Charles Spies - Legal <CSpies@rnchq.org> on 04/05/2004 05:28:51 PM

To: pcstestify@fec.gov
cc:

Subject: RNC Comment

Attached please find the Comment of the Republican National Committee on the Political Committee Status NPRM. In addition, we wish to testify at the hearings on this matter.

- Charlie

Charles R. Spies
Election Law Counsel
Republican National Committee
310 First Street, SE
Washington, DC 20003

Phone: (202) 863-8638
Fax: (202) 863-8654

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Republican National Committee

Counsel's Office

April 5, 2004

Mai T. Dinh, Acting Assistant General Counsel
Office of the General Counsel
Federal Election Commission
999 E St., N.W.
Washington, DC 20463

VIA E-MAIL: **pcstestify@fec.gov**

RE: Political Committee Status Notice of Proposed Rulemaking

Dear Ms. Dinh:

These comments on the Federal Election Commission's ("FEC" or "Commission") Notice of Proposed Rulemaking ("NPRM"), 69 Fed. Reg. 11736, regarding political committee status, are submitted on behalf of the Republican National Committee ("RNC"). The RNC requests an opportunity to testify before the Commission at its hearing on this subject and will be pleased to clarify and expand upon any of our responses at that time.

"I fought the law and the law won."
- Bobby Fuller, 1965
- RNC Chairman Ed Gillespie, 2004

The starting point for analysis of this NPRM must be the plain language of the law. No matter how much the RNC or members of the Commission dislike the law, the reality is that notwithstanding that dislike (and what we believed were legitimate Constitutional concerns), the Bipartisan Campaign Reform Act of 2002 was passed into law and upheld by the United States Supreme Court in *McConnell v. FEC* ("*McConnell*"), 540 U.S. ____, 124 S.Ct. 619 (2003). The obligation of the Commission

in this Rulemaking, therefore, is to provide regulatory guidance as to how it will be enforcing the law as written. The Commission does not have the luxury of being able to ignore enforcement of the law, nor does it have the authority to delay this enforcement until after the election because of any perceived partisan advantage or disadvantage that may come from faithfully upholding its duty to implement the statute.

The statute, as written at 2 U.S.C. §§ 431(4) and (9)(A)(i), is as simple as it is clear: Any "committee, club, association, or other group of persons" that spends or raises more than $1,000 in a calendar year "for the purpose of influencing any election for Federal office" is a "political committee" and must register with the FEC and abide by the limits and prohibitions of the Federal Election Campaign Act of 1971, as amended (the "Act").

That is the law. This NPRM does not propose to "change the definitions" of fundamental terms like "expenditure" or "political committee." An administrative agency such as the FEC has no authority to change statutory terms, and in fact much of the over 20 Federal Register pages that constitute this NPRM appear to be diversions and *non sequiturs* that have little or no relevance to the core issue before the Commission. This Rulemaking must determine what new Regulations, if any, are necessary to implement the plain language of the statute and make clear to any members of the regulated community who still claim to be laboring under "confusion" about the law that this Commission will be carrying out its duty to enforce the statute as written by Congress and upheld by the Supreme Court.

The statutory language at issue in this rulemaking, 2 U.S.C. §§ 431(4) and (9)(A)(i), has been on the books for over a quarter century and over that time period there have been numerous efforts to implement this plain language through both the regulatory and enforcement processes, most recently through an effort initiated by then Commissioner Karl Sandstrom's "Definition of Political Committee; Advance Notice of Proposed Rulemaking," 66 FR 13681 (Mar. 7, 2001). These efforts, however, were consistently countered (including by this Commenter) by citations to voluminous court opinions, beginning with *Buckley v. Valeo*, limiting the statutory language of "for the purpose of influencing any election for Federal office" to "only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." *See Buckley v. Valeo*, 424 U.S. 1, 79-80 (1976). *See also Clifton v. FEC*, 114 F.3d 1309, 1312 (CA1 1997); *Vermont Right to Life Comm., Inc. v. Sorrell*, 221 F.3d 376, 387 (CA2 2000); *FEC v. Christian Action Network, Inc.*, 110 F.3d 1049, 1064 (CA4 1997); *Chamber of Commerce v. Moore*, 288 F.3d 187, 193 (CA5 2000); *Iowa Right to Life Comm., Inc. v. Williams*, 187 F.3d 963, 968-970 (CA8 1999); *Citizens for Responsible Govt. State Political Action Comm. v. Davidson*, 236 F.3d 1174, 1187 (CA10 2000); *c.f. FEC v. Furgatch*, 807 F.2d 857, 862-863 (1987). This all changed in December 2003 with the Supreme Court's opinion in *McConnell*.

