



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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2005 DEC -2 P 3: 43

**Concurring Opinion of**

**Chairman Scott E. Thomas  
Vice Chairman Michael Toner  
Commissioner David M. Mason  
Commissioner Danny Lee McDonald  
Commissioner Ellen Weintraub**

**Re Advisory Opinion 2005-18**

The opinion approved herein involved a radio program paid for by the campaign committee of Congressman Reyes that will include participation of other Members of Congress who are federal candidates. While the opinion's conclusion regarding a potential in-kind contribution by Congressman Reyes' committee to the other candidates is adequately addressed by noting that the program will not reach the congressional districts of the other candidates,<sup>1</sup> there is a separate legal basis that could similarly resolve the in-kind contribution issue. This legal basis turns on whether the communication at issue runs within 120 days of a federal candidate's election. Because we are aware of some confusion in the regulated community on the latter issue, we wish to further clarify application of the Commission's coordinated communication regulations— by specifying that the 'refers to a candidate within 120 days of an election' content prong of the regulations is triggered only by a communication run within 120 days of the election of *the referenced candidate*.

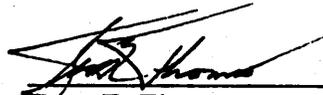
The provision in question is one of the regulations adopted by the Commission following passage of the Bipartisan Campaign Reform Act of 2002. In an effort to clarify which communications the Commission wished to treat as in-kind contributions by virtue of coordination with a candidate, the agency adopted the content prongs at 11 CFR 109.21(c). Of relevance here, the Commission included:

A communication that is a public communication, as defined in 11 CFR 100.26, and about which each of the following statements in paragraphs (c)(4)(i), (ii), and (iii) of this section are true.

<sup>1</sup> The opinion focuses on the 'content prongs' of the Commission's coordinated communication regulations at 11 CFR 109.21(c), particularly the language at (c)(4)(iii) that reaches communications "directed to voters in the jurisdiction of the clearly identified candidate."

communication regulation would not have applied as a matter of law—regardless of whether the ads reached the congressional district of those other candidates. Though this separate legal analysis was not needed to reach a conclusion in this particular advisory opinion, it may prove determinative in other circumstances, and we hope to reduce any unnecessary doubt on the underlying question.<sup>3</sup>

12/2/05  
Date

  
Scott E. Thomas  
Chairman

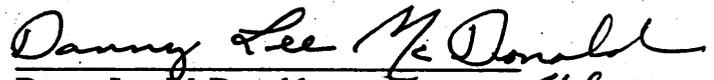
12/2/05  
Date

  
Michael Toncr  
Vice Chairman

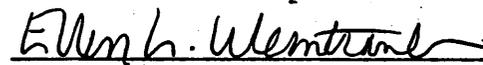
12/02/05  
Date

  
David M. Mason *kte*  
Commissioner

12-02-05  
Date

  
Danny Lee McDonald *by [Signature]*  
Commissioner

12/2/05  
Date

  
Ellen Weintraub  
Commissioner

<sup>3</sup> The Commission will have an opportunity to further address this very issue soon in a Notice of Proposed Rulemaking on Coordinated Communications (11 C.F.R. 109.21)