

THE WHITE HOUSE  
WASHINGTON

February 3, 1983

*Pls see me*

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: OMB Proposed Rules on Political Advocacy  
by Government Grantees and Contractors

By notice published in the Federal Register on January 24, 1983, OMB sought comments on a proposal to revise rules on government grants and contracts with nonprofit organizations. The purpose of the proposed revisions is stated to be to ensure that "federal tax dollars are not used, directly or indirectly, for the support of political advocacy." This purpose would be served by disallowing the costs of political advocacy in government grants and contracts. If any group that has a government grant or contract engages in political advocacy, it must segregate the costs associated with that advocacy and not recoup such costs from the government. The proposed revisions apply only to nonprofit groups, but the notice states that similar revisions will be proposed for civilian and defense contractors by Defense, NASA, and GSA.

Craig Fuller has raised the concern that the logic of the proposed rules would affect traditional lobbying activities of government contractors. One of the "Q&A's" accompanying the proposal, for example, specifically notes that the costs of a corporate jet used in part to fly officials for discussions with congressmen could not be included as allocated overhead in a government contract. The definition of political advocacy -- essentially attempting to influence any sort of governmental decision -- could snare many traditional activities of government contractors, although there is an exception of uncertain breadth for providing information in connection with a bid at the request of a government agency. The proposals paint with a much broader brush than is necessary to address the activities of government grantees that have been perceived as most objectionable. It is possible to "defund the left" without alienating TRW and Boeing, but the proposals, if enacted, could do both.

It is also important to recognize that the notice somewhat disingenuously takes a high moral ground by citing legal

precedent of limited relevance. Two decisions are cited in the notice and accompanying Q&A's for the general proposition that First Amendment values are promoted by an effort to restrict government support for political advocacy. The decisions, however, are only vaguely relevant to the proposed revisions. Elrod v. Burns, 427 U.S. 353 (1976), cited four times, was a 3-2-3 decision holding no more than that the routine patronage dismissal of government employees in nonpolicymaking, nonconfidential positions was illegal. Abood v. Detroit Board of Education, 431 U.S. 209 (1977), held that non-union government employees in an agency shop could not be forced to contribute funds to the union to be used for political purposes, but could be forced to contribute dues for more typical union activities.