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WASHINGTON, D.C. 20463

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AGENDA ITEM
For Meeting of: 5-25-00

SUBMITTED LATE

TO: The Commission
FROM: Commissioner Sandstrom
SUBJECT: Statement Regarding Proposed Notice on the Definition of Political Committee

Statement of Commissioner Karl J. Sandstrom

The proposal that I offer today is intended to be the first step in restoring the integrity of our campaign finance laws. If the registration and reporting provisions of the law are rendered ineffective, and that is the danger that we face today, the law becomes ineffective. Secret contributions become the currency of election success. Hidden from the public gaze, under the table financing gives rise not just to the appearance of corruption but provides the opportunity for bribery, extortion and personal enrichment. Foreign, corporate and labor treasuries can be tapped for electoral advantage.

A hundred years of bipartisan effort to bring sunlight to election financing is now being eclipsed by audacious circumvention of the law. Congress's companion effort to limit foreign and special interest influence over our elections stumbles in the descending darkness. The boldness of this assault on election laws is documented in the headlines of our major newspapers.

Wall Street Journal, March 20, 2000, "Political Groups Swarm to Campaign Finance Loophole"
San Francisco Examiner, May 14, 2000, "Stealth PACs Veil Funding Sources"
Washington Post, May 15, 2000, "Flood of Secret Money Erodes Election Limits"
Arizona Republic, May 11, 2000, "'Soft' Funding Rules in U.S. Races"
Baltimore Sun, April 24, 2000, "Political Donors Find New Loophole - Tax exempt group can spend unlimited sums, hide the givers"

As these headlines suggest, the magnitude of this challenge cannot be overstated. The choice presented to this agency is simple: we can serve as embalmers, putting the best face on a dead Act, or as emergency room physicians and seek to revive a critical patient.

What I propose today is not radical. In fact, I ask only that we put out for public comment a notice on this issue. Of course, any commissioner may add his own proposal or seek comments on a particular issue. For any commissioner who may consider my approach constitutionally suspect, a suspicion I do not share, a notice will allow constitutional scholars to weigh in.

What is the substance of my proposal? The proposal identifies ten criteria for political committee status. Political committee status is triggered for any organization that engages in the activities described. The activities described are hallmarks of organizations that seek to influence Federal elections. Each criterion requires an objective manifestation of purpose on the part of the organization. None of these well marked "tripwires" would unfairly surprise the groups captured by the regulation. Instead, the proposal would put everyone on fair notice as to activities that would necessitate registration and reporting with the Commission.

The proposal avoids after the fact examination of the content of ads to determine the reporting obligation of an organization. Political committee status does not hinge on the employment of the "magic words" of express advocacy. As a recent Brennan Center study revealed, "magic words" carry no magic; fewer than 4 percent of candidates' own ads employ them. Apparently nobody believes that they are necessary to cast the intended spell on voters. Nevertheless the Supreme Court was right, if you have no other objective manifestation of purpose, you do need a properly narrowed and objective content test. Fortunately and wisely, the Supreme Court has never come to the conclusion that only organizations that engage in express advocacy are required to register and report. Unfortunately, some *organizations* have.

My proposal is modest. There are many who probably think it does not go far enough. I look forward to hearing their arguments. Some may think it goes too far. Let us hear from them. Examination of the particulars of my proposal, I believe, amply demonstrate its constitutional sensitivity.

The first criterion is that if a group solicits money with the express purpose of influencing a Federal election, the group becomes a political committee regardless of how it ultimately spends the money. This provision merely effectuates a statute that provides that the receipt of contributions totaling \$1,000 triggers political committee status. A second criterion provides that the purpose for which a contribution is received follows the contribution. Therefore, when a political committee contributes to another group, the recipient is deemed to have received a contribution and is responsible for the reporting of the expenditure of those funds.

Another provision requires organizations that assert to the IRS that they function primarily to influence federal elections be required to register and report with the Commission. An organization sufficiently sophisticated to claim Section 527 status should not be amazed to learn that political organizations generally have reporting

obligations with campaign disclosure agencies. If its activities are federal, that agency is the Federal Election Commission.

Congress has long outlawed slush funds. My proposal gives meaning to that prohibition by providing that candidates, including officeholders, register any committee that they create or control, other than a bona fide non-profit organization. So even if the committee does not claim 527 status, the candidate cannot claim that the organization is a mere "issue" organization and avoid registration.

An organization's disbursements may also demonstrate its purpose and trigger political committee status. When an organization purchases services with the express understanding that the service be designed to influence a federal election, that organization is operating as a political committee and should be required to report. Similarly, when an organization is coordinating its activities under our regulations with a candidate, it assumes political committee status.

Other disbursements also serve as indelible markers of an organization's purpose. Testing a communication to determine its likely impact on voters' candidate preference reveals the true intent of the advertisement. Choosing the audience for a message based on voting behavior in federal elections similarly reveals a group's purpose.

These standards are not at odds with the statute, but rather are precisely the type of activities that Congress had in mind in requiring political committees to register and report their activities. If there are better indicators of political committee status, let them be offered. I do not presume that the proffered lists exhausts the possibilities. This list represents only a beginning of what must be a bipartisan effort to restore some integrity to our election laws. No one party is responsible for the desperate condition in which we find our election laws. My colleagues may have their own rescue plans, but together we must take responsibility for the future of this law.

At the proper time, I will move to instruct staff to prepare a notice incorporating my proposal and any additional proposals on this subject offered by colleagues.

