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WASHINGTON, D.C. 20463

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September 25, 2002

MEMORANDUM

TO: The Commission

FROM: Scott E. Thomas  
Commissioner

SUBJECT: Amendment to Agenda Document 02-68

**AGENDA ITEM**  
For Meeting of: 9-26-02

**SUBMITTED LATE**

I believe we should adopt an exception to the "electioneering communication" definition for certain grass roots lobbying ads. We can describe ads that fall outside the "promote, support, attack, or oppose" test. I have in mind ads that would be able to strongly advocate a particular action regarding a pending matter and urge recipients to contact a named official to urge him or her to take a particular stand on the matter. For example, ads along the following lines should be exempt:

Congress is about to decide whether nuclear waste is to be dumped in Nevada. To save our State and our children's health, please contact Representative Snagglepuss and tell him to vote NO on the nuclear dumping plan. [The phone number or other contact information could then be provided.]

They're at it again. Congress is thinking about raising taxes by going back on the tax cuts approved last year. It's your hard-earned money. It's just plain wrong to tax it out of your pockets. Call Senator Dinglethorpe and tell him to vote against this hair-brained idea. [The phone number or other contact information could then be provided.]

Both clearly get across the favored approach on the issue involved, yet both steer clear of references that would link the identified candidate with that favored approach. This is crucial to meeting the "promote, support, attack, or oppose" test.

I believe Alternative 3B of the NPRM most closely reflected this approach. By requiring avoidance of the candidate's record or position on the issue involved, the regulation would largely satisfy the statutory test, in my view. Of course, the other parts of Alternative 3B (avoiding reference to character, fitness for office, political persuasion,

candidacy, the election) also would be essential to completely satisfy “promote, support, attack, or oppose” concerns, but the requirement to avoid the record or position of the named candidate prevents the most obvious forms of circumvention.

Accordingly, I propose adoption of the following language that would become 11 C.F.R. § 100.29(c)(5):

Meets the following criteria:

- (i) Is devoted exclusively to a particular pending legislative or executive branch matter;
- (ii) Only refers to a clearly identified Federal candidate in urging the public to contact that Federal candidate to persuade him or her to take a particular position on the pending legislative or executive branch matter; and
- (iii) Does not contain any of the following:
  - (A) Any reference to a political party or to the political persuasion of the clearly identified candidate;
  - (B) Any reference to the candidate’s record or position on any issue; or
  - (C) Any reference to the candidate’s character, qualifications, or fitness for office, or to an election, voters or the voting public, or anyone’s candidacy.

In my view, an organization, group, or person that wishes to affect legislation can live comfortably within the foregoing bounds. The pitch for a particular legislative result can be as hard-edged as desired. If the goal truly is to affect the legislation, and to use funding sources that cannot pay for “electioneering communications,” the bright-line boundaries I suggest will let this activity go forward.