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AGENDA ITEM

For Meeting of: 8-1-02

SUBMITTED LATE

To: The Commission
From: Commissioner Bradley A. Smith
Date: July 31, 2002
Subject: Proposed Amendments to Agenda Document 02-55; Draft Notice of Proposed Rulemaking on Electioneering Communications

I propose making the following amendments to the General Counsel's Draft Notice of Proposed Rulemaking on Electioneering Communications.

Category I: Properly tying electioneering communications referencing Presidential and Vice Presidential candidates to pending primary elections.

At page 14, line 20, add the bold language between the words "candidates" and "may" as follows:

However, the Commission is concerned that such a sweeping impact on communications **would be insufficiently linked to pending primary elections**, may not have been contemplated by Congress and could raise constitutional concerns.

At page 14, line 21, add the following sentences after "concerns.":

It would result in a nationwide blackout on ads mentioning a Presidential candidate for more than 240 days between mid-December of the year preceding the election and the election itself. So interpreted, the restrictions on electioneering communications would take effect even if an ad were aired only in a State that has already held its primary, and thus would restrict ads more than 60 days before a general election; an apparent contravention of BCRA.

At page 14, line 21, delete all language after "Therefore, it is proposing" up through the words "a definition ..." at lines 3-4 of page 15.

At page 15, line 7, add after "30 days." the following sentence:

(This definition is listed as Alternative 6-B in Proposed 11 CFR 100.29)

At page 15, line 8, delete the phrase “rather than 11 CFR 100.29(a)”

At page 15, line 11, add the words “and when” between the words “where” and “the”.

At page 15, line 15, add a new paragraph as follows:

As an alternative means of addressing this concern, the Commission could draft a provision stating that an advertisement be considered an electioneering communication only if the advertisement can be received by 50,000 or more persons in either a State in which a Presidential primary will occur within 30 days, or nationwide if within 30 days of the national nominating convention of that candidate’s party. If adopted, this provision would appear at new 11 CFR 100.29(a)(1)(iv), rather than 11 CFR 100.29(b)(4), and appears in the Draft Rules as Alternative 6-A.

At page 52, between existing lines 21 and 22 insert “Alternative 6-B.”

At page 54, lines 5-6, add the following language (and renumber existing paragraphs (4) and (5) occurring at lines 6 and 12, respectively):

Alternative 6-B.

(4) A communication that refers to a clearly identified candidate for President or Vice President is publicly distributed within 30 days before a primary election, preference election, or convention or caucus of a political party only where and when the communication can be received by 50,000 or more persons within the State holding such election, convention or caucus.

Category II: Seeking comment on other possible exemptions from the definition of electioneering communication.

At page 21, line 10, add the following sentence after the word “referendum.”:

The Commission is also interested in receiving suggestions on whether there should be exemptions for communications that refer to a clearly identified candidate but that are public service announcements or that promote a candidate’s business or professional practice.

Category III: Seeking comments on whether or where a hard money regime applies to electioneering communications.

At page 32, line 22, add the following sentence after “communications.”:

“BCRA, however, does not amend the definition of contribution at 2 U.S.C. § 431(8) to include monies given for electioneering communications.”

At page 33, line 1, add the phrase “the Federal account of a” between the words “to” and “political”. Delete the word “committees” and replace it with “organization”.