



"Rebecca L. Emerick" <emerick@irsa.org> on 04/08/2004 08:02:25 PM

To: politicalcommitteestatus@fec.gov
cc:

Subject: Comments on Notice 2004-6

Please accept our comments on Political Committee Status, Notice 2004-6

Rebecca L. Emerick, MS, MBA, CPA
IRSA (International RadioSurgery Association)
3005 Hoffman Street
Harrisburg, PA 17110 USA
PH: 717-260-9808 Fax: 717-260-9809
www.irsa.org mailto:emerick@irsa.org

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· IRSA Comments to Notice 2004-6.pdf



April 8, 2004

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

Via Email: politicalcommitteestatus@fec.gov

Re: (Notice 2004-6) Federal Election Commission, Part 111; 11 CFR Parts 100, 102, 104, 106, and 114; Political Committee Status; Proposed Rule, March 11, 2004

Dear Ms. Dinh:

IRSA (International RadioSurgery Association)¹, a non-profit 501(c)3 entity, appreciates the opportunity to provide comments on the proposed rule for Political Committee Status, announced in the Federal Register on March 11, 2004. IRSA has a long-standing position of advocating for the rights of the communities we serve.

IRSA urges the Federal Election Commission (Commission) to exclude 501(c)(3) organizations from the definition of "political committee." The recommendations presented here are the product of the IRSA's Board of Directors and its members. We believe our issues to be simple and the recommendations provided will provide guidance on the issue of non-profits being defined as political committee. This letter outlines the rationale for our recommendation.

Recommendation: 501©3 Entities should not automatically be included in the definition of Political Committee

IRSA works hard to provide patients seeking medical treatments for brain tumors and brain disorders, as well as hospitals providing these treatments, the necessary information on pending legislation and issues that would affect these issues. It is IRSA fiduciary responsibility to be actively engaged in protecting the rights of those seeking medical treatment and those providing treatments. This includes staying informed and informing others about pending legislation and acts by public officials.

We have a long history of promoting active patient engagement and advocacy in the right to seek treatments and have these treatments provided within the USA. IRSA is protected by The Constitution in these endeavors from being burdened by laws and regulations with the exception of some local and state interests.

We are discouraged that a "relabeling" of non-profits entities at this time would serve to violate the freedom of non-profits. In our case, violating the freedoms of patients and hospitals in seeking remedies

¹ IRSA is an association which represents over 100,000 unique individuals seeking information on the treatment of brain tumor and brain disorders and the gamma stereotactic radiosurgery unit's installation base. Installations of this type are primarily hospital based and specialize in treating brain tumors and brain disorders. The Association's mission is to provide education and guidance on radiosurgery to governments, regulatory agencies, insurers, patients and referring physicians. This is accomplished through providing practice guidelines, position statements, general literature, and comments on issues affecting operations or patient safety.

and alternatives to the right to proper treatments and medical care. Indeed, it is only by working with government agencies and lawmakers that our group has been able in the past to affect change for medical coverage, receive appropriate coding for reimbursement, and to speak out on the safety aspects of medical treatments. Advocacy is an essential role and the basic mission of IRSA. The new rules that the Commission is considering may prevent us from fulfilling our basic mission of advocacy.

Currently, federal law prohibits 501(c)(3) organizations from engaging in partisan political activity and provide substantial penalties for violations of these laws. Title 26 of the United States Code, the Internal Revenue Code, explicitly bars 501(c)(3) organizations from participating in, or intervening in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. The prohibition is absolute; there is no *de minimis* exception to that rule. We, as a non-profit, are heavily regulated, and our board is well aware of this limitation.

The definition of Political Committee should not be expanded to incorporate on the nonpartisan activities of 501(c)(3) organizations such as IRSA. Our organization works in small lobbying and nonpartisan voter activation, which allows are patients and hospitals to participate and be heard, which achieves the ultimate purpose of the original Bipartisan Campaign Reform Act (BCRA). Under BCRA, 501(c)3 entities are required to avoid even the 'hint' of support for or opposition to candidates for public office. Therefore, any ruling that legal non-profit activities may be an expense under BCRA would result in a conflict for non-profit entities that must comply with the tax, State charitable organization, and election laws.

