BEFORE THE FEDERAL ELECTION COMMISSION

In re:	)	
Notice of Proposed Rulemaking	)	Notice 2004-6
Definition of Political Committee	)	
(Federal Register, March 11, 2004)	)	

TECHNICAL COMMENTS ON THE FEC's PROPOSED REDEFINITION OF "POLITICAL COMMITTEE"

by
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on behalf of the
Free Speech Coalition, Inc.
Free Speech Legal Defense and Education Fund, Inc.
and
Campaign Funding Direct
Concerned Women for America
Center for Science in the Public Interest
Conservative Legal Defense and Education Fund
Gun Owners of America, Inc.
English First
National Center for Cardiac Information
Traditional Values Coalition
Policy Analysis Center
American Liberty Foundation
RealCampaignReform.org, Inc.
United States Border Control
Young America's Foundation
TREA Senior Citizens League
Law Enforcement Alliance of America, Inc.
60 Plus Association
National Center for Public Policy Research
Shirley & Banister Public Affairs

INTRODUCTION

The Free Speech Coalition, Inc. (hereinafter "FSC") submitted a statement on the policy and legal reasons against the proposed regulations on April 5, 2004. In those comments, FSC recommended that no regulations be issued at this time pursuant to the Notice of Proposed Rulemaking ("NPRM") published in the Federal Register on March 11, 2004. In the event that this recommendation is not followed, we submit the following technical

comments on several of the specific provisions of that proposal. In these comments, we are pleased to be joined by the other organizations set out above.

FSC, founded in 1993, is a nonpartisan group of ideologically diverse nonprofit organizations and the for-profit organizations which help them raise funds and implement programs. FSC's purpose is to help protect First Amendment rights through the reduction or elimination of excessive federal, state, and local regulatory burdens which have been placed on the exercise of those rights. (Free Speech Coalition, Inc., (703) 356-6912 (telephone); (703) 356-5085 (fax); www.freespeechcoalition.org; freespeech@mindspring.com.)

COMMENTS

1. Nonprofit Organizations Tax-Exempt under IRC Section 501(c) Should Be Excluded from the Definition of "Political Committee."

Although the proposed rule as presented in the NPRM does not expressly mention organizations which are tax-exempt under Section 501(c) of the Internal Revenue Code ("IRC"), the NPRM asks whether such organizations should be exempted from the definition of "political committee" because their very nature precludes their meeting "any of the major purpose tests." 69 Fed.Reg. at 11749.

It is the position of the FSC that such organizations should indeed be exempt from the definition of "political committee." Section 501(c) organizations, by their very nature, are not political committees, but have been determined by the Internal Revenue Service ("IRS") to be organized and operated to accomplish nonpolitical objectives. They could not meet the major purpose test set forth in Buckley v. Valeo, 424 U.S. 1, 79 (1976), as that test heretofore has been defined and understood, and this determination should be respected by the Federal Election Commission ("FEC" or "the Commission").[1]

The FEC proposes to define activities and expenditures in a different way than those items are defined by the IRS. Under the FEC's definition, many Section 501(c) organizations could find themselves termed political committees, and this determination could have adverse consequences vis-a-vis their continued tax-exempt status.

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[1] The fact that some Section 501(c) organizations engage in issue advocacy, as well as other activities that could be considered "Federal election activity" under the Federal Election Campaign Act of 1971, as amended ("FECA"), is not a reason for attempting to impose on such organizations — which are regulated by the IRS pursuant to the federal tax code — with additional regulatory burdens and reporting. Section 501(c) organizations are intrinsically different from IRC Section 527 organizations, the latter being the apparent primary target of the proposed rule set forth in the NPRM.

The proposed rule presents nonprofits with so many intertwining, circular possibilities that, depending upon which version of the regulation were considered, the major purpose test itself might be changed. The reason that FSC begins these Comments with the question relating to Section 501(c) organizations is that this issue so clearly points to the invidious web that the current regulatory proposal is spinning. The central issue here is the proposed regulatory reach of the FEC to organizations over which it has no apparent jurisdiction, as well as issues that heretofore have not existed and would be created by the regulations being considered. The proposal with respect to Section 501(c) organizations is but one example.

