Don McGahn <dmcgahn@NRCC.org> on 09/29/2003 11:47:52 AM

To: "'mailinglists@fec.gov'" <mailinglists@fec.gov>
cc:

Subject: Comments on mailing lists

Comments of National Republican Congressional Committee

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National Republican Congressional Committee

Donald F. McGahn II
General Counsel

September 29, 2003

Mai T. Dinh, Esquire
Acting Assistant General Counsel
999 E Street, NW
Washington, DC 20463

Re: Comments on Proposed Rulemaking Regarding Mailing Lists

Dear Ms. Dinh:

By and through the undersigned counsel, the National Republican Congressional Committee ("NRCC") hereby respectfully submits these comments on the Commission's proposed rulemaking regarding mailing lists. In the event the Commission elects to hold a hearing on this matter, we ask that the undersigned counsel be permitted to testify on our behalf.

Although we agree that political committees may enter into list exchange and rental agreements, we are opposed to the proposed rulemaking regarding mailing lists. It is nothing more that gross regulatory overreaching by the Commission. This is hardly the Commission "adopt[ing] . . . its historical approach to these issues." The notice fails to provide a justification for the rulemaking, relying on only a few MUR's and advisory opinions (which one would think is the adoption of the Commission's historical approach to these issues). If the Commission believes there is a factual predicate for this rulemaking, it has failed to articulate it.

Political parties and candidate committees for the United States House of Representatives and Senate are private affairs. Although Federal law limits contributions to such political committees, the spending of campaign funds has remained almost

exclusively within the discretion of such committees. This proposed rulemaking represents a radical departure from this long-standing practice. The Commission is proposing to insert itself in the details of expending campaign funds, specifically by inserting itself into what is a private contract regarding lists. This is more than just ascertaining whether or not a contribution occurs; this is wholesale government regulation of a private contract. Neither the Federal Election Campaign Act of 1971, as amended, ("FECA") nor the Bipartisan Campaign Reform Act ("BCRA") empower the Commission to take such action; even if the statutes did, such governmental overreaching would be unconstitutional.

Instead of attempting to regulate for the sake of regulation, the Commission ought to leave private entities to engage in private contracts. This is the current position of the Commission, as reflected in AO 1979-36 (acknowledging direct mail prospecting as a legitimate committee function susceptible of "normal industry practice"), and AO 1981-46 (a list exchange of equal value as a transaction for consideration did not result in a contribution or expenditure). Nothing pertinent has changed since the Commission issued these advisory opinions – there is still a normal industry practice regarding list exchanges and rentals.

Adoption of this proposed rule opens the floodgates to all sorts of other intrusive regulation. If the Commission believes it can regulate the details of a private list exchange agreement, does it believe it can regulate the details of other contracts? The potential is astounding.

In conclusion, we are opposed to the Commission's proposed rulemaking.

Respectfully submitted,

Donald F. McGahn II