

Ms. Amy L. Rothstein  
Assistant General Counsel  
Federal Election Commission  
999 E Street N.W.  
Washington, D.C. 20463

Re: Comment Regarding NPRM, Docket ID No. FEC-2010-0007, Coordinated Communications

Dear Ms. Rothstein:

In light of the decision by the United States Supreme Court in Citizens United v. FEC, No. 08–205 (U.S. Jan. 21, 2010), the Federal Election Commission should adopt a coordinated communications content prong to cover public communications that promote, support, attack, or oppose a clearly identified Federal candidate or a political party of a clearly identified Federal candidate, regardless of when the communication is made or the targeted audience for the communication (Alternative 1, The PASO Standard, proposed in Docket ID No. FEC-2009-0058, Coordinated Communications). A determination that a public communication satisfies the PASO standard should be sufficient to satisfy the content prong for coordinated communications. While the Court did not address coordinated communications directly in Citizens United, its decision supports adopting this robust PASO standard, as Justice Kennedy’s opinion draws a direct link from coordination to political corruption.

**I. The Citizens United opinion emphasizes the difference between independent and coordinated expenditures.**

In Justice Kennedy’s opinion for the Court in Citizens United, he noted that “[t]he absence of prearrangement and coordination of an expenditure with the candidate or his agent . . . alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate.” Citizens United, slip op. at 41 (quoting Buckley v. Valeo, 424 U.S. 1, 47 (1976)). This observation segues into a lengthy discussion of what the Court views as the too-tenuous connection between *independent* expenditures and concerns over *quid pro quo* corruption. The Court explains that “[b]y definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate.” Citizens United, slip op. at 44.

**II. In Citizens United, the Court draws a link from coordination to corruption.**

The discussion cited above supports the assertion that the *presence* of coordination between a candidate and a third-party greatly increases the likelihood of corrupting *quid pro quo* political favors. When the Court reasons that “independent expenditures have a substantially diminished potential for abuse,” the unstated points of comparison for this assertion are coordinated expenditures, which are associated with a substantially heightened potential for abuse. Citizens United, slip op. at 41. Adopting the PASO content standard would assist in counteracting this heightened potential for abuse, and protect the political system and American citizens from the corrupting influence of favor-based politics. The Court views coordination as a reliable indicator

for quid pro quo corruption, and the Commission would and should mirror this concern by implementing a PASO content standard that would apply at any time and to any communication which promotes, supports, attacks, or opposes a Federal candidate or a political party of a Federal candidate.

### **III. Coordinated communications resemble direct campaign contributions in their ability to breed quid pro quo corruption.**

Under the Court's analysis, a coordinated communication has little in common with an independent expenditure, but instead is analogous in its potential for fostering quid pro quo corruption to direct campaign contributions. Both campaign contributions and coordinated communications involve a favor (money in the first instance and exposure in the latter) given directly to a candidate by a corporation or individual for the purpose of furthering the candidate's campaign on the candidate's terms. In both instances, it is generally understood that the individual or the corporation provides a portion of the funding and the candidate provides the message. In neither situation is the individual or corporation engaging in pure political speech: A campaign donor loses control over what is done with the money after it is donated. In coordinated communication, the individual or corporation is a vehicle for relaying the candidate's thoughts and message, not his or its own.

### **IV. Thus, like direct campaign contributions, coordinated communications should be robustly regulated in a time-insensitive manner, using the PASO standard.**

In Citizens United, Justice Kennedy explained that "limits on direct contributions . . . ensure against the reality or appearance of corruption." Citizens United, slip op. at 41. To ensure against the reality or appearance of corruption that accompanies coordinated communications, the Commission should adopt a PASO standard to satisfy the content prong of its analysis.

The PASO standard has a robust area of coverage, which befits the high degree of correlation the Supreme Court and Congress see between coordinated expenditures and quid pro quo corruption. Shrinking the content prong umbrella to cover only those communications which expressly advocate the election or defeat of a candidate or which cannot be interpreted in any reasonable manner but an exhortation to vote or not vote for a candidate would be a mistake. If the Commission were to shrink the content prong thusly, it would be handicapped from fulfilling the Congress's goals in enacting FECA and BCRA, and failing to effectively guard against quid pro quo corruption as discussed by the Court in Citizens United.

Unlike the "electioneering communication" standard currently under the content prong, the PASO standard would not distinguish among communications based on how many days away the election is at the time the communication is made. This is appropriate, as campaigns are multi-month and sometimes multi-year endeavors waged slowly and steadily. Limits and disclosure requirements on campaign contributions apply without regard to the proximity of an election, because there is little to no relevance between when a donation is made and the potential for quid pro quo corruption. The same is true for coordinated communications: an individual or corporation that funds communication of a candidate's message in coordination with the candidate's campaign will have bestowed a great favor on a candidate, regardless of

when the communication takes place. The risk of quid pro quo favor exchange is not constrained to the two months preceding an election, and neither should the regulation of those communications which promote, support, attack, or oppose a candidate or party.

I thank you sincerely for your time and consideration, and I urge the Commission to use this opportunity to create a more robust and effective coordinated communications rule, particularly through the adoption of a time-insensitive PASO standard to satisfy the content prong.

Sincerely,  
Jennifer Clark  
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