The NPRM begins its discussion of this issue by posing a question, namely, whether, since Section 501(c) organizations "will not meet any of the major purpose tests because of the nature of their tax-exempt status," the final rule should therefore exempt them from the definition of political committee." 69 Fed. Reg. at 11749. The NPRM then goes on, however, to propose a variety of regulatory possibilities, which depend themselves upon adoption of certain proposals discussed earlier in the NPRM. For example, one of the scenarios put forth in the NPRM with respect to Section 501(c) organizations is "discarding" one version of the underlying analysis proposed for the definition of "political committee" — "a major purpose" — in favor of another, namely "the major purpose" test set forth in Buckley v. Valeo, 424 U.S. 1 (1976), that the NPRM threatens to override. *See* 69 Fed. Reg. at 11749. And other new "standards" are proposed as well for meeting such a revised "major purpose" test. *Id*.

Failure to create such an exemption, at least if a certain version of the NPRM's proposed rule is adopted, would result in great political mischief if the FEC opened the door to complaints filed by political adversaries against Section 501(c) organizations legitimately conducting their activities in conformity with their tax-exempt purposes. This would particularly be so if "a major purpose," rather than "the major purpose," became part of the new definition of "political committee."

Although a complete exemption would be fully justified, any new definition of "political committee" should contain, at a minimum, a firm presumption that Section 501(c) organizations, including organizations which are tax-exempt under IRC Sections 501(c)(3) and 501(c)(4), are not "political committees." Such a presumption could be rebutted only by clear and convincing evidence that a specific Section 501(c) organization was not primarily conducting its activities for the primary purposes for which it was established and received recognition of its tax-exempt status. *See, e.g.*, 26 CFR §§ 1.501(c)(3)-1(b)(3), -1(c)(1); § 1.504(c)(4)-1(a)(2). This would not permit complaints as currently accepted by the FEC, based on newspaper stores, vague accusations, or the like, which we submit should be determined to be invalid under current law in any event. Rather, complaints against such tax-exempt organizations, if allowed at all, would only be entertained if they were based on demonstrated personal knowledge of the complainant and were accompanied by evidence that the organization's "major purpose" was that of a political committee. Such a presumption would allow such organizations to function without having to respond to conflicting regulations

of the IRS and the FEC.[2] Such a presumption also would have the benefit of removing such Section 501(c) organizations, at least in all but the most extreme cases, from the vagaries of FEC oversight.

2. Any Change in the Definition of "Political Committee" Must Not Distort the Longstanding Meaning of That Term.

The NPRM proposes several alternative new definitions of "political committee."[3] Currently, of course, a nonconnected political committee — defined in 2 U.S.C. Section 431(4)(A) as "any committee … or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year" and having the same definition in 11 CFR 100.5(a) of the FEC regulations — depends for its definition on the definition of "contributions" and "expenditures." As pointed out in the NPRM, at least since the decision in Buckley v. Valeo, 424 U.S. 1 (1976), it has been understood that the determination of whether a group not under the control of a federal candidate is a "political committee" depends upon "**the major purpose**" test. *See* 69 Fed. Reg. at 11736.

As the Supreme Court stated in Buckley, despite the language of the regulations defining "political committee" solely with respect to the dollar amount of contributions made and expenditures made each calendar year, a "political committee" referred to "organizations that are under the control of a candidate or **the major purpose** of which is the nomination or election of a candidate." Buckley, 424 U.S. at 79 (emphasis added). The NPRM suggests that, in revising the definition of "political committee" in the regulations, that definition:

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[2] IRC Section 501(c)(3) organizations may not, as a condition of their exemption, intervene in any political campaign, whether in favor or in opposition to any candidate for office. *See* IRC § 501(c)(3). Any FEC rule designed to regulate Section 501(c)(3) organizations, therefore, would be superfluous at best.

Although IRC Section 501(c)(4) organizations may conduct a certain amount of electioneering activity, such activity is not an exempt function activity. Thus, to the extent that it became a Section 501(c)(4)'s primary activity, or major purpose, that organization's tax-exempt status would be in jeopardy as well.

The IRS is well aware of the activity of tax-exempt organizations in the political arena, including that related to issue advocacy. *See* IRS Rev. Rul. 2004-6, IRB 2004-4 (1/26/04) (alerting tax-exempt organizations of the criteria to be used by the IRS in determining whether certain activities are tax-exempt functions).

[3] As indicated in the NPRM, the proposed regulation has to do only with a "nonconnected" political committee, as defined in 2 U.S.C. § 431(4)(A). *See* 69 Fed. Reg. at 11736, n.2.

> arguably should have two elements: First the $1,000 contribution or expenditure threshold; and second, **the major purpose test** for organizations not controlled by Federal candidates. [69 Fed. Reg. at 11736 (emphasis added).]

