Nonprofit Sign on Letters <nonprofitsignonletter@yahoo.com>
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To GRLECNOA@fec.gov
cc
bcc
Subject Comments Notice 2006-04

Mr. Deutsch,

The attached document contains the joint comments of 18 nonprofit organizations, urging the FEC to conduct a rulemaking regarding grassroots lobbying communications. Please let me know if you have any trouble with this transmission, or have any questions.

Kay Guinane
OMB Watch
1742 Connecticut Ave NW
Washington DC 20009

EC signon letter[1][1][1].doc

April 17, 2006

Mr. Brad C. Deutsch, Assistant General Counsel
Federal Election Commission
999 E Street, NW.,
Washington, DC 20463

Dear Mr. Deutsch:

RE: Notice 2006-4: Exception for Grassroots Lobbying

The undersigned organizations urge the Federal Election Commission to immediately initiate this rulemaking to exempt grassroots lobbying communications from the election-law restrictions on broadcast advertising. It is essential that the Commission promulgate this exemption before Labor Day, when current law will otherwise silence nonpartisan broadcast issue advocacy across the country.

The proposed rule would exempt from the definition of "electioneering communication" certain "grassroots lobbying" communications that reflect *all* of the following principles:

1. The "clearly identified federal candidate" is an incumbent public officeholder;
2. The communication exclusively discusses a particular current legislative or executive branch matter;
3. The communication either (a) calls upon the candidate to take a particular position or action with respect to the matter in his or her incumbent capacity, or (b) calls upon the general public to contact the candidate and urge the candidate to do so;
4. If the communication discusses the candidate's position or record on the matter, it does so only by quoting the candidate's own public statements or reciting the candidate's official action, such as a vote, on the matter;
5. The communication does not refer to an election, the candidate's candidacy, or a political party; and
6. The communication does not refer to the candidate's character, qualifications or fitness for office.

The proposed rule is a very good standard that balances the concerns of all sides and provides a workable test. It would provide nonprofits with the ability to engage in genuine grassroots lobbying, and it would eliminate any realistic concerns about such grassroots lobbying being employed as the functional equivalent of express advocacy.

The Bipartisan Campaign Reform Act's "electioneering communications" restrictions on legitimate issue ads infringe on the central constitutional right of the people to bring their

grievances before their elected representatives. These restrictions effectively shut down grassroots lobbying ads during the crucial closing weeks of the congressional term, when Congress is most likely to act on issues of vital importance.

While the goals of the electioneering provisions of the Bipartisan Campaign Finance Reform Act of 2002 (BCRA) are clearly focused on broadcasts that attack or promote federal candidates and are funded by unregulated soft money, the language, if narrowly construed, could result in a "blackout" of many nonpartisan, non-electoral advocacy communications by nonprofits. This kind of genuine issue advocacy is entitled to constitutional protection, and the Commission could take an important step in providing this protection in its proposed rules. We believe this is the intended and appropriate result, since BCRA, at 2 U.S.C. 434(f)(3)(B)(iv) gives the Commission the power to create additional exemptions.

The sponsors of BCRA and the groups that lobbied for it are all on record as supporting an exception for grassroots lobbying ads. In a colloquy addressing the purpose of Section (B)(iv) in floor debate in the House of Representatives, Rep. Shays said "…it is possible that there could be some communications that will fall within this definition even though they are plainly and unquestionable not related to the election. Section 201(b)(iv) was added to the bill to provide the Commission with some limited discretion in administering the statute so that it can issue regulations to exempt such communications from the definition of "electioneering communications" because they are wholly unrelated to an election."

Further, the Supreme Court recently affirmed the constitutional protections for grassroots lobbying in *Wisconsin Right to Life, Inc. v. Federal Election Commission.* The Court ruled that the application of the broadcast ban to legitimate grassroots lobbying could be challenged constitutionally, and it sent the case back to a lower court for more proceedings. In that case, the Court also reminded the Commission that it has the authority to enact rules to exempt this kind of advertising from the broadcast ban .

Regardless of the election calendar, nonprofits must be allowed to use television or radio to support their work and to broadcast their stands on public policy issues. The Commission should act now to exempt grassroots lobbying from the ban on broadcast advertising.

Sincerely,

American Cancer Society
American Federation State County and Municipal Employees
Center for Lobbying in the Public Interest
Human Rights Campaign
Mexican American Legal Defense Education Fund
Michigan Partnership to Prevent Gun Violence
National Council of Nonprofit Associations

National Lowe Income Housing Coalition
NARAL Pro-Choice America Foundation
National Council of Jewish Women
National Employment Lawyers Association
National Partnership for Women & Families
OMB Watch
One Connecticut
Sierra Club
Violence Policy Center
Unitarian Universalist Association of Congregations
Wilderness Society