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November 30, 2018

By email and first class mail

Michael Sullivan, Director
Office of Campaign and Political Finance
One Ashburton Place, Suite 411
Boston, MA 02108

RE: Comments in Response to Notice of Proposed Rulemaking

Dear Director Sullivan:

The Massachusetts Teachers Association appreciates the opportunity to submit comments in response to your Advance Notice of Proposed Rulemaking in order to “better define the appropriate standard for determining when an entity is a ‘political committee’ for purposes of [G.L. c.55,] Section 1.”

As the Notice makes clear, the stimulus for undertaking the regulatory process is a footnoted observation in *1A Auto, Inc. v. Director of the Office of Campaign and Political Finance*, 480 Mass. 423, 433, n. 10 (2018) that OCPF’s long-standing Interpretative Bulletin IB-88-01 constitutes sub-regulatory guidance that, though entitled to deference, does not carry the force of law. OCPF seeks public comment at this preliminary stage whether the bulletin should be codified or replaced with a different standard.

The MTA believes it is appropriate to incorporate IB-88-01 into OCPF’s regulations (with a single revision noted below). The question of when an entity is a “political committee” under the law is of signal importance, and the rights of all parties with an interest in the question are best ensured with a fixed rule of law rather than a less binding form of administrative guidance.

The more substantive question is what the standard should be. In MTA’s view, IB-88-01 has provided a workable standard for decades that comports with both G.L. c. 55 and with the 1st Amendment rights of non-profit organizations and unions. As OCPF correctly notes in IB-88-01, a “strict application” of the statute would convert every organization that spends a dime for a

political purpose into a “political committee” and place on the organization “an extraordinary burden [that was] not intended by the Legislature.”

Indeed, by eschewing a “strict application” of G.L. c. 55, § 1’s definition of a “political committee,” OCPF has avoided results that are not merely absurd but unconstitutional. It is unnecessary at this preliminary stage of rulemaking to enumerate the many untoward outcomes that a literal reading of § 1 would impose on organizations that are not “political committees” in any legally meaningful sense. It is sufficient to note, instead, that numerous courts have concluded that the 1st Amendment to the U.S. Constitution forbids states from imposing full registration, record-keeping, and reporting obligations on organizations which do not have the goal of influencing elections as a “major purpose.” See *N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274, 287–88 (4th Cir. 2008); *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 872 (8th Cir.2012) (en banc); *N.M. Youth Organized v. Herrera*, 611 F.3d 669, 675–79 (10th Cir.2010); but cf. *Nat’l Org. for Marriage v. McKee*, 649 F.3d 34, 58–59 (1st Cir.2011) (rejecting 1st Amendment challenge to disclosure-oriented regulation of non-major-purpose PAC).

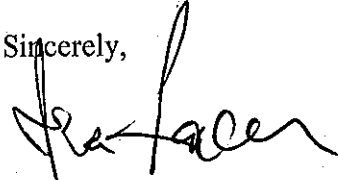
When the Legislature chose to prohibit contributions by business corporations, it also chose not to impose any such limitations on non-profit organizations, leaving the details of the regulatory scheme to the regulator. *That* is the intention of the Legislature that OCPF must enact.

G.L. c. 55, § 1’s definition of a “political committee” must comport with the 1st Amendment’s proscription against placing undue burdens on speech. For decades, OCPF has struck the correct balance in its regulations (see, 970 CMR 2.02) and Interpretive Bulletin 88-01 for “membership organizations” like the MTA whose organizational purpose “primarily” lies outside the political sphere. Although the current ceiling of \$15,000 in political spending is only a tiny fraction of the MTA’s gross revenues, the MTA has always agreed that the limit fairly balances the public interest in electoral transparency and the private interest in the right to participate financially in the political process.

We look forward to reviewing OCPF’s actual proposed regulatory amendments and responding more fully at that time. As OCPF prepares proposed written regulations for public comment, MTA suggests that it continue to use the financial limitation in IB-88-01, section II. However, we urge OCPF to adjust the financial amount so that it is indexed to inflation. The dollar experienced an average inflation rate of 2.54% per year in the 30-year period since IB-88-01 issued. The value of \$15,000 in 1988 is now \$31,080. Unless the cap is indexed, the ordinary course of inflation will ultimately to render meaningless what unions and non-profit organizations can lawfully contribute without crossing the “political committee” threshold and assuming the attendant burdens of that designation.

Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Ira Rader", written over the word "Sincerely,".

Ira Rader
General Counsel

cc. Merrie Najimy, MTA President
Ann Clarke, MTA Executive Director

ICF:264209