The Supreme Court clarified in *McConnell* that *Buckley's* "express advocacy" test is not a constitutional barrier in determining whether an expenditure is "for the purpose of influencing" a Federal election. *McConnell*, 124 S.Ct. at 688-89. As Vice Chair

Weintraub has explained, we are now in a "post-*McConnell* world in which the Supreme Court has declared the 'express advocacy' distinction, thought to be the trigger for so many legal consequences, to be 'functionally meaningless.'" Statement of Vice Chair Ellen L. Weintraub for the Record (March 4, 2004).

The *McConnell* Court ruled that, "the unmistakable lesson from the record in this [BCRA] litigation, as all three judges on the District Court agreed, is that *Buckley*'s magic-words requirement is functionally meaningless." *McConnell*, at 689. Given this analysis by the majority, dissenting Justice Thomas noted, the holding in *McConnell* that the "express advocacy test" was no longer a constitutionally mandated limit meant that *McConnell* effectively overruled lower court decisions applying and upholding *Buckley*'s "express advocacy" standard. *McConnell,* 124 S.Ct at 737 (Thomas, J., dissenting).

At the same time the Supreme Court eschewed the express advocacy standard, it affirmed in the context of "federal election activity" that the test of "promote, oppose, attack, and support clearly set forth the confines [,] provides explicit standards for those who apply them and gives the person of ordinary intelligence a reasonable opportunity to know what is prohibited." *McConnell*, at 675 n. 64 (internal quotations omitted). By adopting this standard, the *McConnell* Court expanded the reach of the Act beyond "express advocacy."

The first indication that we are now, as the Vice Chair explained, "in a post-*McConnell* world," was analysis the Commission adopted in Advisory Opinion 2003-37 issued to Americans for a Better Country ("ABC"), a Section 527 organization. This Advisory Opinion confirmed that, free from the now "functionally meaningless" express advocacy constriction on the plain language of the statue, the Act requires any communication which "promotes, supports, attacks or opposes" a federal candidate to fall under the "hard dollar" rules of the Act. AO 2003-37. The Commission, citing *McConnell,* at 675 n. 64, held that communications referring to a clearly identified federal candidate that promote, support, attack or oppose that candidate are for the purpose of influencing a federal election. The Commission confirmed this, stating: "[C]ommunications that promote, support, attack or oppose a clearly identified Federal candidate" have a "dramatic effect" on federal elections. AO 2003-37, at 3.

The Commission correctly told ABC that it could not use donations from individuals in excess of the Act's limits or from prohibited sources for communications that "promote, support, attack or oppose" a candidate for federal office. AO 2003-37, at 9-10. AO 2003-37 reaffirmed the statutory threshold requirement as to when a 527 organization becomes a federal committee by restating the Act's long-standing requirement that any group that raises or spends more than $1,000 for the purpose of influencing a federal election is required to register and become a federal committee.

Most recently, just last week (March 30, 2004) the United States District Court for the District of Columbia ruled:

> Accordingly, because Triad and then Triad Inc.'s major purpose was the nomination or election of specific candidates in 1996, and because Triad received contributions aggregating more than $1,000 in 1996, I find that Triad and Triad Inc. operated as a "political committee" in 1996.

