PERKINS COIE LLP

607 FOURTEENTH STREET, N.W. · WASHINGTON, D.C. 20005-2011
TELEPHONE: 202 628-6600 · FACSIMILE: 202 434-1690

ROBERT F. BAUER
(202) 434-1602
bauer@perkinscoie.com

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VIA ELECTRONIC MAIL

Ms. Mai T. Dinh
Acting Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Electioneering Communications

Dear Ms. Dinh:

On behalf of the Democratic Congressional Campaign Committee ("DCCC") and the Democratic Senatorial Campaign Committee ("DSCC"), I write to comment on the Commission's proposed rules on Electioneering Communications, 67 Fed. Reg. 51,131 (2002).

The DCCC and DSCC are political committees established and maintained by a national political party – the House and Senate campaign committees, respectively – as defined by Commission rules at 11 C.F.R. §§ 110.2(c)(2)(ii)-(iii) (2002). Significantly, they are also "national congressional campaign committees" that will be barred from raising and spending nonfederal funds by Title I of the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155 ("BCRA"). As now written and as amended by BCRA, the law requires the DCCC and DSCC to disclose their receipts and disbursements on forms prepared by the Commission.

Title II of BCRA, which regulates the making of "electioneering communications," must be seen in the full context of reforms passed by Congress. While Title I limits the activities of political party committees like the DCCC and DSCC, Title II seeks to limit the activities of other entities. Commission rules would best serve this Congressional design by lending proper force to Title II's regulation of outside groups, and by avoiding the use of Title II to impose new and unintended burdens on federally registered political party committees.

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For these reasons, the Commission's electioneering communication rules should not only enforce the provisions of Title II against outside groups as Congress intended. They should also make it unambiguously clear that they do not apply to political committees that raise and spend only funds subject to federal source restrictions, contribution limits and disclosure requirements, as will be the case with the DCCC and DSCC on November 6.

BCRA clearly defines an "electioneering communication" to exclude any communication that constitutes "an expenditure or an independent expenditure under this Act". See Pub. L. No. 107-155, § 201(a). Yet the Notice of Proposed Rulemaking nonetheless suggests imposing new obligations on entities that only make "expenditures," and that consequently should be incapable of making electioneering communications.

Specifically, through the version of proposed 11 C.F.R. § 100.29(c)(3) labeled as Alternative 2-B, the NPRM would bring federally registered political committees into the scope of the electioneering communication rules, even when they raise only federal funds and disclose all of their activity to the Commission. See 67 Fed. Reg. at 51,135. Similarly, the NPRM asks whether principal campaign committees should file additional disclosure reports when paying for certain communications that refer pejoratively to the candidate's opponent. See id. at 51,140.

In the case of a national political party committee like the DCCC or the DSCC, these proposals would expose them to obligations Congress never intended to impose, and upset the balance between Title I's regulation of parties and Title II's regulation of outside groups. With Title I having limited the resources with which national party committees may conduct their affairs, the Commission would use Title II to tax those resources further by imposing new and duplicative reporting obligations on the committees.

In the case of a candidate's principal campaign committee, these proposals would create unnecessary additional confusion. Principal campaign committees will already have to file new statements to comply with BCRA's "millionaires' amendment." See Pub. L. No. 107-155, § 304(b). They will have to use new software to file their reports. See id. § 306. They will have to comply with extensive advertising disclaimer requirements. See id. § 311. By impose additional requirements unintended by Congress, the Commission would only detract from the candidates' already-taxed abilities to comply with the provisions that Congress actually intended to apply.

The DCCC and DSCC understand that some may see redundant reporting requirements as a way of ensuring more full disclosure. However, we respectfully note the broad filing requirements that currently apply to national party committees. We would further note that Congress already created such redundancy through Pub. L. No. 106-230 (2000), and specifically through its requirement that federally registered political committees file Form 990 informational returns with the Internal Revenue Service.

More to the point, however, is that Congress did not seek to impose any more redundancy here. Rather, with Title II, it tried to focus its efforts on entities not registered with the Commission, and ensure that campaign finance reform remained balanced and comprehensive in effect. The Commission should follow the Congressional design and properly implement the statute.

We again appreciate the opportunity to comment on these matters.

Very truly yours,

Robert F. Bauer
Counsel to the DCCC and DSCC