Connecticut Ave NW  
Washington DC 20036

League of Conservation Voters  
1920 L Street, NW  
Suite 800  
Washington DC 20036

Gail Harmon, Esq.  
Harmon, Curran, Spielberg &  
Eisenberg  
1726 M St. NW  
Washington DC 20036