Federal Election Commission v. Malenick, No. Civ. -----, 2004 WL 626174 (D. D.C. March 30, 2004) (internal quotations omitted). Furthermore, this reaffirmation by the District Court of what triggers political committee status was the result of successful briefing and argument by the FEC to the Commission – in other words, Commission policy in the enforcement context, when it matters most, is to uphold the language of the statute.

In light of the legal background stated above, the Commission's challenge in the instant Rulemaking is *not* to solve every hypothetical parade of horribles that has been thrown up as a policy objection to the legal obligation of the Commission to enforce the law. Instead, the current charge to the Commission is two-fold. First, the Commission should enact simple, understandable Regulations that clarify the language of the Act at 2 U.S.C. §§ 431(4) and (9)(A)(i) and the application of this statutory language to so-called "527 organizations." Second, the Commission should make clear that while the specific language of clarifying Regulations may be new, the statute they stem from is not, and therefore any action that does not comply with this statutory and regulatory language taken by the major new 527 organizations which are currently subject to so much public debate and scrutiny can and must be treated as knowing and willful.

PROVISIONS OF THE NPRM

Cutting through the chaff and potential diversions of the NPRM, there are three key issues for the Commission to clarify. The Commission reinforced in AO 2003-37 that political committees may not use donations from individuals in excess of the Act's limits or from prohibited sources for communications that "promote, support, attack or oppose" a candidate for federal office. That analysis, however, led some to claim "confusion" about what triggers political committee status under the Act. The Commission's first task here is to reinforce the statutory language regarding this issue. Second, because the concept of allocation for 527 organizations was introduced in AO 2003-37, the Commission should enact simple regulations specifying when allocation is permitted, and what formula is to be used. Third, the Commission should enact these Regulations with an immediate effective date. Finally, any and all new Regulations should conform to the touchstone concept of certainty and clarity for those attempting to comply with the Act.[1] Distilled to their core, the rules proposed in this NPRM simply

[1] Illustrative of this concept of clarity is the coordination standard's "bright-line tests." *Final Rule, Coordinated and Independent Expenditures*, 68 Fed. Reg. 428 (Jan. 30, 2003). In fact, the first cited basis for one of the most important temporal elements of coordination is that it provides a "bright-line" rule. *Id.* at 430 (describing basis for 11 CFR 109.21(c)(4)(ii)). The Commission further exhorts another rule's "clear boundary," *Id.* at 438, and rejects alternative approaches for another rule because they "would obfuscate otherwise bright lines..." *Id.* at 439. In another context, fixed minimum Federal allocation percentages were praised as "[b]right line test[s] intended to be more easily understood and applied..."

require that only funds raised in accordance with Federal campaign finance laws may be spent in connection with Federal elections – an uncomplicated framework for the regulated community.[2]

1. Expenditures For the Purpose of Influencing Any Election For Federal Office Trigger Political Committee Status

Simply stated, any 527 organization that raises or spends more than $1,000 for the stated purpose of promoting, attacking, supporting or opposing a clearly identified candidate for federal office must register as a federal political committee. This straightforward concept, reinforced by the framework laid out in AO 2003-37, was echoed in the testimony from Senators McCain and Feingold, BCRA's primary sponsors, reinforcing their objective that "527" organizations must, in the words of Sen. Feingold, "register as political committees with the FEC unless their activities are entirely directed at state and local elections." Testimony of Sen. Feingold before the US Senate Committee on Rules and Administration (March 10, 2004). Sen. McCain also testified clearly that "[u]se of soft money by 527 groups whose major purpose is to effect federal elections is not legal" (emphasis added).[3]

The statutory and legal analysis why, in a post-*McConnell* world, the "promotes, supports, attacks or opposes" a federal candidate standard provides a meaningful framework for new rules is laid out in our introduction above. In dispatching the express advocacy standard, the Supreme Court found that the limitation "has not aided the legislative effort to combat real or apparent corruption...". *McConnell* 124 S. Ct. at 689. The Commission's proposed rules are aimed at the type of circumvention decried by the Court in *McConnell* by incorporating into its rules the constitutionally upheld standard of "promote," "support," "attack," and "oppose." *McConnell*, 124 S. Ct. at 675 n. 64. Moreover, federal election activity types 1, 2, and 3 (2 U.S.C. 431(20)(A)(i), (ii), (iii)), with some tailoring, are appropriately counted toward the expenditure threshold.

