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09/28/2007 01:03 PM

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Subject Comments in Response to NPRM 2007-16

To: Federal Election Commission
Attn: Mr. Ron B. Katwan, Assistant General Counsel

From: Vicki Rippie, Executive Director
Washington State Public Disclosure Commission
711 Capitol Way Room 206
P.O. Box 40908
Olympia, WA 98504-0908

Re: Comments in Response to NPRM 2007-16

Attached to this e-mail is a two-page memorandum, provided in Adobe PDF format, which provides comments in response to the Federal Election Commission Notice of Proposed Rulemaking 2007-16. If you have any problems opening the attached document, please contact our General Counsel Nancy Krier, who is copied on this e-mail. Thank you.



State of Washington
PUBLIC DISCLOSURE COMMISSION

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To: Federal Election Commission
Attn: Mr. Ron B. Katwan, Assistant General Counsel
wrtl.ads@fec.gov

From: Washington State Public Disclosure Commission
Through: Vicki Rippie, Executive Director
vrippie@pdcc.wa.gov

Date: September 28, 2007

Re: Federal Election Commission Request for Comments on Proposed Revisions to
FEC Rules Implementing *FEC v. Wisconsin Right to Life, Inc. (WRTL II)*
Notice of Proposed Rulemaking 2007-16, 72 Fed. Reg. 50261 (proposed Aug.
31, 2007)

This communication is in response to the Federal Election Commission Notice of Proposed Rulemaking (NPRM) 2007-16 and request for comments on proposed revisions to FEC rules, including those governing electioneering communications. 72 Fed. Reg. 50261 (proposed Aug. 31, 2007). The proposed revisions would implement the U.S. Supreme Court's decision in *FEC v. Wisconsin Right to Life, Inc. (WRTL II)*, 127 S.Ct. 2652 (2007).

This communication is provided by the Washington State Public Disclosure Commission, as directed at its September 27, 2007 meeting. The PDC is a state agency that implements and enforces the Washington State campaign finance and disclosure laws.

The PDC understands the FEC is seeking comment on two alternative rulemaking approaches. With regard to the general approach, Alternative 1 is preferable.¹ As noted in the NPRM, the plaintiff in *WRTL II* challenged only BCRA's corporate/union funding restrictions (Section 203) and did not contest either the definition of "electioneering communication" or the reporting (disclosure) requirement for such ads.

Washington adopted an "electioneering communication" law in 2004, after the decision in *McConnell v. FEC*, 540 U.S. 93 (2003). However, unlike the FEC, the PDC does not implement a provision similar to Section 203 of BCRA. That is because Washington

¹ The PDC is not commenting on specific proposed rulemaking language provisions because of some differences in Washington State laws and rules and FEC provisions, such as provisions related to "grassroots lobbying."

does not have a similar statutory prohibition on use of corporate or union general treasury funds for electioneering communications, or other political advertisements. On the other hand, like the FEC, the PDC does provide voters with access to information about the financing of campaigns under its jurisdiction. The PDC believes disclosure is "mission critical" to agencies such as the PDC and FEC. The PDC believes that state and federal provisions requiring disclosure of the financing of political advertising and electioneering communications were not affected by the specific as-applied challenge to one section of BCRA in *WRTL II*.

The *WRTL II* decision was issued during the pendency of the *Voters Education Committee v. Public Disclosure Commission et al.* case involving campaign advertisements in the Washington State Supreme Court. Case No. 77724-1. Regarding *WRTL II*, the PDC filed a supplemental brief in *VEC v. PDC*, explaining that the express advocacy/issue advocacy distinction in *WRTL II* does not apply to state statutes like Washington's that do not bar speech, but merely require disclosure of information.

In the 7-2 majority opinion issued September 13, the State Supreme Court described in a footnote that *WRTL II* involved a challenge to the prohibition on the use of general treasury funds to finance electioneering communications, a "different section" than was discussed in *McConnell v. FEC*. *VEC v. PDC*, at 19, n. 8. Citing to *McConnell*, the State Supreme Court stated that disclosure requirements "d[o] not prevent anyone from speaking." *VEC v. PDC* at 29. The PDC agrees and therefore asks the FEC to refrain from taking the *WRTL II* decision to places it does not need to go, and should not go, given the voters' entitlement and strong desire to receive information about who is financing election campaigns.