The Supreme Court reiterated "**the major purpose**" test in FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 252, n.6 (1986), when it stated: "[A]n entity subject to regulation as a 'political committee' is one that is either 'under the control of a candidate or **the major purpose** of which is the nomination or election of a candidate.'" (Emphasis added.)

The NPRM goes on to point out that, despite the absence of language in the regulations setting forth "**the major purpose**" test, the Commission, following the Supreme Court's lead, actually applies that test "when assessing whether an organization is a political committee." 69 Fed. Reg. at 11736-37.[4] This section of the NPRM concludes with the announcement that the Commission "seeks comments on whether to amend its regulations to incorporate **the major purpose** test into the regulatory definition of 'political committee' in 11 CFR 100.5(a)," as well as comments with respect to the timing of the Commission's consideration of the important regulatory changes proposed in the NPRM. *See* 69 Fed. Reg. 11737.

In actual fact, of course, the NPRM does **not** seek to incorporate "**the major purpose**" test as part of the definition of "political committee"; **it proposes a significant alteration of that test**. Indeed, by changing "the major purpose test" to "**a major purpose test**," it would significantly expand the potential sweep of the new regulations, as proposed. *See* 69 Fed. Reg. at 11744. (And it proposes other revolutionary definitional changes as well.**)**

It seems axiomatic that any change to the definition of "political committee" embodied in the FECA and the regulations must comport with existing law. In this case, the regulatory meaning of "political committee" has been established for over 25 years. The NPRM admits as much. What is at stake, therefore, is a sweeping change in FEC jurisdiction which would result in a major reversal of an important regulatory term that has been virtually etched in stone for a generation. Furthermore, the legal basis for taking such a step is not provided by any change in the law or any convincing rationale. The proposed rule simply seeks to re-interpret the Supreme Court's decision in Buckley, and redefine the FEC's position to expand its own jurisdiction over groups that, arguably, engage in enough "Federal election activity" that the FEC may feel they should be classified as political committees, even where it is undisputed that their major purpose, or their primary or principal purpose, is issue advocacy or

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[4] Although the NPRM purports to pay lip service to the fact that the U.S. Supreme Court spoke to "the major purpose" and not "a major purpose," the Advisory Opinions cited in the NPRM are not absolutely clear on that point. *See* Advisory Opinion ("AO") 1994-25; AO 1995-11. *But see* AO 2003-37 (Federal political committees are "organizations whose 'major purpose is the nomination or election of a candidate'….").

some other purpose different from "Federal election activity." *See* 69 Fed. Reg. at 11744. This, we would submit, would be an attempt to illegally expand the FEC's jurisdiction.

No change in controlling law of which we are aware would justify such a departure from existing law. Indeed, the current proposed rule appears to be merely a rethinking of old principles.[5] There is no basis on which to construct such a change in the edifice of the FEC regulations, and there is no cause that would justify such a change. Such a change, therefore, should not be attempted.

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[5] It is well-known that certain Members of Congress are attempting to pressure the FEC to adopt regulations that define "political committee" very broadly, on the theory that the FEC regulation defining "political committee" is simply wrong. *See* Statements of Sens. McCain and Feingold, United States Senate, Committee on Rules and Administration, Hearing to Examine the Scope and Operation of Organizations Registered Under Section 527 of the Internal Revenue Code, March 10, 2004, http://rules.senate.gov/hearings/2004/031004_mccain.htm, http://rules.senate.gov/hearings/2004/031004_feingold.htm.

It is also well known, however, that these chief proponents of BCRA believe that BCRA does not accomplish all of their regulatory dreams, particularly with respect to controlling Section 527 organizations. But regulations are to be based on laws, not on the unenacted regulatory dreams of certain elected officials.

Moreover, the theory of those Members of Congress misses the mark. First, they seem to argue that, under Buckley, "political committee" always meant Section 527 organizations which, by their very nature, were established to influence Federal elections. *See* Statement of Sen. John McCain, United States Senate, Committee on Rules and Administration, Hearing to Examine the Scope and Operation of Organizations Registered Under Section 527 of the Internal Revenue Code, March 20, 2004, http://rules.senate.gov/hearings/2004/031004_mccain.htm. But that argument is simply wrong. Under FECA, a nonconnected "political committee" always has been defined according to its operations, and whether they reached the statutory thresholds for "political committee" status. In addition, those who would push the Commission to adopt wholesale change with respect to the definition of "political committee," without any legal foundation justifying such a radical departure from almost 30 years of established law, clearly need to be more fully educated with respect to the processes of law.

