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2007 NOV 20 A 11: 52

OFFICE OF THE CHAIRMAN

MEMORANDUM

TO: The Commission
FROM: Chairman Robert D.  Lenhard
DATE: November 20, 2007
RE: Draft Final Rule on Electioneering Communications

AGENDA ITEM
For Meeting of: 11-20-07

SUBMITTED LATE

Below is an amendment to Agenda Document No. 07-76 I plan to introduce at today's meeting. The amendment would replace the language at page 10, line 6 through page 11, line 23.

1 7. Section 114.15 is added to read as follows:

2 **§ 114.15 Permissible use of corporate and labor organization funds for certain**
3 **electioneering communications.**

4 (a) Permissible electioneering communications. Corporations and labor organizations
5 may make an electioneering communication, as defined in 11 CFR 100.29, to
6 those outside the restricted class unless the communication is susceptible of no
7 reasonable interpretation other than as an appeal to vote for or against a clearly
8 identified Federal candidate.

9 (b) Safe Harbor. An electioneering communication is permissible under paragraph
10 (a) of this section if it:

- 11 (1) Does not mention any election, candidacy, political party,
12 opposing candidate, or voting by the general public;
- 13 (2) Does not take a position on any candidate's or officeholder's
14 character, qualifications, or fitness for office; and
- 15 (3) Either:
- 16 (i) Focuses on a legislative, executive or judicial matter or issue;
17 and
- 18 (A) urges a candidate to take a particular position or action
19 with respect to the matter or issue, or
- 20 (B) urges the public to adopt a particular position and to
21 contact the candidate with respect to the matter or issue; or

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1 (ii) Proposes a commercial transaction, such as purchase of a
2 book, video, or other product or service, or such as attendance (for
3 a fee) at a film exhibition or other event.

4 (c) Rules of Interpretation. If a communication does not qualify for the safe harbor in
5 paragraph (b), the Commission will consider whether the communication includes
6 any indicia of express advocacy and whether the communication has an
7 interpretation other than as an appeal to vote for or against a clearly identified
8 Federal candidate in order to determine whether, on balance, the communication
9 is susceptible of no reasonable interpretation other than as an appeal to vote for or
10 against a clearly identified Federal candidate.

11 (1) A communication includes indicia of express advocacy if it:

12 (i) Mentions any election, candidacy, political party, opposing
13 candidate, or voting by the general public; or

14 (ii) Takes a position on any candidate's or officeholder's character,
15 qualifications, or fitness for office.

16 (2) A communication has an interpretation other than as an appeal to vote for
17 or against a clearly identified Federal candidate if it:

18 (i) Focuses on a public policy issue and either urges a candidate to
19 take a position on the issue or urges the public to contact the candidate
20 about the issue; or

21 (ii) Proposes a commercial transaction, such as purchase of a book,
22 video or other product or service, or such as attendance (for a fee) at a film
23 exhibition or other event; or

1 (iii) Includes a call to action or other appeal that interpreted in
2 conjunction with the rest of the communication urges an action other than
3 voting for or against or contributing to a clearly identified Federal
4 candidate or political party.

5 (3) In interpreting a communication under paragraph (a), any doubt will be
6 resolved in favor of permitting the communication.

7 (d) Information Permissibly Considered. In evaluating a communication under this
8 section, the Commission may consider only the communication itself and basic
9 background information that may be necessary to put the communication in
10 context and which can be established with minimal, if any, discovery. Such
11 information may include, for example, whether a named individual is a candidate
12 for office or whether a communication describes a public policy issue.

13 (e) Examples of Communications. A list of examples derived from prior
14 Commission or judicial actions of communications that have been determined to
15 be permissible and of communications that have been determined not to be
16 permissible under paragraph (a) is available on the Commission's Web site,
17 <http://www.fec.gov>.

18 (f) Reporting requirement. Corporations and labor organizations that make
19 electioneering communications under paragraph (a) aggregating in excess of
20 \$10,000 in a calendar year shall file statements as required by 11 CFR 104.20.