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KS Chapter of The National Action Network
813 N. 5 St, #3
Stockton, KS 67669

April 3, 2004

Dear Ms. Dinh Mai Dinh
999 E Street NW
Washington, DC 20463

Dear Dear Ms. Dinh Dinh:

We are writing to express our concern over the Federal Election Commission s (FEC) March 4, 2004 Notice of Proposed Rulemaking and to recommend that these rules not be adopted. After this election cycle the FEC can take the time it needs to consider the many serious and complicated issues raised in the rulemaking.

We are a nonpartisan organization that believes in the importance of genuine advocacy about issues.

Genuine issue advocacy must be left free of the Commission s regulation.

The Commission has no legitimate interest in attempting to regulate genuine issue advocacy, which addresses issues and public officials in their role as policymakers, not as candidates for federal office. The democratic process depends not only on citizens voting, but also on people and nongovernmental organizations speaking up about the issues of the day, including pending legislation and acts by public officials. The Constitution protects this advocacy from being burdened by laws and regulations unless a compelling state interest justifies it. There has been no evidence that this kind of civic engagement poses a threat of corruption in government.

The vague and overbroad standards in the proposed rulemaking threaten our ability to engage in critically important legislative advocacy and nonpartisan voter education activity.

These rules extend beyond the plain language of McCain-Feingold and fly in the face of the Supreme Court decision upholding the statute. The Court said public interest groups such as ours remain free to raise soft money to fund voter registration, GOTV activities, mailings, and broadcast advertising. McConnell v. FEC, 540 U.S. __ at__[slip op. at 80)

The proposed rules, however, would regulate any group that promotes, supports, attacks or opposes candidates for federal office, without distinguishing between criticism or praise of federal officeholders in their official capacity and attacks or promotion of them as candidates. This vagueness would effectively bar any grassroots lobbying or public education on issues, because our financial support is largely based on foundation grants and large individual contributions the type of contributions that the FEC would prohibit to support our advocacy and voter education activity if we are classified as a political committee under these rules.

We are nonpartisan in elections. IRS rules prohibit us from even indirectly supporting or opposing candidates for election. But we are not nonpartisan about our mission. We believe in it and have the right to advocate for policies that will help us achieve it. The proposed rule threatens our ability to exercise that right.

It is inappropriate for the Commission to change the campaign finance rules in the midst of this election cycle.

Simple fairness dictates that no new rules should be applied during this

election season, nor applied retroactively. Nonprofits and the public need clarity and reasonable notice when rules change. The FEC s haste in rushing these rules through in the middle of an election year will lead to confusion and ultimately silence many nonpartisan organizations.

The proposed rules appear to be a solution in search of a problem. They expand regulation when there is no evidence that independent groups seeking to participate in the democratic process present a threat of corrupting government.

Our constitutional rights of free speech and association can only be limited by campaign finance laws when there is a compelling need to prevent corruption or the appearance of corruption in the federal government. For t his reason the McCain-Feingold law only bans federal officials and political parties from raising soft money. The proposed rule would sweep in and restrict far more than is necessary to prevent corruption.

The FEC s priority should be to monitor compliance with McCain-Feingold and, if warranted, to propose statutory amendments on the basis of a factual record. It makes absolutely no sense, however, to leap over the important step of monitoring compliance and jump right to suggesting new rules for problems that the FEC has yet to identify.

Conclusion

When Congress passed campaign finance reform, it did so carefully and deliberately. The concerns about corruption that lead to reform were directed at the national political parties. The only provision affecting nonprofit organizations is the electioneering communications provision. Otherwise we were specifically left alone because we operate outside the control and coordination of candidates or political parties. Now, without an act of Congress, the FEC is attempting to circumvent Congress and the Supreme Court s thoughtful consideration and treat nonprofits that engage in specific advocacy activity as political committees. We believe that Congress not the FEC, should do any reconsideration of nonprofits.

We hope you carefully consider our comments, and that you do not adopt any of the proposed rules. They are hurried, unfair and unwise.

Matutinally Yours,

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KS Chapter of The National Action Network