



April 9, 2004

Ms. Mai T. Dinh, Acting Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463
VIA HAND DELIVERY

Re: Notice of Proposed Rulemaking 2004-6: Political Committee Status

Dear Ms. Dinh:

Common Cause respectfully submits the following comments in connection with Notice of Proposed Rulemaking (NPRM), No. 2004-6 regarding Political Committee Status.

Since its founding in 1970, Common Cause has fought to reduce the power of special interests in the political system, to promote the policies and tools of self-governance that allow the people's voice to be heard by policymakers, and to hold government officials accountable when they have put narrow self- or corporate-interest above the public interest. Common Cause led the coalition that successfully advocated for the passage of the Bipartisan Campaign Reform Act (BCRA), filed an *amicus* brief in defense of the law before the Supreme Court, and has strongly urged the Federal Election Commission ("FEC" or the "Commission") to vigorously enforce the election law.

We support efforts by the FEC to enforce both the Federal Election Campaign Act (FECA) and BCRA vigorously, especially efforts to curtail attempts to evade the soft money ban at the core of BCRA. The reported activities of several high-profile 527 organizations in this election cycle raise serious questions in this regard. However, we have serious concerns about the pending NPRM and its potential effect on civic engagement, participation, and advocacy and genuinely independent political speech. Because the NPRM itself is so expansive in its drafting and presents so many unanswered questions, we structure our comments as a statement of policy considerations that we believe should guide the Commission in issuing any new regulations regarding the question of political committee status and the permissible activities of organizations classified as tax-exempt under section 527 of the Internal Revenue Code.

Our comments reflect our conviction that election regulations should respect the central value of civic engagement and participation in our democracy. Moreover, as a policy matter, we contend that

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democracy is strengthened by the presence of organizations that are political in nature but genuinely independent of candidates and political parties.

We share the concerns and values expressed in the more extensive comments submitted by the Brennan Center for Justice at NYU School of Law and, with one exception, agree with their recommendations. As a matter of policy and constitutional law, Common Cause believes that the Commission should regulate the funding of electoral speech by entities, such as 527s, that are primarily concerned with affecting federal electoral outcomes to assure: (1) that there is full public disclosure of their sources of funding; (2) that rules prohibiting corporations and labor unions from spending treasury funds to affect the outcome of federal elections are fully and effectively enforced; (3) that independent entities do not funnel illegal soft money to federal candidates or national political parties; and (4) that large contributions to organizations formed for the primary purpose of affecting federal elections may not be used to gain undue access to and influence over elected officials. The Commission may not, however, regulate the funding of speech in the larger civic culture by organizations such as 501(c)s merely because the speech comments on issues of electoral significance.¹ We do not share the Brennan Center’s view that individual contributions to political committees may not be constitutionally limited.² With that exception, we support the Brennan Center comments and recommend that the FEC take the following actions:

(A) To ensure that any rulemaking actions of the FEC do not chill the education and issue advocacy work conducted by 501(c) organizations, any rules promulgated should include a strong statement excluding 501(c) organizations. The FEC lacks the authority to regulate the activities of 501(c)s beyond the current restrictions imposed by the “electioneering communications” provisions of BCRA and restrictions on “express advocacy” outside of the 30- and 60-day windows that help define “electioneering communications.”

(B) 527s engaged primarily in efforts to affect the outcome of federal elections should be registered as political committees for the purposes of immediate and effective disclosure of all contributions to such organizations.

(C) 527s engaged primarily in efforts to affect the outcome of federal elections should be registered as political committees for the purposes of enforcing the ban on contributions from corporations or labor unions and limits on the amount that individuals may contribute to such organizations, to the extent that the courts determine that such individual limits are constitutional.

¹ It should be noted that the definition of political activity for the purposes of tax exemption is considerably broader than the definition of political activity for the purposes of determining political committee status. For example, the IRS considers legislative scorecards, candidate pledges, and certain issue-based voter communications that do not mention candidates or parties to be political activity that should be conducted in a 527 organization or paid for with a 527 separate segregated account of a 501(c) organization. However, there has never been a ban on corporate and union contributions to support this type of activity. The FEC should not import this broader IRS definition into its regulation of political committees.

² In our view, it is an open constitutional question whether limits may be placed on contributions by individuals to 527 organizations that do not make contributions to or coordinate with federal candidates, and the FEC does not have the authority to resolve this question.

(D) The FEC should act promptly to develop strict and clear anti-coordination rules that will ensure the genuine independence of 527s from candidates and political parties.

(E) The Commission should revise its allocation rules for non-connected committees and provide for a minimum federal percentage in the allocation formula.

The breadth of both the issues raised and the potential effect of the NPRM does an injustice to the deliberative nature of the regulatory process. The confused nature of the pending NPRM, as evidenced by the Commission's numerous questions in the preamble, decreases public confidence in the FEC's ability to address these serious questions in a thoughtful and appropriate manner. The FEC's failure in this regard, however, does not mitigate the agency's duty to preserve the integrity of the electoral system through timely and vigorous enforcement of the law and prompt action to address the matters identified above.

Respectfully submitted,

A handwritten signature in black ink that reads "Chellie Pingree". The signature is written in a cursive, flowing style.

Chellie Pingree
President