3. The Definition of "Political Committee" Should Not Be Revised, or Only Revised to Conform to Existing Law.

a. Adoption of "the major purpose" test as it has heretofore been defined.

The NPRM suggests so many issues in connection with its proposed redefinition of "political committee," and raises so many questions, *see* 69 Fed. Reg. at 11743-49, that it is difficult to address them all.

The proposed rule would begin by broadening "political committee," to include any organization whose purposes include any particular Federal candidates or Federal candidates of a particular party, even if such purpose is not the major, or primary, purpose of the organization. If such purpose could be said to be even **one of the organization's major purposes**, the organization must register and operate as a political committee. *See* 69 Fed. Reg. at 11743-49, and 11756-57.[6]

FSC believes that "political committee" need not be redefined. Certainly, the proposed amendment is unauthorized and counterproductive. However, if this term is be revised properly, if it would need to be done to reflect correctly the U.S. Supreme Court's decision in Buckley. According to the Supreme Court, a nonconnected "political committee" could be subjected to the burdens of FECA compliance if it (i) meets the $1,000 contribution or expenditure threshold, and (ii) has **as its major purpose** the nomination, election, or defeat, of a candidate for Federal office. *See* 424 U.S. at 79. Such an amendment would offer clear guidance to the public reading the FEC's regulations.

Rejection of the accepted and longstanding criterion for defining a "political committee" — "**the major purpose**" test — is ill-advised. If adopted, it likely would ensnarl the FEC in tangles of legal controversy. And it would subject the public to great uncertainty, undermining confidence in the FEC's regulatory role. Obviously, even adoption of "**the major purpose**" test would not dispose of all controversy concerning the application of that definition to the activities of all organizations. *See, e.g.*, FEC v. Akins, 524 U.S. 11 (1998). But changing "**the major purpose**" to "**a major purpose**" could call into question the political committee status of virtually all organizations engaged in public advocacy concerning federal

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[6] The burden of such regulatory responsibilities and restrictions, contrary to the NPRM's statement (69 Fed. Reg. at 11755), would not be light. The NPRM's assertions that the proposed rule, if adopted, would not have a significant economic impact on small entities that would be required to register and report, and that FECA's "reporting requirements … are not complicated and would not be costly to complete," 69 Fed. Reg. at 11755, are at odds with the experience of FSC, the many organizations associated with FSC over the years, and many other organizations in the nonprofit community. *See, e.g.*, FEC v. Akins, 524 U.S. 11, 12 (1998) (FECA imposes extensive registration and reporting requirements).

issues, and require FEC registration for hundreds or thousands of now-unregistered organizations.

The proposed definition of "political committee" in proposed new 11 CFR 100.5(a), in addition to adding "**a major purpose**" as one of the criteria, would not only expand the definition of "expenditure" for purposes of the determining a "political committee," but also sets forth a number of alternative, supposedly bright-line tests for determining "**a major purpose**." The first test, in proposed 11 CFR 100.5(a)(2)(i), is based upon the premise that a single document or statement, by itself and without taking into account other documents and activities could demonstrate that an organization's major purpose is to nominate, elect, defeat, etc., a clearly identified Federal candidate. Furthermore, the language would expand the test to "Federal candidates of a clearly identified political party," and would provide a very light ($10,000) disbursement threshold, including disbursements for electioneering communications in any of five consecutive years. This could result in many Section 527 organizations being classified as political committees when their major purpose clearly was not related to the election of particular Federal candidates and when, realistically, they did not function as political committees at all. Furthermore, the other "tests" in proposed § 100.5(a)(2) would result in an organization being classified as a political committee based upon either (a) its disbursement history — including disbursements for electioneering communications — in the current year or any of four preceding calendar years (proposed § 100.5(a)(2)(ii) and (iii)) or (b) its status as an Section 527 organization that is not exclusively non-federal (proposed § 100.5(a)(2)(iv)). These proposed tests, discussed in more detail below, have virtually nothing to do with "**the major purpose**" test as it now exists, and as it has existed since at least the decision in Buckley v. Valeo. It is hard to imagine a more drastic revision of the definition of "political committee," and there is no apparent reason in the law how such a change could be made lawfully.

The only permissible redefinition of "political committee" would simply add "**the major purpose**" test to the $1,000 contribution or expenditure threshold.

b. The proposal to adopt "a major purpose" test should be rejected.

