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FEDERAL ELECTION COMMISSION
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Concurring Opinion
to Advisory Opinion 1993-18

Commissioner Joan D. Aikens

I voted to approve draft Advisory Opinion 1993-18, as amended, because I agreed with most of the responses we were giving to the requester, Southwestern Bell Corporation (SBC).

I do, however, want to take issue with one portion of the response and want to clarify what my objections are in this concurrence. I am referring to the language in the paragraph under Nonpartisan Communications to the General Public, which was amended during the debate. The original draft stated that "Retirees who are not shareholders ... are indistinguishable from members of the general public." To my mind this is a misstatement of the facts. My colleagues agreed with me to the extent that the language was amended to read: "Retirees who are not shareholders or in the families of employees or shareholders in the SBC companies are not identified in Commission regulations as members of the corporation's restricted class or the larger employee class who may attend nonpartisan candidate events sponsored by the corporation." While this language is, in fact, true to the language of our regulations, it still does not explain under what rationale we are excluding retirees from receiving a nonpartisan communication.

Our regulations clearly exclude retirees from the solicitable class and I am not arguing that point at this time. However, there is no specific reference to retirees in the "communications" provisions of 11 C.F.R. 114.4. General Counsel's draft of Advisory Opinion 1993-18 and the revised language would clearly give them no more rights than the general public. To my mind, retirees are clearly not in the same class as the general public. These individuals are receiving retirement benefits from the corporation and maintain a strong organizational tie to the company. These particular retirees are communicated with monthly and often attend company functions. But even these additional ties should not be mandatory in order for retirees generally to be able to receive a nonpartisan communication from their former employer.

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One of the primary justifications for restricting the class of employees who could be solicited was to prevent union and corporate coercion. Much of the discussion at the table centered on the coercion issue. It was cited by the General Counsel as one of the reasons Congress created a restricted class when amending the statute in 1976. However, retirees are by the very nature of their status protected from any threat of coercion or financial reprisal, as are stockholders.

Further, retirees comprise the majority of the age group that is the most politically active at all levels of government. Individuals in this age group have consistently been shown to have the highest voting percentage in both Presidential and non-presidential elections. The type of communication proposed by SBC to its retirees clearly will not do great damage to the political process and might, in fact, improve the level of participation.

With all these points in mind, I see no compelling governmental interest in restricting the flow of information, on a nonpartisan basis, from retirees who may not also be stockholders.

Dec. 8, 1993

Date

Joan D. Aikens

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Commissioner