



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

**TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
CHIEF COMMUNICATIONS OFFICER
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE**

FROM: COMMISSION SECRETARY *Muri*

DATE: JULY 25, 2008

**SUBJECT: COMMENT ON DRAFT AO 2007-33
Club for Growth PAC**

Agenda Document No. 08-12

Transmitted herewith is a timely submitted comment from Carl Pope, Executive Director, Sierra Club, regarding the above-captioned matter.

Proposed Advisory Opinion 2007-33 is on the agenda for the open meeting of Monday, July 28, 2008.

Attachment



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VIA FACSIMILE: (202) 208-3333 and (202) 219-3923

Mary W. Dove
 Secretary of the Commission
 Federal Election Commission
 999 E Street NW
 Washington, DC 20463

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FEDERAL ELECTION
 COMMISSION
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Dear Ms. Dove:

These comments are filed on behalf of Sierra Club on Advisory Opinion Request 2007-33 requesting the Commission's approval for written disclaimers or shorter audio disclaimers for 10 second and 15 second television advertisements.

We strongly urge the Commission to approve this advisory opinion request and give citizen campaigns and nonprofit groups the ability to more widely distribute their messages about candidates and pending legislation in Congress.

The Sierra Club represents more than 1.3 million Americans and is America's oldest, largest and most influential grassroots environmental organization. It also operates Sierra Club PAC, a separate segregated fund that is registered as a political committee.

Our organization would like to air 10 second and 15 second television advertisements but the current audio disclaimers make these advertisements impractical. We are also concerned that there are substantial legal risks to running the ads either with only written disclaimers or shorter audio disclaimers. We urge the FEC to confirm there is an exception for audio disclaimers on short advertisements.

Short Ads Would Allow More Nonprofit Groups to Advertise on TV

TV advertising keeps getting more expensive and as a result more ads are now 10 seconds or 15 seconds long.

One way nonprofit groups can afford to run television ads is to use these short format ads. If a group uses 10 second or 15 second spots, it can reach its target audience for about half the cost of a traditional 30 second spot.

Despite the fact that these shorter ads are vastly more cost effective for lobbying or for express advocacy on behalf of candidates, our group has refrained from using these formats due to the legal risks of using them with only written disclaimers or with shorter audio disclaimers.

The Commission in the past has confirmed that disclaimers need not be used for formats where disclaimers are impractical or take too much of the space intended for the message itself. Since the required audio disclaimers take about 40% of a 10 second spot and about 27% of the 15 second spot, there is simply not enough time for an effective ad with the audio disclaimer currently required. Additionally, a spoken disclaimer reduces the effectiveness of the ad because of its bureaucratic wording.

All Ads Would Contain Disclaimers

The request for the advisory opinion states that all ads would contain written disclaimers for at least four seconds. The written disclaimer would contain:

- The name of the group paying for the ad.
- The address, phone number or website URL of the organization.
- A statement that the “[group name] is responsible for the content of this advertising.”
- A statement that the ad is “Not authorized by any candidate or candidate’s committee.”

Unlike other situations where the Commission has exempted short ads from disclaimers, the request only asks that the intrusive and time consuming audio disclaimer be omitted or shortened. Any governmental interest in providing the information to the public on who paid for and created the ad is served by the robust written disclaimer.

The Audio Disclaimers Impede Lobbying Ads

The Sierra Club aggressively lobbies the Congress on legislation that affects the environment and would like to use these short advertisements as a tool.

Here is an example of what an announcer might read in a 10-second advertisement.

Energy and gas prices are off the charts. Let’s fix the problem by investing in clean energy.

Tell Senator Smith to support the Renewable Energy Act today.

Unfortunately, it is effectively impossible for the Sierra Club to air such an ad this summer or fall, when the electioneering communications rules would require an audio disclaimer identical to that required for express advocacy.

Clearly there is no room in the above ad to include the disclaimer "Sierra Club is responsible for the content of this advertising," as currently required in electioneering communications rules. The remaining ad would not make any sense or convey any useful information with a spoken disclaimer.

Since electioneering communications rules are in effect for virtually the entire election year due to the extended primary calendar in the 50 states combined with the 60-day rule marking electioneering communications for a general election, it is impractical to use these short spots for lobbying Congress in an election year.

The Growing Importance of the Internet Makes Short Ads Essential

With the growing use of high-speed Internet connections, more ad-supported video content is available on the Internet. Video preroll ads, which run just before a video clip, are usually short, often 10 seconds or 15 seconds long so as not to unduly annoy viewers who don't wish to wait long for the clip.

Production costs for advertisements are also high, making it uneconomic for most groups to produce a long spot with a disclaimer for a broadcast audience and a second short spot without a disclaimer for an Internet audience.

If the Commission clarifies that short spots may omit the spoken disclaimer, then our groups could use Internet video ads without incurring substantial extra production costs. This would enable more nonprofit groups to combine Internet video ads with broadcast video ads, making both mediums more effective.

The Draft Opinion Threatens Text Messaging

The draft opinion implies that the Commission has not exempted text messaging from disclaimer requirements despite its advisory opinion on the subject in 2002 (Advisory Opinion 2002-09).

Text messages are limited to just 160 characters, and it is very difficult to write a message in such limited space. If the Commission believes such short messages require disclaimers, then at best it will greatly impede the effectiveness of text messages as a medium for political committees and candidates. It will also put political committees and candidates with long names at a substantial disadvantage.

A Shorter Audio Disclaimer is an Alternative

The advisory opinion request provides examples of shorter audio disclaimers that take less time from the ad and distract less from the message. It offers these alternatives: Paid for by [group name]; or [group name] created this ad.

If the Commission concludes that audio disclaimers must be retained, then we urge that it approve these or other similarly short audio disclaimers.

In conclusion, since the proposed short advertisements contain clear written disclaimers for between 27% and 40% of the ads and the Commission has exempted other short format advertisements from any disclaimers, we urge the Commission to approve the advisory opinion request so that citizen groups may more effectively promote their messages to the public.

Sincerely,



Carl Pope
Executive Director, Sierra Club

Copy to:

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Federal Election Commission
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