AGENDA DOCUMENT NO. 01-5-A

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

JAN 31 2001

MEMORANDUM

AGENDA ITEM
For Meeting of: 2-08-01

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lois G. Lerner
Acting General Counsel

N. Bradley Litchfield
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SUBJECT: Advance Notice of Proposed Rulemaking on the Definition of "Political Committee:" Supplemental Document

At the request of Commissioners Mason and Sandstrom, the Office of General Counsel is circulating a supplemental document to Agenda Document # 01-5, the Advance Notice of Proposed Rulemaking on the definition of "political committee."

Recently, the 11th Circuit affirmed the Middle District of Florida in *Florida Right to Life, Inc. v. Mortham*, No. 98-770-CIV-ORL-19A (M.D. Fla., Dec. 15, 1999), which is mentioned in the body of the ANPRM with respect to both the "major purpose" and "express advocacy" issues. While the affirmance was a short *per curiam* opinion, it held that the statute at issue was "unconstitutionally overbroad under the First Amendment." This document would add a reference to this appellate case to the ANPRM. It would also add a Westlaw citation for the district court decision, as well as a footnote quoting the Florida statute at issue. The recommended revisions would replace lines 1 through 5 on p. 16 of the draft ANPRM with the following:

In Florida Right to Life, Inc. v. Mortham, No. 98-7770-CIV-ORL-19A, 1999 WL 33204523, at *4, 5 (M.D. Fla., Dec. 15, 1999), a federal district court declared Florida's "political committee" definition 6/ "unconstitutionally overbroad" because its reach was not limited to "organizations whose major purpose is engaging in 'express advocacy,' as that term is defined in Buckley v. Valeo, 424 U.S. 1, 42-44 (1976)." ~~Slip op. at 12, 17.~~ The Eleventh Circuit affirmed the district court, holding the definition to be "unconstitutionally overbroad under the First Amendment," 2001 WL 40216 (11th Cir., Jan. 17, 2001).

6/ Florida Stat. section 106.11(1) defined "political committee" as a "combination of two or more individuals, or a person other than an individual, the primary or incidental purpose of which is to support or oppose any candidate, issue or political party, which accepts contributions or makes expenditures during a calendar year in an aggregate amount in excess of $500."

Footnotes 6 and 7 would be renumbered footnotes 7 and 8, respectively.