In light of the clear statutory language at 2 U.S.C. §§ 431(4) and (9)(A)(i), *Buckley*, *McConnell*, and AO 2003-37, there can be little doubt or dissent regarding what constitutes a contribution or expenditure. The "major purpose" test, however, deserves clarification by the Commission in this Rulemaking. The "major purpose" requirement in determining political committee status is described in *Buckley*. Payments by an

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Final Rule, Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49064, 49080 (July 29, 2002). A "bright line" concept is again adopted in the context of a rule involving the use of Levin funds. *Id.* at 49096.

[2] "The proposed rules would merely require that only funds raised in accordance with the Act may be spent in connection with Federal elections." NPRM, 69 Fed. Reg. at 11756. Furthermore, "[t]he reporting requirements [] are not complicated and would not be costly to complete." *Id.* at 11755.

[3] It should be noted that all four witnesses (Senators McCain and Feingold, former FEC General Counsel Larry Noble, and Professor Edward Foley) at the March 10, 2004 hearing before the US Senate Committee on Rules and Administration offered testimony that the current law is unambiguous. As Mr. Noble explained, "it is clear that the 527 groups set up to elect or defeat Democratic or Republican candidates for federal office are federal political committees, and as such they cannot be used to funnel soft money back into the election."

organization whose "major purpose is the nomination or election of a candidate" should "be assumed to fall within the core area sought to be addressed by Congress. They are, by definition, campaign related."[4] Of course, so-called "527" groups exist, literally by definition of their tax status, to influence elections.[5] Individuals seeking to exert influence over federal officeholders and candidates, the Supreme Court predicted, would turn to political committees which exist for the express purpose of influencing the election or defeat of federal officeholders. The Court noted, "federal candidates would be just as indebted to these contributors as they had been to those who had formerly contributed to the national parties." *McConnell,* 124 S. Ct. at 673. If the objective of BCRA was to separate federal officeholders from large soft money donations, then, and the Court upheld BCRA precisely for this reason, how are unregistered, non-reporting shadow groups immune from the government's strong, particular interest in the appearance of corruption? *McConnell* at 124 S. Ct. at 629 (stating the government's interest "in preventing corruption, and particularly its appearance"). As Senator John Kerry noted in voting for the BCRA, "the McCain-Feingold goal and objective, which I support, is to eliminate altogether the capacity of soft money to play the role that it does in our politics." Sen. John Kerry, *Congressional Record*, 3/27/01, p. S2930. In addition, even those with the strongest philosophical predispositions against campaign finance regulation acknowledge the value of disclosure,[6] which is accomplished when these shadow organizations with the major purpose of promoting, attacking, supporting or opposing a federal candidate begin registering and reporting to the FEC.

The RNC concurs with the NPRM that the major purpose test is met when the nomination or election of a candidate or candidates is one of two or more major purposes of an organization, even if it is not its primary purpose ("a major purpose"). This is consistent with the recent District Court ruling in *Malenick*,[7] and the RNC strongly supports a regulation requiring that if a group has an avowed purpose, as demonstrated in an organization's public pronouncements, of nominating, electing, defeating, promoting, supporting, attacking, or opposing a Federal candidate or candidates, it meets this "major purpose" element of the political committee test. Organizations with an avowed purpose, when they see that the Commission is serious about enforcing the Act, will most likely voluntarily register and report to the Commission, rendering many of the fact-intensive red herrings in the NPRM unrealistic. By looking to a 527 organization's avowed

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[4] *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *see also McConnell*, 124 St. Ct. at 678 n. 67 (emphasizing that "section 527 political organizations are, unlike 501(c) groups, organized for the express purpose of engaging in partisan political activity.")

