

Hybrid Ad Hearing
Questions for Witnesses
7/10/07

The question before us is whether to amend our regulations to clarify how the cost of hybrid ads can be allocated and how to define what constitutes a hybrid ad.

To my mind, there are two central questions. First: What exactly is a hybrid ad? This question has two parts. (a) How specific must it be in making reference to the party and its down-ticket candidates? (b) Does this apply to ads with only a single clearly identified candidate or can it apply to ads with multiple candidates?

Second: What is the appropriate way to allocate the cost of hybrid ads?

Most of my questions will focus on these two concerns. I am especially interested in whether any witness is aware of any empirical or anecdotal evidence that including a generic party reference to an advertisement increases the benefit to other candidates of the party.

I anticipate asking several specific questions. To give the witnesses time to think about the questions and their answers, I am providing them in advance of the hearing. While it is possible I will vary somewhat from the way these questions are phrased or add or omit some, they are the questions I currently plan to ask. In addition, if any witness would like to answer a question that is currently framed for another witness, they should feel free to do so.

Stephen M. Hoerding, Center for Competitive Politics

What test should we use to determine if an advertisement has “certain words that evidence a placeholder by the party committee”? Your comments suggest the standard be drafted liberally to provide parties with flexibility, but also that it be clear so that it can be easily applied. What sort of language would you suggest?

In establishing this test, how should we balance the clarity, ease of compliance and rigidity that comes with a bright line with the ambiguity, second guessing in enforcement and freedom that comes from a more flexible test?

Should generic party references be limited to the clearly identified candidate’s party or should you be able to create a hybrid ad that identifies your party’s candidates but makes a generic reference to your opponent’s party?

Do any of the following texts constitute a generic reference to a political party that should permit an allocation under a hybrid ad rule?

“Congressman X has been battling the Liberals in Washington.”

“Congressman X has been battling the tax and spend Washington crowd”

A photo of the Capitol behind a candidate running for the executive branch.

“Presidential candidate X has been working with Congressional leaders to pass key legislation.”

Does it matter if an ad refers to other political actors in their status as legislators as opposed to as candidates in assessing the benefits reasonably to be derived by down-ticket candidates from hybrid ads?

**Thomas J. Josefiak, RNC and
Sean Cairncross NRSC**

As I read 106.1, it provides for an allocation based on time and space, while 106.8 provides for a flat 50/50 split, regardless of the number of mentions of a candidate or party. Advisory Opinion 2006-11 seems to provide a third allocation method. If we do not adopt a new rule, which of these tests will govern hybrid ads?

Should it matter how frequently a candidate is mentioned in an ad, as opposed to the generic party reference?

Is there evidence that including a generic party reference increases the likelihood that other candidates of that party will receive votes?

Can you speak to why parties fund these sorts of advertisements? What is the electoral advantage to candidates other than the clearly identified candidate? Are there separate advantages to the party itself, or is the party’s objective limited to the down-ticket candidates in the region where the ad is run?

You say that we should not regulate the nature of the generic party reference, that parties ought to be able to select their own title, name and nickname. How about the nickname of their opponent? If an ad says: “Candidate x has stood shoulder to shoulder with those who are soft on terrorism. In vote after vote, she has refused to give our troops the support they need”, has the ad made a generic reference to the other party (the “soft on terrorism” party) or its down-ticket candidates? If not, how do we set a standard?

Neil Reiff, Democratic National Committee

You suggest we adopt a rule that permits hybrid ads to be calculated based upon the time and space used, with a minimum of 50% attributable to the candidate. This would seem to amount to a codification of Advisory Opinion 2006-11. One concern I have heard is

that the time/space allocation method is effective in calculating the allocation in print and radio ads, where the message is experienced by only one sense (i.e., sight, sound), but becomes more difficult in television where the calculation involved allocating time in an ad that uses both visual and auditory messages. Given your experience, should we be concerned about the complexity of using a time and space allocation with television ads?

In contrast to Mr. Hoersting, you appeared comfortable with a test that requires the use of the name or nickname of a political party. As a consequence, I assume you would not consider the examples I gave Mr. Hoersting as sufficient to qualify as a generic reference to a political party. I take it that you think we should permit a reference to a party's members in their legislative capacity, such as "Republicans in Congress" or "Democrats in Washington." Am I correct? How does this additional flexibility help achieve the party's electoral goals?

Can you speak to why parties fund these sorts of advertisements? What is the electoral advantage to candidates other than the clearly identified candidate? Are there separate advantages to the party itself, or is the party's objective limited to the down-ticket candidates in the region where the ad is run?

**Marc E. Elias, Democratic Senatorial Campaign Committee and
Brian G. Svoboda, Democratic Congressional Campaign Committee**

You advocate a clear 50%/50% split per 106.8 as opposed to a time/space allocation per 106.1. What are the advantages to this approach?

Does that sort of a split really provide a fair measure of the benefit reasonably expected to be derived when applied to an ad that provides 25 seconds of images and words about the advantages of a clearly identified federal candidate, and at the end, says "Support Senator X and conservatives in Congress"? Are there other policy considerations that would counsel a bright line test?

What is the electoral advantage to candidates other than the clearly identified candidate? Are there separate advantages to the party itself, or is the party's objective limited to the down-ticket candidates in the region where the ad is run?

You urge us not to place arbitrary constraints on content such as requiring that the communication "refer specifically to candidates of a political party rather than the party itself." Does the distinction Mr. Reiff draws, that the generic reference to the party should include references to the candidates in their capacity as officeholders seem an appropriate point to draw the line or should we allow even more freedom to reference the party generically? Are the examples I provided to Mr. Hoersting sufficiently clear references to a party? If not, how should our rule provide guidance or constraint on what constitutes a generic reference?

Donald F. McGahn II, Illinois Republican Party and NRCC

You suggest that a party should be free to choose its own nicknames and that our regulations should not limit them from doing so. How specific should the reference be? Do the examples I gave Mr. Hoersting and Mr. Cairncross qualify?

As I raised with Mr. Cairncross, if we do not adopt a new rule, which test governs hybrid ads?