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VIA E-MAIL

Lawrence H. Norton
General Counsel
Federal Election Commission
899 E Street NW
Washington, DC 20463

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COMMISSION
OFFICE OF GENERAL
COUNSEL
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Re: AOR 2004-1 Bush-Cheney '04 & Alice Forgy Kerr

Dear Mr. Norton:

We are writing on behalf of the Center for Responsive Politics (CRP) and its campaign finance law project FEC Watch to comment on Advisory Opinion Request 2004-1, and on the Commission's draft response to this request. For the reasons set for below, we support the conclusions reached in the draft response, and urge the Commission to approve the draft as submitted.

AOR 2004-1 was submitted by the Bush-Cheney '04 reelection campaign and Alice Forgy Kerr For Congress. It describes a series of advertisements in which President Bush would appear and endorse Ms. Kerr's candidacy in the special election in Kentucky's sixth district, to be held on February 17, 2004. Some of these ads would be broadcast within 120 days of Kentucky's presidential primary election, scheduled for May 18, 2004, an election in which President Bush will be a candidate. Consequently, the request asks whether Kerr's dissemination of the ads would be a coordinated communication on behalf of President Bush.

The Draft Response

We agree with the draft response's conclusion that the advertisements described in the request would satisfy the content standard in 11 CFR 109.21(c)(4) if disseminated within 120 days of the May 18 primary. All four advertisements would be public communications that refer to a clearly identified candidate running in the primary and would be directed at viewers who will be voters in the primary.

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We also agree with draft response's analysis of the "material involvement" conduct standard in 11 CFR 109.21(d)(2). According to the request, Bush-Cheney '04 will review the advertisements for legal compliance, factual accuracy, quality, consistency with the President's position, and content that distacts from or distorts the endorsement message. This review goes directly to the content of these communications. In addition, President Bush will appear in video footage with Kerr in all four advertisements. The draft response correctly treats this participation in the production of the ads as material involvement.

Other Conduct Standards

The draft response does not discuss whether Bush-Cheney '04's review of the Kerr advertisements would satisfy any of the other conduct standards. We would like to comment on the application of two of these standards to the facts set forth in the request.

We believe Bush-Cheney '04's approval of these ads would also satisfy the "request or suggestion" conduct standard in 11 CFR 109.21(d)(1). Under section 109.21(d)(1), communications created at the suggestion of a sponsoring candidate may, nevertheless, be coordinated communications on behalf of another candidate if the other candidate, or his agents, "assents to the suggestion" made by the sponsoring candidate. President Bush participated in the production of these advertisements, and his campaign committee will review them before broadcast. Clearly, he and his campaign have consented to the creation and dissemination of these advertisements.

Similarly, Bush-Cheney '04's involvement would satisfy the "substantial discussion" conduct standard in 11 CFR 109.21(d)(3). Under that provision, if the two campaigns engage in substantial discussions about President Bush's campaign's plans, projects, activities or needs, and their discussions are material to the creation, production or distribution of the Kerr ads, this conduct standard is satisfied. Bush-Cheney '04 will examine the Kerr advertisements for quality, content and consistency with the President's positions. Presumably, the Kerr campaign will take the views of Bush-Cheney '04 into account in producing the advertisements. As such, the discussions between the two committees will be material to the creation, production and distribution of the advertisement, and this conduct standard will be satisfied.

The draft response's reliance on the "material involvement" conduct standard is appropriate. However, if the Commission should conclude, incorrectly, that Bush-Cheney '04's review of the Kerr advertisements does not meet this standard, it should recognize that this review also meets two other conduct standards in the regulations.

Other comments

We have brief comments on other aspects of the AOR and the draft response.

The requester suggests there should be a difference between limited review of an advertisement for legality, and more substantive review that results in coordination. While there may be a difference in some instances, the draft response correctly concludes that Bush-Cheney '04's involvement in these ads exceeds mere legal review.

The requester also asks whether the time at which Bush-Cheney '04's review take place has significance for purposes of the coordination rules. The draft response correctly disregards the time of review and focuses on the time when the advertisements will be disseminated.

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The draft response is also correct in disregarding AO 1982-56 as not relevant or controlling in this situation, since that AO predates the current coordination regulations by two decades.

We appreciate the opportunity to comment on Advisory Opinion Request 2004-1 and draft AO 2004-1.

Respectfully submitted,



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