[5] Section 527 of the Internal Revenue Code provides that these organizations be organized and operated primarily for the purpose of influencing or attempting to influence the nomination, election, or appointment of individuals to public office. 26 U.S.C. 527(e).

[6] "Disclosure allows individuals and groups to fulfill their desire to participate freely in the system. Some, of course, may still want to hide their activity, but doing so becomes the difference between legal action and illegal activity, a potentially high cost for the slightly added benefit of nondisclosure. Assuming that the contributor's primary goals are to affect who is elected to office and what policies are pursued by the government, the added burden of disclosure is relatively little." Bradley A. Smith, *Unfree Speech, The Folly of Campaign Finance Reform*, Princeton University Press (2001) at 175.

[7] "An 'organization's purpose may be evidenced by its public statements of its purpose or by other means, such as its expenditures in cash or in kind to or for the benefit of a particular candidate or candidates.'" *FEC v. Malenick*, 2004 WL 626174 (citing *FEC v. GOPAC, Inc.* 917 F. Supp. 851, 859 (D.D.C. 1996)).

purpose, the Commission creates a clear bright-line standard. While we can all think of hypotheticals that would not be captured by this standard, the reality of the past six months has shown that there is a significant fundraising advantage for organizations that have a stated purpose of supporting or opposing a specific federal candidate. With that fundraising advantage, however, must come the burden of complying with the Act. If an organization, instead of focusing on supporting or opposing a federal candidate or candidates, instead focuses on issues, then it rightfully avoids this standard.

An argument has been made that in *McConnell*, the Supreme Court acknowledged, "Interest groups, however, remain free to raise soft money to fund voter registration, GOTV activities, mailings, and broadcast advertising (other than electioneering communications)." *McConnell,* 124 S. Ct. at 686. That quotation is self evident, but only goes so far. "Interest groups" do indeed, even under the most restricting of the proposed rules in this NPRM, remain free to engage in grassroots GOTV activities, so long as they are not for the purpose of supporting or opposing a federal candidate or candidates. The RNC, Democrat Party, Liberterian Party, and Socialist Party, after all, are "interest groups," yet do not remain free to fund the above listed activities with soft money and, in fact, are required to use federal funds for these activities. 2 USC 441i(a). This is not to say there should be a specific equivalence between nonconnected groups and political parties; rather, it merely occasions the observation that a single quotation from the Court's opinion cannot carry the weight that some wish it would.[8]

2. Allocation

The NPRM seeks comment on a number of issues related to allocation and non-connected political committees. First, political committees raising or spending money for activities which promote, attack, support, or oppose clearly identified Federal candidates exclusively must of course be paid for with 100% Federal funds. Second, if the communication has in it even one clearly identified Federal candidate, the activity should be paid for by 100% Federal funds, consistent with the Commission's current treatment of electioneering communications and political committees. *See, generally,* 11 CFR 300.33 (allocation of costs of Federal election activity). Conversely, if the communication only refers to a clearly identified non-federal candidate, and has no generic message, then it may be paid for with 100% non-federal funds. If the activity contains a generic partisan or GOTV message, with no mention of a Federal candidate, then the political committee should use the current state party allocation formula for the state in which the activity occurs. This simple approach would require a political committee to determine its formula based on the presence of a Presidential and/or U.S. Senate candidate on the next ballot. *See, e.g.,* 11 CFR 300.33(b)(1)-(4). If the activity occurs in multiple states, the political committee could either make a state-by-state determination for payment allocation, or could for administrative efficiency purposes use the highest potentially applicable Federal allocation percentage (the required minimum federal percentage is a floor, not a ceiling). In contrast to the pages of charts and explanations in the NPRM, this proposed method of allocation is clear and fair, in as

[8] In another context, the NPRM itself warns against "dissect[ing] the sentences of the United States Reports as though they were the United States Code," *St. Mary's Honor Ctr. v. Hicks,* 509 U.S. 502, 515 (1993).

much as it mirrors treatment of other similarly situated political committees in the Regulations.