In our case, the proposed rules could deem IRSA a political committee if we were to spend funds towards national newspaper ads which criticize an administration for not properly funding specific medical treatments for the aged population.

If IRSA were deemed to be a political committee, the result would be that we could no longer conduct are basic mission of advocacy unless we raise and spend funds in accordance with the source and contribution limits of the Federal Election Campaign Act ("FECA"). FECA prohibits contributions over \$5000 from individuals and grants and contributions from corporations and foundations, the primary source of funding for most 501(c)(3) organizations. This means that manufacturers and pharmaceutical companies that provide grant funding for research in organizations like ours would be prohibited from providing the funds for vital and necessary medical research efforts.

Recommendation: Maintain the current definition of "Expenditures" under BCRA.

The Commission should not redefine "expenditures" to include all communication that "promotes, supports, attacks, or opposes" a candidate for federal office. The United States Supreme Court has upheld BCRA in stating that interest groups "remain free to raise soft money to fund voter registration, activities, mailings, and broadcast advertising." The Commission should not limit speech that Congress itself refused to limit.

It is a right that non-profit entities such as IRSA can inform their members on legislative and policy issues related to our charitable mission. It is often beneficial to state which current officials support a position or oppose a position that would affect our members. Arbitrary language that does not clearly define what speech and activities falls within the ambit of "promotes, supports, attacks, or opposes" a candidate for federal office will leave all non-profits open to litigation. We believe that the Commission itself has recognized that it is difficult to define such activities.

Federal law, through the tax code, already prohibits 501(c)(3) organizations in participating in, or intervening in political campaigns on behalf of, or opposition to, candidates for public office. That same law allows for criticism and support of actions of elected officials.

In IRSA's situation the following could easily happen under the Commission's proposed ruling:

- IRSA encourages our membership to oppose a proposed ruling in The Federal Register which is sponsored by a Senator in Washington that will cut funding for efforts we support. This Senator is currently a candidate for reelection. Such activities, even though specifically targeted at the proposed ruling, may be seen as opposing or attacking the Senator, who is up for reelection.

We hope you can see from this illustration, our very mission and performance of regular activities would be restricted under the Commission's proposed ruling.

Recommendation: The Proposed Ruling changes in mid-election cycle are unethical and should be reevaluated and delayed.

Changing the definition of basic terms such as "political committee," "expenditure," and "contribution" in the middle of an election year would cause undue disruption to the regulated community. Simple fairness dictates that no new rules should be applied during this election season, nor applied retroactively.

An organization cannot and should not be held to standards before they are presented and adopted. Nonprofits and the public need clarity and reasonable notice on all rules. The Commission recognized this when it urged the District Court to grant a stay in *McConnell v. Federal Election Commission* while the case was on appeal to the Supreme Court in order to avoid creating confusion during an election cycle.

IRSA believes that the Commission should review and delay any action, until the protection of viable non-profits can be protected. If there are abuses that the Commission wishes to address, they should be addressed more specifically and not with a broad ruling that will hamper small non-profits from providing their basic services. Of great concern to IRSA, is whether this proposed ruling is a misguided attempt to 'quiet' political voices that are not welcomed. We believe that basic free speech should never be regulated, even when we do not agree with the proffered message.

Further, the proposed ruling is long and exceedingly complex. The implementation and educational process alone would be lengthy, and require many months for entities to appropriately comply.

Summary:

IRSA appreciates the opportunity to comment on the proposed regulations. However, we are alarmed that the right and freedom to comment and react to this proposed ruling may be hampered or denied in the future by this very ruling. We hope that the issues of the right to provide advocacy for our entity, and for the patients and hospitals we serve, will allow the Commission to see its way to making appropriate changes in the proposed regulation to ensure our very existence and our basic mission.

Sincerely,

Rebecca Emerick

Rebecca L. Emerick, MS, MBA, CPA
Executive Director
emerick@irsa.org

Jamie K. Kunkle

Jamie K. Kunkle, MSW
Vice President, Board

[Electronically signed]