



April 2, 2004

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

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
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Dear Ms. Dinh:

Housing Works, 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.

We also request the opportunity to testify in opposition to these rules at hearings scheduled for April 14 and 15, 2004. Michael Kink, our Legislative Counsel, will testify on the potential impact these rules would have on Housing Works and on AIDS advocacy in the United States.

While Housing Works 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 living with AIDS and HIV, and people living with HIV/AIDS all over the world.

Housing Works engages in public discourse on many issues and relies to a great degree on donations from individuals, foundations, and corporations. We also support our organization through entrepreneurial ventures, including thrift stores, a used book café, a food service unit and other subsidiary corporations.

Limiting our ability to utilize these resources will effectively silence our voice and the voices of our clients and supporters in the serious debate over HIV/AIDS, homelessness and poverty at home and around the world.

**Over the course of the AIDS epidemic, one of the most persistent truths has been that democracy and free speech have saved lives. Advocacy has saved lives. Criticism of elected officials for their inaction on HIV/AIDS has spurred remarkable public and private responses to the epidemic. These responses have literally saved millions of lives all over the world. Silencing the voices of AIDS activists is not the proper function of the FEC, and yet your proposed rules threaten to do just that.**

**Housing Works, Inc.**  
320 West 13th Street  
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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:

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\* 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.

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 “grey 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 Housing Works, which, in addition to providing housing, medical care, job training and supportive services for homeless people living with AIDS and HIV, must necessarily advocate for and against the positions espoused by candidates for office in order to assert fundamental rights of people living with HIV/AIDS in New York, in America, and around the world.

Our efforts also include voter registration and “get-out-the-vote” drives targeted to homeless people and people living with HIV/AIDS – 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 Housing Works 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. We have at times spent more than \$50,000 doing so, and 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.

Criticism of elected federal officials is simply not the same thing as promoting candidates for election. Again, the history of the AIDS epidemic in America and

around the world has been marked, again and again, by legitimate criticism of elected officials for inaction or improper action that has resulted in lost lives.

Inherent in such advocacy, and for the sake of clarity in our public education efforts, is the 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 targets defined by our donors and by our Board of Directors for self-generated funds could be so impaired by this rule as to eviscerate one of the three major missions of our organization: to provide housing, services and advocacy to homeless people living with AIDS and HIV in order to end the twin crises of AIDS and homelessness.

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 HIV/AIDS and homeless communities in New York and around the nation are 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 or people with HIV/AIDS 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 or increased HIV/AIDS as irresponsible?

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Again, while Housing Works is a non-partisan organization, an important part of our mission is to inform the public on issues relating to HIV/AIDS, health care, housing, welfare benefits, disability and LGBT rights and many others.

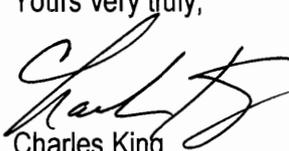
A prohibition against using any of the funds obtained from the sources referenced by the rulemaking would severely undermine our efforts, which although not directed toward the promotion or opposition of a specific candidate for office, could be at odds with, or in agreement with, the positions of people 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 or self-generated 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, Housing Works 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.

**Simply put, campaign finance reform should not be used to silence AIDS activists.** 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.

Yours very truly,

		
Charles King Co-President & CEO	Keith Cylar Co-President & CEO	Michael Kink, Esq. Legislative Counsel

cc: The Honorable Charles Schumer, The Honorable Hilary Rodham Clinton  
Members of the New York Delegation to the U.S. House of Representatives