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December 10, 2007

**By Electronic Mail**

Thomasenia Duncan, Esq.  
General Counsel  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463

**Re: Comments on Advisory Opinion Request 2007-33**

Dear Ms. Duncan:

These comments are filed on behalf of the Campaign Legal Center and Democracy 21 in regard to AOR 2007-33, an advisory opinion request submitted by the Club for Growth PAC ("Club PAC"), requesting the Commission's permission to dispense with the spoken "stand-by-your-ad" disclaimer requirements established by 2 U.S.C. § 441d(d) and 11 C.F.R. § 110.11(c) when it runs "ten- and 15-second independent expenditure television ads." AOR 2007-33 at 1.

Federal law requires – in no uncertain terms – that every political committee that "makes a disbursement for the purpose of financing any communication through any broadcasting station" to "state the name and permanent address street address, telephone number or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee." 2 U.S.C. § 441d(a); *see also* 11 C.F.R. § 110.11(b)(3). Federal law requires an additional spoken disclaimer for any such communication transmitted through radio or television. Such communication must include, "in a clearly spoken manner, the following audio statement: '\_\_\_\_ is responsible for the content of this advertising.' (with the blank to be filled in with the name of the political committee ... paying for the communication and the name of any connected organization of the payor)." 2 U.S.C. § 441d(d)(2); *see also* 11 C.F.R. § 110.11(c)(4).

These disclaimer requirements, as amended by the Bipartisan Campaign Reform Act of 2002 (BCRA) which added the so-called "stand-by-your-ad" requirements, were challenged and upheld by the Supreme Court in *McConnell v. FEC*, 540 U.S. 93 (2003). The Court explained that section 441d "requires that certain communications 'authorized' by a candidate or his political committee clearly identify the candidate or committee or, if not so authorized, identify

the payor and announce the lack of authorization.” *McConnell*, 540 U.S. at 230 (citing 2 U.S.C. § 441d). The Court further explained:

The *McConnell* and Chamber of Commerce plaintiffs challenge BCRA § 311 by simply noting that § 311, along with all of the “electioneering communications” provisions of BCRA, is unconstitutional. We disagree. We think BCRA § 311’s inclusion of electioneering communications in the FECA § 318 disclosure regime bears a sufficient relationship to the important governmental interest of “shed [ding] the light of publicity” on campaign financing. *Buckley*, 424 U.S., at 81, 96 S.Ct. 612. Assuming as we must that FECA § 318 is valid to begin with, and that FECA § 318 is valid as amended by BCRA § 311’s amendments other than the inclusion of electioneering communications, the challenged inclusion of electioneering communications is not itself unconstitutional. We affirm the District Court’s decision upholding § 311’s expansion of FECA § 318(a) to include disclosure of disbursements for electioneering communications.

*McConnell*, 540 U.S. at 231 (emphasis added). While the Court focused its attention on the fact that BCRA expanded the disclaimer requirement to apply to “electioneering communications,” the Court also made clear that the “stand-by-your-ad” disclaimer itself is beyond constitutional question.

It is true, as the requester points out, that the Commission has, by regulation, created certain exceptions to the general disclaimer requirement for “small items upon which the disclaimer cannot be conveniently printed,” such as pins and pens, 11 C.F.R. § 110.11(f)(1)(i), or for an advertisement “of such a nature that the inclusion of a disclaimer would be impracticable...,” such as an ad by skywriting or an ad on a water tower. *Id.* at (ii).

None of these exceptions, however, apply to broadcast ads. Congress in BCRA explicitly regulated broadcast ads, imposing specific “stand-by-your-ad” disclaimer requirements – including a specific audio requirement – on such broadcast ads, while other forms of communication (e.g., pins, pens, skywriting) were not explicitly subjected by Congress to these requirements. 2 U.S.C. § 441d(d). There is no basis in the statute for the Commission to start creating exceptions to the clear and specific set of requirements that Congress imposed on broadcast ads. Nor certainly is there any basis to do so by advisory opinion when no such exceptions have been duly promulgated by regulation implementing the statutory provisions.

The statute is abundantly clear. Not only did Congress establish general disclaimer requirements for all political committee communications, but Congress took special care to explicitly require an additional spoken disclaimer for political committee television and radio ads, like those Club PAC intends to run. The Supreme Court has upheld these statutory requirements as constitutional. The clarity of the statute leaves no doubt. Club PAC’s proposed ads must contain the written and spoken disclaimers required by section 441d. The Commission has no basis upon which to conclude otherwise.

We appreciate the opportunity to submit these comments.

Sincerely,

*/s/ Fred Wertheimer*

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*/s/ J. Gerald Hebert*

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Copy to: Commission Secretary