



**no-reply@erulemaking.net**

04/14/2006 12:37 PM

To GRLECNOA@fec.gov

cc

bcc

Subject Public Submission

Please Do Not Reply This Email.

Public Comments on Rulemaking Petition: Exception for Certain ``Grassroots  
Lobbying Communications From the Definition of ``Electioneering  
Communication:=====

Title: Rulemaking Petition: Exception for Certain ``Grassroots Lobbying  
Communications From the Definition of ``Electioneering Communication  
FR Document Number: E6-03810  
Legacy Document ID:  
RIN:  
Publish Date: 03/16/2006 00:00:00  
Submitter Info:

First Name: Jerald  
Last Name: Jacobs  
Mailing Address: 2300 N Street, NW  
City: Washington  
Country: United States  
State or Province: DC  
Postal Code: 20037  
Email Address: jerald.jacobs@pillsburylaw.com  
Organization Name: American Society of Association Executives

Comment Info: =====

General Comment: The American Society of Association Executives respectfully  
submits the  
attached comments in response to the Notice of Availability (2006-4) issued by  
the Federal Election Commission.



**ASAE Grassroots Lobbying Comment to FEC-30783.pdf**



Pillsbury  
Winthrop  
Shaw  
Pittman<sup>LLP</sup>

April 14, 2006

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

**Re: Federal Election Commission, 11 C.F.R. Part 100, Notice 2006-4  
Comment to Rulemaking Petition: Exception for Certain “Grassroots Lobbying”  
Communications from the Definition of “Electioneering Communication”**

Dear Mr. Deutsch:

The American Society of Association Executives (“ASAE”) respectfully submits these comments in response to Notice of Availability (2006-4) issued by the Federal Election Commission (the “Commission”), and in support of the February 16, 2006, Rulemaking Petition asking the Commission to revise its regulations by exempting certain “grassroots lobbying” communications that otherwise may meet the definition of an “electioneering communication” under the Federal Election Campaign Act, as amended.

ASAE, the “association of associations,” is the voice for over 25,000 individual members who represent 10,000 tax exempt nonprofit associations – serving more than 287 million people and companies worldwide. One of ASAE’s central functions is to serve as an advocate for its members and virtually all nonprofit associations. ASAE appeals regularly to government entities at all levels, including the federal legislative and executive branches, on matters of concern to its membership and nonprofit organizations in general. The majority of ASAE’s member associations also use grassroots lobbying communications to advocate for their respective constituencies. As discussed below, to give ASAE’s members, and all other nonprofit associations, the ability to run issue ads on matters of vital interest to them at the most critical time – when the issue is before Congress, regardless of the election cycle – ASAE is writing to urge the Commission to use its statutory authority to revise its regulations by exempting certain “grassroots lobbying” communications from the definition of “electioneering communication,” as outlined in the aforementioned Rulemaking Petition.

**The Need for a “Grassroots Lobbying” Exception**

A primary function – perhaps the most important function – of associations is to advocate for or against legislation critical to the interests of their membership bases and constituencies. A vital advocacy tool of associations is the ability to use “grassroots lobbying,” such as “issue ads,” to educate the public and encourage elected officials to vote for or against certain legislation. Indeed, the overall success or failure of an association’s entire represented industry sometimes hinges on the passage, defeat, or modification of particular legislation. The most crucial time for associations to be able to issue “grassroots lobbying” communications is during the timeframe that Congress is considering relevant legislation – a timeframe that associations have no control over. In such situations, the goal of the grassroots lobbying communication is the passage or defeat of a piece of legislation, not the election or defeat of a particular federal candidate. Thus,

it is of the utmost importance that associations be able to issue bona fide “grassroots lobbying” communications when relevant issues are before Congress, regardless of the federal election cycle.

The current regulations do not ensure that associations will be able to advocate effectively for their members and constituencies at the critical time. Current regulations allow associations to run “grassroots lobbying” issue ads, so long as those ads do not qualify as “electioneering communications,” which are defined as any broadcast, cable, or satellite communication that refers to a candidate for federal office and that is broadcast within 30 days of a federal primary election or 60 days of a federal general election in the jurisdiction in which that candidate is running for office. 2 U.S.C. § 434(f)(3). Thus, if a bill with the potential to greatly benefit or hinder associations comes before Congress within one of the prohibited pre-election windows, the affected associations could be robbed of perhaps their most valuable advocacy tool, the ability to run grassroots lobbying issue ads. This is especially likely if the bill has become known by the names of its congressional authors, such as the “Sarbanes-Oxley bill,” and one or both authors is also an incumbent candidate for federal office. Such situations routinely occur and adversely affect many associations.

A carefully-tailored exemption for bona fide grassroots lobbying communications would permit associations to effectively advocate for their constituencies, using genuine issue ads at the critical juncture, while still prohibiting “electioneering” communications that are the true target of the federal election laws and regulations. The exemption proposed in the Rulemaking Petition, with its six guiding principles, constitutes an administratively practicable solution that is statutorily and constitutionally well-grounded. Essentially, it ensures that excepted ads are true issue ads that in no way refer to an election, candidacy, or political party. The Commission has the authority to exempt bona fide grassroots lobbying communications as defined in the Rulemaking Petition. This authority is well-documented in the Bipartisan Campaign Reform Act of 2002, and has been endorsed by the Supreme Court in *Wisconsin Right to Life, Inc., v. Federal Election Commission*, 126 S. Ct. 1016 (2006).

In sum, Associations have an earnest, valid need for a bona fide “grassroots lobbying” exception to the definition of “electioneering communications.” The Rulemaking Petition has provided a workable, constitutionally informed exception. Accordingly, ASAE respectfully urges the Commission to exercise its authority to amend its regulations based on the proposal in the Rulemaking Petition.

Respectfully submitted,

**AMERICAN SOCIETY OF ASSOCIATION EXECUTIVES**



Jerald A. Jacobs  
General Counsel, **AMERICAN SOCIETY OF ASSOCIATION EXECUTIVES**

Pillsbury Winthrop Shaw Pittman LLP  
2300 N Street, NW  
Washington, DC 20037  
(202) 663-8000