



FEDERAL ELECTION COMMISSION
Washington, DC 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2005 APR 27 P 4: 23

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence H. Norton
General Counsel

Rosemary C. Smith
Associate General Counsel

Mai T. Dinh
Assistant General Counsel

J. Duane Pugh Jr.
Senior Attorney

Margaret G. Perl
Attorney

SUBJECT: Amendment to Agenda Document No. 05-22: Draft NPRM on
Definition of Federal Election Activity (11 CFR 100.24).

AGENDA ITEM
For Meeting of: 4-28-05

SUBMITTED LATE

The Office of General Counsel recommends that Agenda Document No. 05-22, the draft Notice of Proposed Rulemaking on the Definition of Federal Election Activity, which was circulated under a Memorandum dated April 25, 2005, be amended as follows.

- (1) On page 10, line 18, and on page 11, line 17, delete "in an odd-numbered year".
- (2) On page 10, line 22, after "activity." and before "The" insert the following:

- 1 This interpretation would have the advantage of being a bright-line rule for the
- 2 Commission and political parties. In addition, this interpretation would be consistent
- 3 with the reporting requirements, as a political party would report the disbursement for a
- 4 voter list at the time of purchase.

(3) On page 11, before line 6, insert the following:

1 Alternatively, the Commission also seeks comment on an alternative application
2 of the rule that would use the date the voter list was used to determine whether the
3 acquisition of a voter list falls with the FEA timeframes and would therefore be a Federal
4 election activity. Under this alternative, a voter list that was purchased before the FEA
5 period would nonetheless be subject, at least in part, to Federal and Levin funds
6 requirements whenever it was used within the FEA period. Triggering the FEA
7 provisions based on the use of a voter list would discourage any attempts to avoid those
8 requirements by purchasing a list early for intended use during the FEA period.
9 However, this approach could raise allocation and valuation issues if the voter list is
10 purchased outside the FEA window and used by the political party committee both inside
11 and outside the window.