



FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

Statement of Commissioner Hans A. von Spakovsky

Definition of “Solicit” and “Direct”

February 23, 2006

This rulemaking focuses on a delicate aspect of the campaign finance laws: regulating the speech of political actors. We are on sensitive First Amendment ground, and it is critical that the Commission approve a rule that properly balances free speech rights, effectuates Congressional intent, and responds to the court’s decision in Shays v. FEC. We must be careful, however, not to overstep and risk infringing our most important constitutional right – the ability to engage in political expression.

The Court of Appeals construed the Commission’s 2002 definitions of “solicit” and “direct” to encompass only “explicit direct requests.” I do not believe that the regulation was nearly as narrow as the Court suggested, and neither did those who commented

The proposed rule that Chairman Toner, Commissioner Mason, and I put forward (Agenda Document No. 06-08-A) is intended to answer the Court’s criticism, and our proposal does exactly what the Court asked. The Court objected that the 2002 regulation covered only “explicit direct requests” for funds while excluding implicit and indirect requests. Our proposal specifically states that a solicitation may be made implicitly.

The regulated community and the general public are entitled to a clear, easily understood rule. This is why it is essential to limit solicitations to “unambiguous appeals.” Without this clarification, the rule becomes open to endless debate. Agency regulations are supposed to remove the gray area from statutes, not widen it. A “solicitation” definition that includes mere suggestions, contextual reasonability standards, and an open-ended possibility of solicitation by conduct, does not clarify the statute or provide clear guidance to the regulated community. A regulation that the public cannot understand – through no fault of its own - can only have a chilling effect. In this context, it is political speech that would be chilled. This unfortunate effect can be avoided, however, by limiting solicitations to unambiguous appeals for funds.

The Commission cannot put candidates in the position of not knowing exactly what they may say to their grassroots supporters. Candidates should not have to risk an

investigation every time they speak to voters. And candidates should not have to limit their political speech because they cannot locate a bright line rule between what they can and cannot say. Such a confusing and overbroad regulation would have a damaging and dangerous effect on basic constitutional rights and participation in the political process. Candidates deserve a regulation that allows them to evaluate their words against the rule and know quickly and easily whether they are within the bounds of the law. This inquiry should not depend on the subjective interpretations of others.

Our proposal is properly tailored to respond to, and effectuate, Congressional intent. Of course, Congress did not define the terms “solicit” and “direct,” but we know that Congress was concerned with restricting the ability of candidates, officeholders, and national party officials to raise and spend nonfederal funds. Congress did not intend to clamp down on political speech – including general expressions of political support. As Congress intended, our definition would cover actual appeals for funds, while excluding protected political speech. Our proposal strikes the right balance and should be adopted by the Commission.