



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
CHIEF COMMUNICATIONS OFFICER

FROM: OFFICE OF THE COMMISSION SECRETARY *MW*

DATE: DECEMBER 14, 2007

SUBJECT: *Ex Parte* COMMUNICATION
Re: Draft Final Rule and Explanation and Justification on
Electioneering Communications
Agenda Document No. 07-92

Transmitted herewith is an *ex parte* communication sent to the Commissioners from Michael B. Trister and B. Holly Schadler, regarding the above-captioned matter.

This matter will be considered in the meeting on Friday, December 14, 2007.

Attachment

CC: FEC Press Office
FEC Public Disclosure

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

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December 13, 2007

For Circulation to Commissioners Prior to Open Meeting of December 14, 2007.**By Fax to 202/208-3333**

Commission Secretary

Federal Election Commission

999 E Street, NW

Washington, D.C. 20463

Dear Sir or Madam:

We are writing to express our strong objection to one aspect of the draft final Rule and Explanation and Justification implementing the Supreme Court's decision in *FEC v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652 (2007), which is on the Commission's agenda for December 14, 2007.

Section 104.20(c)(9) addresses reporting of electioneering communications by a corporation or labor organization pursuant to 11 CFR § 114.15. Amongst the items to be reported under this provision are the name and address of each person who made a donation aggregating \$1,000 or more to the corporation or labor organization ... "which was made for the purpose of furthering electioneering communications." While the quoted language is a welcome addition to the regulation, we are deeply concerned about the comments in the E & J which state that this language does not apply to Qualified Nonprofit Corporations established under 11 CFR § 114.10. (Pages 49-50)

First, the regulation itself does not create a special reporting rule for QNCs; it applies to all "corporations," whether or not they have qualified as QNCs. The statements in the E & J thus conflict with the clear language of the regulation.

Second, if QNCs are required to report all donations that they receive, rather than those made for the purpose of furthering electioneering communications, QNCs will be subject to a greater reporting burden than other nonprofit corporations that do not qualify for QNC status. This makes no sense, since it is QNCs that have favored constitutional status under the First Amendment.

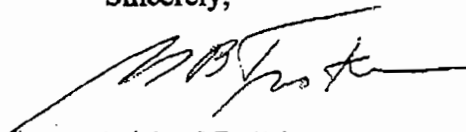
Federal Election Commission
December 13, 2007
Page 2

Third, the attempt in the E & J to distinguish QNCs from other corporations, including other nonprofit corporations, is simply incorrect. There is no reason to believe, as the E & J states, that QNCs are different from other nonprofit corporations because "individuals and organizations typically donate funds to a QNC because they support the QNC's goals" and even if this were true it has nothing to do with whether the donations have been made for the purpose of supporting electioneering communications, which is the only relevant test under the regulation. The fact is that donors to most nonprofits, both QNCs and those that are not QNCs, do so because they support the organizations' goals; and donors to QNCs are no more likely to earmark their donations to support electioneering communications than donors to nonprofits that do not qualify as QNCs.

Finally, the attempt to create special reporting rules for QNCs was not proposed in the NPRM which in fact stated that no changes were being considered with respect to the rules applicable to QNCs.

We urge you to remove this unsupported language from the E & J before it is issued.

Sincerely,



Michael B. Trister
B. Holly Schadler

cc: Chairman Robert D. Lenhard (by email)
Vice Chairman David M. Mason (by email)
Commissioner Hans A. Von Spakovsky (by email)
Commissioner Steven T. Walther (by email)
Commissioner Ellen L. Weintraub (by email)
General Counsel Thomasenia Duncan (by email)