Beth Kingsley <bkingsley@harmoncurran.com> on 04/09/2004 12:54:12 PM

To: politicalcommitteestatus@fec.gov
cc:

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

The attached comments are submitted on behalf of the named state-based affiliates of NARAL Pro-Choice America. If there any <<NPRM 2004-6 affiliates comments.doc>> problems with this transmission or you require any further information, please contact me.

Yours truly,

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NPRM 2004-6 affiliates comments.doc

April 9, 2004

Ms. Mai T. Dinh, Acting Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463
VIA E-MAIL <politicalcommitteestatus@fec.gov>
AND HAND-DELIVERY

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

Dear Ms. Dinh:

We, the undersigned organizations, are state-based affiliates of NARAL Pro-Choice America. We write to express our agreement with the concerns raised in comments filed by both NARAL Pro-Choice America and the NARAL Pro-Choice America Foundation with regard to Notice of Proposed Rulemaking 2004-6 (the "NPRM").

Each of us is based in a single state. Each of us has within our family of related organizations a nonprofit membership corporation exempt under Section 501(c)(4) of the Internal Revenue Code. Most of us have a related 501(c)(3) organization that carries out educational work in support of a shared mission to protect and preserve the right to choose while promoting policies and programs that improve women's health and make abortion less necessary. Most of us maintain a state-registered political action committee, either on a continual basis or constituted from time to time as the state election cycle mandates.

We wholeheartedly share the concerns raised in the comments filed by both NARAL Pro-Choice America and NARAL Pro-Choice America Foundation. While we are not writing separately to submit detailed comments of our own, we do wish to note a few specific points that concern us as state-based advocacy groups.

The NPRM uses the term "Federal election activities" in a number of places. For instance, it suggests treating payments for "Federal election activities" as "expenditures" for purposes of determining whether an organization has made over $1000 of expenditures and thus met one of the two criteria proposed to determine whether an organization is a federal political committee that must register with the FEC and abide by the source restrictions, contribution limits, and reporting requirements of the Federal

Election Campaign Act.[1] It also suggests that such payments be included in the measurement of expenditures (either $50,000 in a year, or over 50% of annual disbursements) that will cause an organization to meet the other criterion, that it has a "major purpose" to influence federal elections.

As noted in other comments, "Federal election activity" is a concept that has been imported from an unrelated part of the Bipartisan Campaign Reform Act ("BCRA"). It was developed to be applied to state and local political parties, to prevent easy circumvention of BCRA's prohibition on the use of soft money by the national parties. But the fact that this activity has been unfortunately given the label "Federal election activity" does not reflect a Congressional conclusion that ***all*** such activity, regardless of the actor, should be regulated as an attempt to influence federal elections.

"Federal election activity" includes voter registration during the 120 days before a regularly scheduled federal election, and voter identification and get-out-the-vote ("GOTV") conducted in connection with an election where a federal candidate appears on the ballot.[2] In the vast majority of states, at least for the general election, federal and state elections coincide. This definition captures a large portion of activity conducted by state-based entities that is directed toward influencing state elections, within the constraints of applicable state campaign finance law.

As many of us can attest, the political and civic life of the nation is alive and well at the state and local levels. Many of the most critical decisions governing the lives of citizens in this country are made by state and local governments. Issues that are vital to our organizations, including access to health care services, freedom of choice, and age-appropriate factual sex education, are fought out and decided not on the national stage but on a state-by-state, city-by-city, schoolboard-by-schoolboard basis. It is flatly erroneous to conclude that any voter involvement communications or voter registration activities carried out around an election that happens to include federal candidates must necessarily represent an attempt to influence the federal rather than state or local election.

We urge the FEC in the strongest terms possible not to adopt any rules that would subject state and local grassroots organizations like us to regulation under the federal campaign finance laws. There are more than enough regulatory obstacles to citizen participation in the political process. This rulemaking should not be used to create more barriers to independent issue groups' participation in public debate and the electoral and policy-making processes.

NARAL Pro-Choice California Foundation
NARAL Pro-Choice Maryland Fund, Inc.
NARAL Pro-Choice Maryland, Inc.

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[1] Political Committee Status; Proposed Rule, 69 Fed. Reg. 11,735, 11,756 (proposed March 11, 2004) (to be codified at 11 C.F.R. § 100.5(a)(1)(iii)).

[2] 2 U.S.C. § 431(20)(A); 11 C.F.R. § 100.24(b).

NARAL Pro-Choice Missouri
NARAL Pro-Choice Missouri Foundation
NARAL Pro-Choice New Hampshire
NARAL Pro-Choice New Hampshire Foundation
NARAL Pro-Choice Ohio
NARAL Pro-Choice Ohio Foundation
NARAL Pro-Choice South Dakota
NARAL Pro-Choice South Dakota Foundation
NARAL Pro-Choice Washington
NARAL Pro-Choice Washington Foundation
NARAL Pro-Choice Wisconsin
NARAL Pro-Choice Wisconsin Foundation
TARAL
TARAL Education Fund