Although the NPRM mentions, as a potential issue in amending the definition of "political committee," whether to use "**a major purpose**" as opposed to "**the major purpose**" test mentioned by the Supreme Court in Buckley, there is no substantial discussion in the NPRM of why "**the major purpose**" test — the very test mentioned in Buckley, and reaffirmed in MCFL — would be discarded. *See* 69 Fed. Reg. at 11744. Instead, in full recognition that the Supreme Court, in Buckley, articulated "**the major purpose**" test, and without exploring the benefits of such a rule, the NPRM seems to seek a way to circumvent the rule. *See* 69 Fed. Reg. at 11744. Second-guessing the "apparent intention" of the Supreme Court in adopting "**the major purpose**" test, the proposed rule appears to proceed on the theory that the test was adopted solely to protect organizations engaged "purely in issue discussion" from having to comply with FECA's burdens and is somehow too narrow. *Id.*

As already indicated above, "**the major purpose**" test should be retained in defining "political committee." In addition to issues related to following the correct legal standard, changing that standard to one incorporating "**a major purpose**" test would pose numerous regulatory problems. Clearly, for example, "**a major purpose**" is very vague, very broad, and needs clear definition. And, although proposed definitions have been furnished by the NPRM, they are quite unsatisfactory.

Proposed 11 CFR 100.5(a)(2) provides that "**a major purpose**" would be found in any of four separate circumstances. First, an organization would be found to have "a major purpose" of nominating or electing a candidate if **any document, pronouncement, or communication** of that organization should **demonstrate** that **its major purpose** is to nominate, elect, defeat, etc. a clearly identified candidate for Federal office or the Federal candidates of a clearly identified political party, and, during the current year or any of the previous four calendar years, the organization made more than $10,000 in total disbursements for any of a number of activities, including not only contributions or expenditures, but also for certain newly-defined "Federal election activities," as well as for all or any part of an electioneering communication. *See* proposed 11 CFR 100.5(a)(2)(i). But this is no sensible standard at all. If its "major purpose," as set forth in the proposal, really means what it says, why confuse the issue by opening up the possibility that an organization could be found to have "the major purpose" to nominate, etc. a Federal candidate based upon a single document or pronouncement? Why should the newly-created "Federal election activities" and "electioneering communications" be added to the critical disbursement list?[7] And why should the organization's activities in other years determine how it should be classified in the current year? There is no substantive discussion in the NPRM regarding the proposed adoption of such alleged standards.

The **other three proposed standards** suffer from similar, or in some cases even worse, infirmities. Proposed 11 CFR 100.5(a)(2)(ii) provides a bright-line test for determining **"a major purpose"** — *i.e.*, **more than 50 percent of disbursements** for certain activities — but, again, the activities go beyond "contributions and expenditures" and incorporate expenditures for other "Federal election activity" and "electioneering communication" activity, and such disbursements in any of **four previous years** would conclusively establish political committee status for the current year. Although this proposal is probably closest to the most reasonable approach of those set forth in the proposed rule, it is still manifestly unfair and constitutes an unwarranted departure from existing law. Proposed 11 CFR 100.5(a)(2)(iii) is even worse, as it would abandon the 50-percent-of-disbursements test for a straight **$50,000 disbursement test** in the current year or any of the four previous years. Illegally and arbitrarily, under that proposal, an organization with gross receipts of $10 million which spent $50,000 on "Federal election activities" would be a political committee. Despite having spent just one-half of one

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[7] Alternative 1-A, which would add such disbursements to the definition of "expenditure," is discussed below.

percent of its gross receipts on such federal items, it would be treated identically to an organization with gross receipts of $75,000 also spending $50,000 (*i.e.*, 67 percent of its income) on such federal items.

Proposed 11 CFR 100.5(a)(2)(iv) (both Alternative 2-A and Alternative 2-B)) is simply an attempt to make all or nearly all IRC Section 527 organizations register as political committees. Alternative 2-B is more straightforward, and would admit of no exception. Alternative 2-A apparently would except Section 527 organizations that were organized and operated exclusively for non-federal purposes (which would be difficult if they had $1,000 in contributions or expenditures as defined under federal law). These alternatives would turn the existing definition of "political committee' on its head, by abandoning any semblance of a "major purpose" test and establishing a conclusive presumption that a Section 527 organization with at least $1,000 of contributions or expenditures — as newly defined in the proposal — would constitute a political committee.

