

April 5, 2004

By Email and Fax

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

Re: Federal Election Commission 11 CFR Parts 100, 102, 104, 106, and 114; [Notice 2004-6]; Political Committee Status; Proposed Rule¹

Dear Acting Assistant General Counsel:

The Drug Policy Alliance (“the Alliance”) submits these comments and the attached request to testify concerning the Federal Election Commission (“FEC”) Notice of Proposed Rulemaking (“NPRM”) with regard to Political Committee Status. The Alliance is a nonprofit corporation under state law and is exempt from federal income taxation under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code.

The Alliance objects on several grounds and in the strongest terms possible to the NPRM. Adoption of the NPRM would represent one of the worst assaults on the freedoms of speech and association ever proposed in the United States. The NPRM is an unacceptable and unconstitutional intrusion upon the free-speech rights of the Alliance and the free-association rights of our members and supporters.

The chilling effect of the FEC proposal on free speech cannot be overstated. Adoption of the draft opinion would rework and expand the definition of “expenditures” under the Federal Election Commission Act (“FECA”) to include any communication that “promotes, supports, attacks, or opposes” a candidate for federal office. Not only would fundraising, membership, news, and action-alert communications that make any mention of the voting record, public statements, or other actions of a federal candidate have to be paid for with federally permissible funds, but the Alliance would be limited by law from raising funds outside of the federal source and contribution limits.

By limiting when and how the Alliance can communicate with our members and supporters, the proposed FEC regulations would force a deleterious sea change in our ability to remain at the forefront of the vital and growing drug-policy reform movement. Adoption of the NPRM would give Members of Congress who are running for re-election a green light to introduce and pass harmful drug policies right before Election Day, while restricting the Alliance's ability to run advertisements in a newspaper or to send out emails alerting our members and supporters to their actions. Even though the Alliance never endorses or opposes specific candidates for federal office, the NPRM would

¹ Federal Election Commission Chairman. “11 CFR Parts 100, 102, 104, 106, and 114; Political Committee Status; Proposed Rule.” *Federal Register* 69, no. 48 (11 March, 2004): pp. 11736-11760.

hamper our efforts to contact our members and supporters about drug laws pushed through Congress by candidates up for re-election, or to comment on their drug policy stances.

Our fundraising and other member and supporter communications reinforce and generate public support for our advocacy of drug-policy reform. Adoption of the NPRM would cripple our ability to raise and spend funds in pursuit of drug policy reform and force us to immediately cease communicating with our members and supporters about urgent drug policy reform issues – or be burdened with the prohibitive costs associated with massive political fundraising, internal restructuring, and possible FEC fines. The Alliance would therefore be required to choose to forgo either the messages that inform our supporters about drug policy reform or the funds that are vital to our existence. There is no legal or rational basis – nor is there precedence before Congress or the Supreme Court – for imposing these harsh constraints on the activities of the Alliance and other 501(c)(3) or 501(c)(4) groups.

Merely expressing an opinion about the policies and actions of a sitting President or Member(s) of Congress could turn the Alliance overnight into a federally regulated political committee and impose crippling fund-raising restrictions. Forcing the Alliance to transform into a political committee runs counter to our staunchly nonpartisan mission.

By making it unlawful to criticize federal officials, except under the auspices of a registered political committee, FEC policy would emulate the most tyrannical language of the infamous Sedition Act of 1798, which included provisions that penalized the acts of “persons [who] unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States.” The Sedition Act, which expired three years after its passage, imposed fines on a person(s) who “...shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing ... scandalous and malicious writing or writings ... [designed to] resist, oppose, or defeat any such law or act...” of the President or of Congress.

The Alliance finds three other provisions of the NPRM to be especially nefarious. First, the NPRM seeks to dramatically change the rules for nonprofit advocacy in the middle of this important election year. Second, the retroactive provisions contained in the NPRM, namely applying the “major purpose standard” to expenditures made in “any of the previous four calendar years,” would impose severe fines and penalties on legal actions the Alliance has taken over the past 4 ½ years. Third, the language contained in the Federal Register makes clear that the federal government may selectively interpret any of the Alliance’s communications that mention a candidate’s positions on a drug policy issue as “opposing” or even “attacking” that candidate. The Alliance has every reason to believe that current and future presidential administrations and Members of Congress would use the NPRM as a means to silence our work to end the government-funded War on Drugs.

The Federal Election Commission Notice of Proposed Rulemaking on Political Committee Status would severely hamper the Alliance's ability to communicate urgent future drug-policy reform messages to our members and supporters – which is and has been an essential part of the mission and work of the Alliance. Because the Federal Election Commission Notice of Proposed Rulemaking on Political Committee Status poses an unprecedented threat to the advocacy and educational activities of the Alliance, we respectfully urge that the Federal Election Commission withdraw or reject the NPRM outright. Should the NPRM be adopted, the Drug Policy Alliance requests that implementation be stayed indefinitely or at least until after the completion of the 2004 presidential election.

Respectfully submitted,

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