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MAJORITY—222-3681
 MINORITY—222-3686

November 1, 1993

The Honorable Mike Espy
 Secretary of Agriculture
 U.S. Department of Agriculture
 Independence Avenue, S.W.
 Washington, D.C. 20250

Dear Secretary *Mike* Espy:

I am writing to share with you my concerns about a proposed rule, currently under consideration by the Forest Service, that has serious First Amendment implications. The rule, which would amend the permit requirements for use of the National Forest System, was proposed in the May 6, 1993 Federal Register.

The proposed rule is the latest in a series of actions by the Forest Service that have threatened to infringe on the First Amendment. A rule on these matters was first promulgated in 1984. It drew a distinction between "group events for the public expression of views" and all other "group events" in National Forests, setting different permit standards for events involving the expression of views. In 1986, a federal district court found that the rule was unconstitutional under the First Amendment because it singled out expressive conduct for differential treatment.

In 1988, the Forest Service amended the rule, but did so without complying with the Administrative Procedure Act. Consequently, another Federal District Court found the revised rule invalid.

The Forest Service is now trying a third time, and I am concerned that the latest proposal still fails to meet First Amendment standards. Indeed, the proposed rule still singles out expressive activity. The proposed rule creates a special category of activity, called "non-commercial distribution of printed material," which is defined to include soliciting signatures in conjunction with the distribution of printed material. The proposed rule subjects such activity to different treatment in the permit process.

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This distinction would produce some strange results. For example, under the proposed rule a single person soliciting signatures on a petition in a National Forest and passing out leaflets would have to obtain a special use permit, while a camping group consisting of 24 people, cars and horses would not have to obtain a special use permit.

I am concerned that such distinctions do not rationally further a significant government interest and that the proposed regulations are not narrowly tailored. Therefore, I urge you to carefully review this matter. It may be that the Forest Service, rather than continuing to pursue an effort now nearly ten years old that draws distinctions based on expressive conduct, should take a broader look at the question of use of the National Forests.

With kindest regards,

Sincerely,



Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights

DE:jdw