



FEDERAL ELECTION COMMISSION
Washington, DC 20463

FEDERAL ELECTION
COMMISSION
SECRETARIAT

2010 APR 29 A 10:19

AGENDA ITEM

For Meeting of 04-29-10

MEMORANDUM

SUBMITTED LATE

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*
General Counsel

Rosemary C. Smith *AKR for RCS*
Associate General Counsel

Amy L. Rothstein *AKR*
Assistant General Counsel

David C. Adkins *DA*
Attorney

SUBJECT: Draft Final Rule and Explanation and Justification for Participation by
Federal Candidates and Officeholders at Non-Federal Fundraising Events

We have been asked to place on the agenda of the April 29, 2010 Open Session these proposed amendments to the draft Final Rules and Explanation and Justification to implement the decision of the Court of Appeals for the District of Columbia Circuit in *Shays v. FEC*, 528 F.3d 914 (D.C. Cir. 2008).

Attachment

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SUBMITTED LATE

Participation by Federal Candidates and Officeholders at Non-Federal Fundraising Events: Potential Amendments to Rule Text and Explanation & Justification

Final Rule Text:

- Page 2, line 2:

After “overlooked,” insert “by any significant number of those in attendance.”

- Page 3, line 10:

After “script,” insert “or is conducted according to a structured or organized program.”

Part II of the Explanation & Justification:

- Page 2, line 19:

After “overlooked,” insert “by any significant number of those in attendance.”

Part III of the Explanation & Justification:

- Page 5, lines 4-5:

Delete “only,” and change “recorded or follows any form of a written script” to “recorded, follows any form of a written script, or is conducted according to a structured or organized program.”

- Page 5, line 9:

After “met.,” insert “When non-written solicitations are conducted according to a structured or organized program, the Commission will similarly presume that the requirements of the rule were met where a sworn statement, that appropriate disclaimers were made, is submitted by the person making the solicitation or by the Federal candidate or officeholder who authorized the use of his or her name. A structured or organized program includes the making, at a designated time, of telephone calls that invite people to and solicit funds for a non-Federal fundraising event, and which is authorized, requested, or agreed to by the Federal candidate or officeholder.”

**Participation by Federal Candidates and Officeholders at
Non-Federal Fundraising Events: Additional Amendments to Final Rule Text and
Explanation and Justification (Amended)**

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RULE TEXT:

- Page 37, lines 15-16:

Replace "Federal candidate or officeholder" with "Federal candidate, officeholder, or an agent of either."

- Page 37, lines 20-21:

Replace "Federal candidate or officeholder" with "Federal candidate, officeholder, or an agent of either."

- Page 38, line 5:

Replace "Federal candidate or officeholder" with "Federal candidate, officeholder, or an agent of either."

- Page 39, line 10:

Replace "Federal candidate or officeholder" with "Federal candidate, officeholder, or an agent of either."

EXPLANATION & JUSTIFICATION:

- Page 18, line 13-14:

Replace "if the measure had qualified for the ballot" with "under the circumstances described in the request".

Page 27, line 22:

After "11 C.F.R. 110.11(c)(2)." insert, "To the extent the publicity already has a disclaimer required by 11 C.F.R. § 110.11 (federal disclaimer), the disclaimer required by this section may be included in the same box as the federal 'Paid for by' disclaimer."