If the Commission, ignoring the protests against changing the nature of the standard for determining a political committee, resolves to adopt "a major purpose" test, FSC would emphasize the need for simplicity and fairness in arriving at a definition that goes to the very essence of what a political committee is, and has been, under federal law.[8] This would render subparts (i) through (iv) of proposed 11 CFR 100.5(a)(2)(iv) unnecessary, and **could be accomplished simply by revising proposed § 100.5(a)(2) to read as follows:**

> (2) For purposes of paragraph (a)(1) of this section, a committee, club, association or group of persons has the nomination or election of a candidate or candidates as a major purpose if more than 50 percent of its disbursements during the calendar year are for contributions or expenditures.

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[8] The NPRM also requested comment concerning proper application of the "major purpose" requirement. *See* 69 Fed. Reg. at 11749. Specifically, it asks whether "major purpose" should be built into the definition of a political committee, which supposedly is the approach used in the proposed rule, or whether every organization having contributions/expenditures totaling more than $1,000 should have the burden of establishing that it "has a major purpose other than nominating or electing candidates." *Id.* For what probably should be obvious reasons, not the least of which would be to be wary of an apparent "political committee" presumption of sorts operating against all groups having $1,001 in contributions and/or expenditures, FSC would vigorously oppose the placing of such a burden on such organizations. Curiously, however, if the burden was merely to establish that it "has a major purpose other than nominating or electing candidates," as stated in the NPRM, that would seem to operate against the approach advocated in the proposed rule.

4. The Proposed Expanded Definitions of "Expenditure" and "Contribution" Are Unwarranted and Should Not Be Adopted.

The proposed rule would further change the definition and rules associated with determining the existence of a political committee by expanding the definitions of "**expenditure**" (and "contribution") to include a variety of disbursements that would have no necessary connection to a clearly identified candidate for Federal office or Federal candidates of a clearly identified political party. *See* 69 Fed. Reg. at 11739-43, and 11756-57.

There are two alternative changes proposed with respect to "expenditure." The first, Alternative 1-A, would apply solely to the definition of "political committee." *See* 69 Fed. Reg. at 11756. The second, Alternative 1-B, would provide, in the definitions of various "Federal" activities, new, but tailored, definitions of "expenditure," as well as "contribution." *See* 69 Fed. Reg. at 11757.

The obvious motivation underlying both alternatives is to expand the definition of political committee. The entire rationale advanced in the NPRM for such changes appears to be based upon the U.S. Supreme Court's acceptance, in McConnell v. FEC, ___ U.S. ___, 124 S.Ct. 619 (2003), of the notion that "Federal election activities" by entities other than "political committees" as currently defined can have an influence on Federal elections. But as the NPRM itself recognizes, the Government's justification for imposing prohibitions and restrictions on "Federal election activities" in BCRA was focused on the potential for corruption from party committees and candidates for office, and the "close relationship" between candidates/officeholders and their political parties. 69 Fed. Reg. at 11739; McConnell, 124 S.Ct. at 668. No such rationale exists to expand these restrictions to nonconnected committees. Furthermore, also as observed in the NPRM, the Supreme Court noted in McConnell that "interest groups" remained free to conduct such "Federal" activities. 69 Fed. Reg. at 11739; McConnell, 124 S.Ct. at 686.

The U.S. Supreme Court's decision in McConnell v. FEC, *supra*, may have emboldened "reformers" to regulate every aspect of political activity, but irrespective of whether any such law could be constitutional, no law has yet been passed which would authorize such a change. The Supreme Court's decision in McConnell was predicated on the definition of "expenditure" in 2 U.S.C. Section 431(9) remaining the same; the only expanded definition of "expenditure" was to the use of the term as set forth in 2 U.S.C. Section 441b. Clearly there is no warrant in McConnell for the FEC to amend either the definition of "expenditure" (or "contribution," the definition of which is proposed to be changed primarily to correspond to the changes proposed for "expenditure") in an attempt to expand the definition of "political committee." **Any such amendment should be proposed only pursuant to specific legislative authority, not proposed pursuant to pressure from specific legislators**. Until such time as Congress acts, the Commission should leave the definitions of "expenditure" and "contribution" alone.

CONCLUSION

The NPRM sought comments as to whether the Commission should make fundamental changes, such as those proposed to the current regulations, either in haste or at a critical time in the current federal election cycle (*see* NPRM at 69 Fed. Reg. 11737).

FSC urges that no such redefinition occur at this time, due to the long-standing nature of the current regulation, because of the closeness of the November 2004 elections, and based on the specific objections to the most fundamental of the proposed regulations set out above.

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