coalition
for the
homeless

April 1, 2004

Ms. Mai T. Dinh
Acting Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Ms. Dinh:

Coalition for the Homeless, a not-for-profit organization established under §501 (c) (3) of the Internal Revenue Code, wishes to express strong opposition to the proposed rules outlined in Notice of Proposed Rulemaking 2004-6, published by the Commission in the Federal Register of March 11, 2004.

While the Coalition is a non-partisan organization and never promotes candidates for elected office, we strenuously object to the proposed rule, which, if adopted, would place significant restrictions on our work as an advocacy and direct-service organization helping homeless New Yorkers. The Coalition for the Homeless engages in public discourse on many issues and relies to a great degree on donations from individuals, foundations, and corporations.

We believe the proposed rule, as outlined in the NPRM, goes well beyond the spirit of any statute or other authority in this area. Our objections, which are detailed below, include:

- The proposal to shift from a focus on certain political activity as "the major purpose" of an organization to the more expansive, "a major purpose" of an organization is overly broad.
- The proposed expansion of the definition of a "political committee" -- under which organizations will be deemed as having election of candidates as "a major purpose" simply if they meet a very low threshold of advocacy spending – would have a dramatic chilling effect on organizations wishing to assist disadvantaged populations in being heard.
- The proposed definition of the term "expenditure," which would in some cases be applied to an organization not deemed a "political committee," would also impair, or perhaps end, efforts directed toward assisting people in asserting fundamental rights.

Major Purpose Characterization

We believe the Commission proposal to consider altering the political committee criteria to embrace organizations that have federal official election as "a major purpose" rather than "the major purpose" will seriously threaten the advocacy work of organizations such as ours.

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As the NPRM notes, the Supreme Court has spoken in terms of using the definite article "the" when modifying the terms "major purpose" (*See Buckley v. Valeo*, 424 US 1, 79; *see also FEC v. Massachusetts Citizens for Life, Inc.*. 479 US 238, 262).

We are not aware of a compelling reason for the Commission to expand upon the parameters of those decisions and now classify all types of organizations whose actions may touch upon federal election campaigns in a tangential way as political committees. It is quite possible for an organization to engage in issue advocacy, for instance, without having election of any specific federal candidate as "the major purpose" of the organization. Yet, the Commission's proposed rulemaking might well classify that organization as a political committee despite the absence of support or opposition for any candidate for office. We believe that the Supreme Court was exercising sound reasoning in using the definite article "the" to modify its major purpose language to avoid having to make fine distinctions for organizations that present "gray areas" when their purported political activities are being appraised. Simply put, requiring candidate selection as "the" major purpose avoids the ambiguities and subjective interpretation that would result were only "a major purpose" to become the standard.

Political committee definition

This objection is related to the "major purpose" objection outlined above.

It is proposed that the "major purpose" provision of the definition of a "political committee" will be met if an organization's activities are within new, expansive criteria. Among these is the criterion that an organization is deemed a political committee if it spends more than $50,000, during the current year or any of the previous four years, on communications promoting, supporting, attacking or opposing a candidate or political party, or on *non-partisan* voter registration or mobilization activities. This definition and its extremely restrictive threshold – one that would apply regardless of an organization's overall budget – would effectively transform not-for-profits of all kinds into organizations deemed to have election of specific candidates or parties as a "major purpose."

This type of expansive definition will have a palpable chilling effect on organizations such as the Coalition, which, in addition to overseeing the New York City shelter system pursuant to a court decree assigning us that duty, must necessarily advocate for and against the positions espoused by candidates for office in order to assert fundamental rights of homeless people in New York. Our efforts also include voter registration and "get-out-the-vote" drives targeted to homeless residents – a group that has suffered many illegal attempts to hinder its rights to register and vote. The proposed definition looms as a severe impediment to the democratic process and the ability of a most vulnerable population to receive assistance in exercising fundamental rights. We strongly object to any rulemaking that would impose such a burden.

