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October 28, 2005

Brad C. Deutsch
Assistant General Counsel
Federal Election Commission
999 E St., NW
Washington, DC 20463

Re: NPRM, "Definitions of 'Solicit' and 'Direct,'" 70 Fed. Reg. 56599 (September 28, 2005)

Dear Mr. Deutsch:

I am writing to present comments on behalf of the AFL-CIO, the national labor federation comprised of 52 national and international unions and hundreds of state and local central labor councils, representing over 9,000,000 working men and women throughout the United States.

This rulemaking revisits the Commission's 2002 rulemaking concerning the meaning of the statutory terms "solicit" and "direct" in 2 U.S.C. §§ 441i(a)(1), (d), and (e)(1-4), 441e(a)(2), and 441h(b), as required by *Shays v. FEC*, 414 F. 3d 76, 105-07 (D.C. Cir. 2005). The previous rulemaking was exclusively concerned with those terms as added to the Federal Election Campaign Act by the Bipartisan Campaign Reform Act: the current rulemaking must revisit the definitions of those recently added statutory terms.

In its current notice, however, the Commission asks whether or not this rulemaking also should define the terms "solicit" and "solicitation" for various Part 114 regulations concerning labor organizations and corporate activities, see 70 Fed. Reg. at 56604, in order to explicate the term "solicitation" in 2 U.S.C. § 441b(b)(2)(C). The proposed regulation in the current notice, however, does not offer language to that end.

The AFL-CIO urges the Commission not to expand this rulemaking to encompass Part 114. The Commission should focus instead on the necessary task at hand in order to comply with the D.C. Circuit's decision, a task that entails sensitive and controversial choices as it is. The Commission cites no external demand to reopen this aspect of Part 114, nor any problems encountered by the Commission or the entities regulated by Part 114 with its interpretation or enforcement. In our view, Part 114 may merit a fresh look in some respects, but this should occur deliberatively and distinctly from the BCRA-related rulemakings that will continue to preoccupy the Commission for some time. Virtually any revision of Part 114 could prove contentious and time-consuming, hardly the sort of undertaking the Commission should gratuitously invite while it is so preoccupied.

Indeed, dealing with the Part 114 variations of "solicit" in this rulemaking surely will delay its completion, for any final regulation that addresses those terms would be adopted without the benefit of a specific Commission proposal and, quite likely, with sparse public comment on the merits of such a regulation. We do not believe the Commission necessarily should simply apply to Part 114 whatever definitions it settles upon in Part 300. Rather, for the reasons we have explained, it would be preferable to complete this rulemaking on its own terms and then consider whether or not a properly noticed rulemaking concerning Part 114 should be undertaken.

Thank you for your consideration of our views.

Sincerely,

Laurence E. Gold
Associate General Counsel

LEG:ab
cc: Karen Ackerman
Jonathan Hiatt