3. Effective Date

The Commission seeks comment on whether the effective date for any final rules that the Commission may adopt should be delayed until after the next general election and whether there is a legal basis for delaying the effective date. There is no legitimate legal basis. Congress, in a duly enacted law, has spoken to the question of political committee status in section 431(4) of the Act. The Commission is mandated to administer and seek compliance with the Act. 2 U.S.C. 437c(b)(1). While the Commission may enjoy some authority to delay the effective date of rules under the Administrative Procedures Act, it enjoys no such privilege to flaunt the effective dates provided for in enabling legislation of its organic statutes, the Federal Election Act of 1971, as amended, and the Bipartisan Campaign Reform Act of 2002, for which effective dates have passed. The statutory language at 2 U.S.C. §§ 431(4) and (9)(A)(i) is clear, and absent the former court imposed express advocacy constraints, the Commission is obligated to uphold the current clear language of the statute. To quote Justice Brennan, "It may be presumed that Congress does not intend administrative agencies, agents of Congress' own creation, to ignore clear jurisdictional, regulatory, statutory, or constitutional commands." *Heckler v. Chaney,* 105 S. Ct. 1649, 1660 (1985) (Brennan, J., concurring),

Along with an immediate effective date, the Commission should knock down the disingenuous argument that some have put forth that organizations do not have to comply with the law until any Regulations passed by the Commission have sat before Congress for the full 30 legislative days. That argument belies the fact that the statute governing the activities of such organizations is currently the law. In addition, the Commission has indicated through AO 2003-37 that it has accepted the post-*McConnell* reality that the statutory language at 2 U.S.C. §§ 431(4) and (9)(A)(i) now governs the activities such 527 organizations. It is incumbent upon the Commission to make clear in the Explanation and Justification for new Regulations that it will immediately treat intentional violations of the statute from that point forward as "knowing and willful" under the Act.

In addition, the RNC supports "conversion rules" outlined in the NPRM because they provide clear, straightforward guidelines and instructions for groups that have already undertaken activities in connection with Federal elections. Any group engaged in this type of activity would be afforded an opportunity, through the clear mechanism provided in the rule, to prove that it possessed the appropriate type of funds it has used to pay for the Federal activity. The RNC strongly supports several concepts in the NPRM designed to require political committees to confirm that only federally permissible funds can be converted to federal funds because this is requiring nothing more than what is required for political committees already registered and reporting under the Act. 11 CFR 102.5(a)(1). The definition of "covered period", as it is based on a comparable time period established in the statute in 2 U.S.C. 434(f)(2)(E), is sound for this reason.

Furthermore, the RNC agrees with the NPRM's conclusion that under the proposed rules, the groups at issue must have federal funds to undertake future activity. 11 CFR 102.53 (requiring that a political committee that undertook Federal activity during its "covered period" satisfy debt owed by the non-federal account to the federal account before undertaking Federal activity).

CERTIFICATION OF NO EFFECT

The proposed rules will have no effect pursuant to 5 U.S.C. 605(b). Based on the analysis provided in the NPRM, the RNC supports the Commission's certification that the proposed rule would not have a significant economic impact on a substantial number of small entities. Needlessly delaying the implementation of the proposed rules by exaggerating their impact with an irrational parade of horribles would violate the Regulatory Flexibility Act, because the Commission can show that it "has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected." 5 U.S.C. 604(a)(5)(emphases added). *See also* 5 U.S.C. 604(a)(1)-(4).

