



Congressional
Black Caucus
POLITICAL EDUCATION &
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April 1, 2004

Mai T. Dinh, Esq.
Acting Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Notice of Proposed Rulemaking: Political Committee Status

Dear Ms. Dinh:

These comments are submitted on behalf of the Congressional Black Caucus Political Education and Leadership Institute, Inc. (the "CBC Institute"), in response to the Commission's Notice of Proposed Rulemaking regarding political committee status, 69 Fed. Reg. 11736, (March 11, 2004). We request the opportunity for a representative of the Institute to testify at the Commission's hearings to be held on April 14 and 15, 2004. The CBC Institute strongly opposes adoption of the proposed rules, and urges the Commission to postpone or terminate the rulemaking proceeding without taking any further action at this time.

The CBC Institute is a nonprofit organization exempt from taxation under section 501(c)(4) of the Internal Revenue Code. Its past activities have included educating the African American community with respect to redistricting issues; training of young African-American activists, in organizing and communications skills, on a non-partisan basis; and sponsorship of debates among the candidates for the Democratic nomination for President in 2004, in accordance with the Commission's rules applicable to sponsorship of debates by nonprofit organizations.

The CBC Institute plans in the coming months, to (i) undertake programs to educate local leaders and voters with respect to voting rights issues; (ii) undertake issues forums. African-American elected officials, celebrities and activists will appear at forums in areas with high African-American populations, to address issues of concern to the African-American community and to appear on programs sponsored by local and national media to discuss these issues; (iii) continue training African-American activists; (iv) undertake initiatives to promote diversity in the staffing of nonprofit organizations and political campaigns, in all political parties; and (v) sponsor issue education events at the Democratic and Republican National Conventions this summer.

The Commission's proposed rules would threaten to shut down the programs and activities of the CBC Institute and numerous other independent, nonprofit organizations engaged in issue and voter education, as well as voter mobilization. The CBC Institute, and any other similarly situated nonprofit organization, would become a federal "political committee"—subject to all the limitations and prohibitions on contributions under federal campaign finance laws—merely by spending as little as \$1,000 on any "public communication" that a government agency may decide "promotes, supports, attacks or opposes" any federal candidate, plus having spent more than \$50,000 in any of the last four years for any such communication, or on voter registration or voter turnout programs—even those that are wholly nonpartisan under existing Commission and IRS standards. (Proposed section 100.5). Any activity designed to encourage any citizen to vote would count against these limits if it includes *any* reference to a federal official—such as the President—that a government agency (the FEC) decides may "promote, support, attack or oppose" that official. (Proposed sections 100.115 & 100.133).

In short, an organization such as the CBC Institute would effectively be banned from issue discussion or education that the IRS has long regarded as appropriate for a section 501(c)(4) organization but that could be interpreted by your agency as being critical of Bush Administration policies or of the Congressional majority, and therefore "opposing" President Bush., or the Republicans in Congress.

In addition, under the proposed rules, the CBC Institute could not continue to operate once it became a "political committee," merely by taking federally permissible contributions in the future, but would have to terminate most or all of its operations until it raised enough contributions to "repay" the amounts spent on voter education and mobilization activity since the beginning of 2003. (Proposed sections 102.53 & 102.54).

Certainly nothing in the Bipartisan Campaign Reform Act of 2002 ("BCRA") permits, let alone requires, the Commission effectively to ban independent, non-party organizations from undertaking issue discussion or education critical of the President or any other federal official. And nothing in BCRA allows the Commission to demand that independent, non-party, nonprofit organizations engaging in voter registration, education and mobilization, operate as federal PACs.

To the contrary, it was specifically represented to Members of the Congressional Black Caucus by sponsors of the legislation and by congressional leadership that BCRA would *not* affect the ability of independent, non-party, nonprofit organizations to engage in voter registration, education and mobilization in the African-American community just as they had been able to do in the past. It is safe to say that no Member of the Caucus ever contemplated that the law would require such groups to operate as federal PACs.

Indeed, provisions were included in BCRA specifically to allow federal candidates and officeholders to raise contributions, *without limit*, for non-party, nonprofit 501(c) organizations, as long as the funds are not earmarked for voter registration, voter identification or get out the vote, and as long as such activities are not the principal

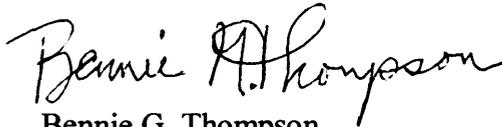
purpose of the organization. (BCRA, new FECA section 323(e)(4)(A), 2 U.S.C. §441i(e)(4)(A)).

It is particularly troublesome that the Commission is contemplating instituting these radical changes in the scope of its regulatory scheme in the middle of an election cycle. By the time the Commission adopted final rules and such rules became effective, it could well be mid-July, on the eve of the first of the national nominating conventions and deep into the general election campaign period. Adoption of new rules at such a late date would be extremely disruptive, and would surely create chaos, fear and uncertainty among the hundreds of thousands of non-profit organizations never before subject to regulation by the Commission.

In summary, we believe that the proposed new regulations are ill-advised; are contrary to representations made to Members who voted for the law; and clearly exceed the scope of the Commission's statutory authority. In any event, it makes no sense to adopt such extreme new measures so late in an election cycle. For these reasons, the Commission should terminate or postpone this rulemaking.

Thank you for your time and attention to our views on this important matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Bennie G. Thompson". The signature is written in black ink and is positioned above the printed name and title.

Bennie G. Thompson
Chairman