



1742 Connecticut Ave. NW Washington, D.C. 20009 202/234-8494 Fax 202/234-5150 www.ombwatch.org

October 11, 2002

Mr. John Vergelli, Acting Assistant General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: Notice of Proposed Rulemaking: Coordinated and Independent Expenditures

Dear Mr. Vergelli,

OMB Watch, a nonprofit organization that promotes government accountability and citizen participation in public issues and decision-making, welcomes this opportunity to comment on proposed rules relating to coordinated expenditures. We work with and through the nonprofit sector because of its vital place in communities and our faith that the sector can play a powerful role in reinforcing democratic principles. Because of our commitment to strengthening the voice of the nonprofit sector in public policy debates, we work to protect nonprofit advocacy rights. In addition, we promote public accountability of the nonprofit sector through government oversight that is not unduly burdensome.

These comments are written from the perspective of nonprofit organizations that are actively involved in public policy issues, but do not participate in candidate elections or campaigns. 501(c)(3) organizations are qualitatively different from corporations in that involvement in issues is intrinsic to our missions and no personal benefit is derived from our activities. 501(c)(3)s are also different from other nonprofits in that the tax code prohibits any support of or opposition to candidates in elections.

We believe that campaign finance laws and regulations should be carefully crafted so that they do not adversely affect nonprofit public policy participation, particularly by 501(c)(3) organizations, which are by law candidate neutral. This approach furthers the goal of campaign finance reform by increasing citizen voices, as the voice of corrupting private moneyed interests is reduced. Carefully balanced rules will contribute to a level political playing field.

Proposed Exceptions Under 11 CFR Subpart C Section 109.21(f)

Distribution of nonpartisan voter education materials should not be considered in-kind campaign contributions, but a literal reading of the proposed rules could lead to that result. We propose that any public communications, including republication of materials from candidates, their committees or political parties, that meet the criteria of 11 CFR 110.13 regarding candidate debates and forums, and 11 CFR 114.4(c) regarding voter registration drives and voter education be exempt from the definition of a coordinated communication.

Grassroots communications that urge the people to contact state, local or national officials urging them to take action in their official capacity should also be exempt, if they do not refer to the election or an officials' status or qualifications as a federal candidate. This exemption would protect first amendment rights and encourage citizen involvement in public policy debates, but would not exempt communications meant to impact federal elections.

Clarification of Content Standard

Republication of campaign material provided in accordance with the regulations governing nonpartisan voter education efforts should not meet the criteria under the content standard. This can be avoided by adopting the proposed exception under Section 109.21(f) or including a similar exception in 109.21(c).

The alternatives (A) and (C) in Section 109.21(c)(4) are too broad to identify public communications aimed at promoting or opposing federal candidates. Alternative A merely requires that a communication be public and refer to a clearly identified federal candidate. If the reference to the candidate is outside the context of the election, the communication should not satisfy the content standard. For example, a flyer announcing the appearance of the mayor at a community event should not satisfy the content standard, even if the mayor is a candidate for federal office, if the flyer makes no reference to the election or to the mayor's character and fitness for office.

Alternative C is significantly narrower, but would still bring a grassroots lobbying appeal made within 120 days of a federal election within the content standard if it makes a statement about the record, position or views of a public official who is also a federal candidate. While we agree that discussion of a candidates character and fitness or qualifications for office are election related, and can be considered in the content standard, we do not agree that discussion of an official's position on issues should be off limits. This approach would effectively insulate incumbents from criticism for 120 days preceding elections. That result does not further the goals of campaign finance reform.

We recommend that Alternative B be adopted, and if Alternative C is considered, that it only apply to communications that refer to a candidate's character and fitness and qualifications for office.

Clarification of Conduct Standard

Proposed Section 109.21(d) refers to five different kinds of conduct between “a candidate or an authorized committee, political party committee, or agent of any of the foregoing”, any one of which can fulfill the conduct standard that contributes to making a communication an in-kind campaign contribution. The scope of the proposed regulation should be limited to recognize that candidates are also legislators, mayors, governors or other public officials. Nonprofits often work closely with these officials on public communications involving legislative campaigns or other activities connected to their public office. These communications should not be considered campaign activity. Instead, public officials should be encouraged to work closely with constituents and nonprofit organizations. This includes the an official’s ability to make suggestions on content of communications, material involvement in outreach plans and substantial discussion of legislative strategy.

For example, a campaign finance reform group may work closely with the sponsor of a reform bill to generate public support for passage of legislation. An action alert from a nonprofit asking the public to call their Senators and urge them to pass McCain-Feingold is more effective if the timing and content can be coordinated with Senator McCain. For these reasons, the conduct standard should be limited to communications with candidates only in their capacity as candidates.

Conclusion

The approach the Commission has taken to define coordinated communications is clear and logical. With the addition of the exceptions for nonpartisan communications we have proposed, we believe the rules will be constitutional and workable.

Yours truly,

Kay Guinane
Counsel and Manger, Community Education Center