CONCLUSION

The RNC recognizes that whatever objections endure on principle to the BCRA and campaign finance restrictions in general, the FECA and BCRA are nonetheless the law of the land. Consequently, as Sen. McCain recently summarized, "Section 527 groups need to play by the rules that all other political committees are bound by, the rules that Congress has enacted to protect the integrity of our political process - they need to raise and spend money that complies with federal contribution limits and source prohibitions for ads they run that promote or attack federal candidates or otherwise have the purpose to influence federal elections, and they need to spend federal funds for voter mobilization activities that are conducted on a partisan basis and are intended to influence federal elections. Just like every other political committee."[9]

The Commission is to be commended for the obvious work that went into drafting the lengthy NPRM, and now must have the fortitude to uphold the Commission's statutory charge to "administer, seek to obtain compliance with, and formulate policy with respect to" our nation's campaign finance laws. 2 U.S.C. 437c(b)(1). The laws at issue here are on the books, and now must be reinforced through this Rulemaking and then enforced by the Commission.

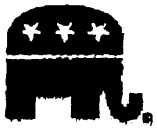
[9] Sen. McCain Testimony before the US Senate Committee on Rules and Administration (March 10, 2004).

Respectfully Submitted,

Charles R. Spies
Election Law Counsel

Republican National Committee
310 First Street, SE
Washington, DC 20003
Phone: (202) 863-8638
Fax: (202) 863-8654
Email: CSpies@rnchq.org

cc: The Commissioners
VIA FACSIMILE: (202) 208-3333
(202) 219-3923



Republican National Committee

Counsel's Office

April 9, 2004

Mai T. Dinh, Acting Assistant General Counsel
Office of the General Counsel
Federal Election Commission
999 E St., N.W.
Washington, DC 20463

VIA E-MAIL: **pcstestify@fec.gov**

RE: Political Committee Status Notice of Proposed Rulemaking

Dear Ms. Dinh:

After reviewing comments submitted on the Notice of Proposed Rulemaking on Political Committee Status, 69 F.R. 11736 (March 11, 2004) ("the NPRM"), the Republican National Committee ("RNC") wishes to concur with the vast majority of commentators that any rule adopted should not apply to the activities of 501(c) organizations. In these supplemental comments, the RNC wishes to emphasize that the Commission needs to make clear that current law bars the spending of funds illegal under the Act by 527 political committees whose major purpose is to influence a federal election. See *Federal Election Commission v. Malenick*, No. Civ. -----, 2004 WL 626174 (D. D.C. March 30, 2004).

At 69 F.R. 11749, the Commission posed this question:

> Should the final rule state that certain tax-exempt organizations, such as those organized under 501(c)(3) or (c)(4) of the Internal Revenue Code, will not meet any of the major purpose tests because of the nature of their tax exempt status and exempt them from the definition of political committee?

The RNC believes emphatically that the Commission should answer this question in the affirmative. Those seeking to delay or prevent the Commission's NPRM are using this issue as a red herring. The Commission should not regulate 501(c)s. It must, however, take the necessary step of issuing regulations to prevent further subversion of the Federal Election Campaign Act by Section 527 organizations seeking to spend unlimited donations from individuals, corporations and unions for the purpose of influencing a federal election.

The focus of this Rulemaking is not, and should not be, anything other than Sec. 527 organizations that promote, attack, support or oppose federal candidates. The issue of 501(c) organizations is a cynical diversionary tactic that the Commission should reject. Because the majority of Commentors appear focused on this 501(c) strawman rather than the serious issue of enforcement of the statute, the RNC hereby withdraws our request to testify and instead will allow our comments to speak for themselves.

Respectfully Submitted,

Charles R. Spies
Election Law Counsel

Republican National Committee
310 First Street, SE
Washington, DC 20003
Phone: (202) 863-8638
Fax: (202) 863-8654
Email: CSpies@rnchq.org

cc: The Commissioners
VIA FACSIMILE: (202) 208-3333
(202) 219-3923