While the Coalition never promotes candidates for federal office (or any office), and we do not spend more than half of our resources for voter mobilization, we do assess the policies of elected federal officials – whether or not they are candidates for office at a given time. Although we generally do not spend more than $50,000 when doing so, we should not be subjected to such a limit merely because a federal official happens to be running for re-election or for another federal office.

Quite simply, we fail to see the value in designating organizations as promoting candidates for election as a "major purpose" of those organizations when, in fact, that is simply not the case.

Such a designation would severely impair our ability to communicate important information to the public, and might well have a serious adverse impact on our ability to raise money from sources that are critically important to our survival. We raise more than half of our operating budget from private sources, with the great bulk supporting concrete services for homeless and poor New Yorkers. Many of our grants and donations are large gifts, well in excess of $5,000, and some are designated by our supporters to be used to promote solutions that address homelessness, and oppose policies that exacerbate the problem of homelessness, or to assist homeless people in overcoming barriers that stand in the way of their right to register and vote.

Inherent in such advocacy, and for the sake of clarity in our public education efforts, is the occasional need to identify by name or title the person or body that has promoted or effected a change in federal policy, for better or for worse. Whether we are addressing federal policy directly, or addressing its effects at the State or local level, we firmly believe that our right to free speech and our ability to honor the purposes defined by our donors could be so impaired by this rule as to eviscerate one of the two major missions of our organization – public policy advocacy addressing the problems of homelessness, poverty, an inadequate system of mental health care, and the unmet need for affordable housing.

Moreover, the voter mobilization provisions contained in the rulemaking put organizations on dangerous ground that could lead to political committee status and the resulting impairments of function and fund-raising. In our own case, because the homeless community in NYC is largely African-American and Latino, we fear that we could face limitations on our right to raise funds to engage in voter mobilization if there is a determination that African-American and Latino voters, or homeless people generally, tend to vote for candidates of a certain party in Federal elections, regardless of our own non-partisan stance. This, too, is a disservice to the democratic process of a fundamental nature.

Prohibition on Advocacy Communications

Advocacy organizations that do not fall under the new definition of political committee would nevertheless also have their advocacy activities severely curtailed. The proposed rulemaking contains a new definition of the term "expenditure" that would prohibit any corporation – including a nonprofit corporation – and labor organizations from sponsoring any public communication that refers to a candidate for federal office and "promotes or supports, or attacks or opposes" the candidate.

We note that the rulemaking provides no guidance on the meaning of these terms, but wonder, for example: Would the rule prohibit us from characterizing a change in federal policy proposed or supported by a federal office-holder running for re-election that would cause rising homelessness as irresponsible?

Again, while the Coalition is a non-partisan organization, an important part of our mission is to inform the public on issues relating to housing, shelters, and myriad others. A prohibition against using any of the funds obtained from the sources referenced by the rulemaking would severely undermine our efforts, which although not directed toward the promotion or opposition of a specific candidate for office, could be at odds with, or in agreement with, the positions of people who happen to be candidates for office. We again do not see the value in limiting this sort of public discourse through limiting the ways in which undesignated financial support may be used in the course of our work. In fact, we see something quite the opposite: A rule that limits public discourse in such a way that all citizens are done a disservice.

Given the substantial and, perhaps, unintended broad consequences of the proposed rulemaking, the Coalition for the Homeless strongly objects to its adoption and urges the Commission to reject rules that would have such an adverse impact on the ability of under-served populations to be served and heard.

It is quite ironic, indeed, that efforts to perhaps level the democratic playing field in this way would, instead, serve to place the vulnerable populations we serve in even greater danger of never being heard. We do not find any authority for such a result in the new Bipartisan Campaign Reform Act, nor do we think any was ever intended.

Thank you very much for the opportunity to comment on the Notice of Proposed Rulemaking.

Sincerely,

Shelly Nortz
Deputy Executive Director for Policy

Jeff Wise
Senior Policy Analyst

cc: United States Senators Schumer, Clinton
Members of Congress Representing New York State