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FEDERAL ELECTION COMMISSION
Washington, DC 20463

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AGENDA ITEM

For Meeting of: 12-5-02

MEMORANDUM

SUBMITTED LATE

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence H. Norton
General Counsel

Rosemary C. Smith
Acting Associate General Counsel

John C. Vergelli
Acting Assistant General Counsel

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SUBJECT: Recommended amendments to Agenda Doc. No. 02-90

The Office of General Counsel has prepared Attachment A to this memorandum, which lists this Office's recommended amendments to Agenda Document No. 02-90.

Recommendation

The Office of General Counsel recommends that the Commission approve Agenda Document No. 02-90 incorporating the amendments contained in Attachment A to this memorandum.

ATTACHMENT A
Agenda Document No. 02-90 Amendments Sheet

1. At page 21: insert the following after line 23:

The Commission notes that Congress has provided that candidates and any entity “acting on behalf of 1 or more candidates” must not “solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act” 2 U.S.C. 441(i)(e)(1)(A). The Commission has addressed this restriction in a separate rulemaking (see Final Rules and Explanation and Justification on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Register 49,081 (July 29, 2002)), and does not necessarily equate activity resulting in a coordinated communication under 11 CFR 109.21 with “acting on behalf of 1 or more candidates” in 2 U.S.C. 441(i)(e)(1). Therefore, a determination of whether a coordinated communication exists must be made separately from, and without reference to, a determination of whether an entity is “acting on behalf of 1 or more candidates” under 2 U.S.C. 441(i)(e)(1)(A).

2. At page 39, line 13: delete “consider” and replace with “considered”

3. At pg. 77, line 4: insert the following after the end of the sentence:

The conduct standards in paragraph (d)(4) and (d)(5) would not be affected by (d)(6). Whereas a candidate's or authorized committee's original preparation of campaign materials might have possibly been misconstrued as satisfying the conduct standards in (d)(1) through (d)(3) without the addition of (d)(6), there is no such danger that the (d)(4) "common vendor" standard or the (d)(5) "former employee" standard would be satisfied by the candidate's or authorized committee's original preparation of campaign materials. However, to avoid any potential confusion, the second sentence in paragraph (d)(6) clarifies that a communication that satisfies the conduct standards in (d)(4) or (d)(5) is still a coordinated communication even if the communication only satisfies the content standard in paragraph (c)(2).

4. At page 168: delete lines 9 and 10