

FREE SPEECH COALITION, INC.

8180 GREENSBORO DRIVE, SUITE 1070
MCLEAN, VIRGINIA 22102-3860
703/356-6912 (PHONE); 703/356-5085 (FAX)

May 10, 2004

Hon. Thomas M. Davis, III, Chairman
Committee on Government Reform
U.S. House of Representatives
2348 Rayburn House Office Building
Washington, DC. 20515

Re: Postal Reform and the Cooperative Mail Rule

Dear Chairman Davis:

On behalf of the Free Speech Coalition, Inc. (“FSC”),¹ we would like to address an issue we believe wholly unrelated to the postal reform legislation that your Committee may be considering based upon the “placeholder” in the Discussion Draft — vast expansion of the current Cooperative Mail Rule to limit the ability of nonprofits to enter into beneficial fund raising agreements simply because these agreements include provisions requiring escrow accounts and limiting the use of donor lists.

Any effort to broaden the Cooperative Mail Rule would make the U.S. Postal Service a regulator of nonprofit organizations and direct mail firms, with authority to review their contracts and to deny the ability of nonprofit organizations, especially those who need it most, to use nonprofit postage rates.

Although cloaked in high-sounding rhetoric of protection of nonprofit organizations, we want you to understand this amendment for what it is — an anticompetitive effort to harm smaller and start-up nonprofits for the economic benefit of larger nonprofits.

The recent Postal Service revision of the Cooperative Mail Rule (Section E670.5.3 of the Postal Service’s Domestic Mail Manual), was adopted, after considerable time and extensive consideration in the context of a rulemaking by the Postal Service, just last year.

¹ FSC has been operating for a decade in the nonprofit community as a broad alliance of nonprofit organizations and for-profit companies which help nonprofits to raise funds and carry out their programs. We are particularly concerned with the preservation of the rights of nonprofit advocacy organizations. This diverse group came together in 1993 to defend the interests of Americans who want to participate fully in the formation of public policy in this nation without undue governmental interference and restriction. We have advocated our members’ position regarding regulations impacting the nonprofit community before committees of Congress, including this Committee, as well as federal agencies, such as the U.S. Postal Service, the Federal Election Commission, and the Internal Revenue Service.

The Postal Service even acknowledged that an expansive Cooperative Mail Rule is unfair. **Those who now seek a legislative fix forcefully advanced their views before the Postal Service, but their arguments were addressed by the Postal Service and were found to be wanting.** See 68 *Federal Register* 58276 (October 9, 2003). They are now trying to win the battle they lost last year.

We want you to understand the economic motivations of those who support this change. Those who want your Committee to “fix” the Cooperative Mail Rule generally are some of the largest nonprofits, as well as certain associations where the big nonprofits pay most of the dues and have most of the say as to what they do. Proponents of a “fix” view smaller nonprofits as no more than pesky competitors in fundraising, serving no important societal function. **Some of these large nonprofits derive much of their operating income from federal, state, or local governmental sources, or are heavily funded by private foundations and corporations.** They frequently have sufficient resources to retain in-house fundraising staff and do not need to use direct mail firms. These large nonprofits often seek changes in the law, or even accounting regulations, to make it more difficult to start up new nonprofits, which they view as potential competitors in the areas that they have “staked out” and believe that they own. A legislative “fix” is in their narrow self-interest.

On the other hand, new, start-up nonprofit organizations and smaller nonprofits do not have the resources to hire direct mail experts on their staff. Also, they do not have sufficient financial resources that would allow them to communicate their message to their potential supporters. These start-up and smaller organizations enter into beneficial contracts with professional direct mail agencies which are reasonably designed to protect the financial investment of the direct mail firm by limiting the ability of the nonprofit organization to act in bad faith by refusing to pay legitimate invoices to vendors and the agency, or to take their newly-acquired supporter list, often their principal asset, and to mail it directly so as to capture the cash flow necessary to offset the losses sometimes incurred in prospecting for those contributors. **If smaller and start-up organizations are barred from entering into such agreements, the usual alternative is that they cannot get their fundraising program off the ground.** Some of the larger nonprofits might welcome such a result, but this Committee should not permit this to occur.

We would be pleased to provide you and your Committee with any further information that you think could be helpful regarding the matters discussed above.

Sincerely yours,

William J. Olson, Legal Co-Counsel

Mark B. Weinberg, Legal Co-Counsel