



FEDERAL ELECTION COMMISSION
Washington, DC 20463

**Statement of Commissioner Hans A. von Spakovsky on Proposed Interim Final Rule
Exempting Certain Grassroots Lobbying Communications From BCRA's Electioneering
Communications Provisions**

August 3, 2006

On August 3, 2006, I submitted a proposed [Interim Final Rule](#) to the Commission that would provide an exemption to the electioneering communication prohibition contained in the Bipartisan Campaign Reform Act ("BCRA") for certain grassroots lobbying communications on issues of public policy. This proposal will be considered at the FEC's open meeting on August 29, 2006.

The right of citizens to 'petition the Government' is a fundamental First Amendment right explicitly recognized by the Founding Fathers. It is vital to our democratic process that we continue to protect that right through an exemption for grassroots lobbying on matters of public importance being considered by Congress and the President.

This proposal would permit organizations otherwise subject to the electioneering communication prohibitions to air a television or radio communication during the 30-day period before a Federal primary election and 60-day period before a Federal general election, so long as that communication:

- is directed to an incumbent officeholder in his capacity as an officeholder, and not in his capacity as a candidate;
- has as its subject matter a public policy issue under consideration by Congress or the Executive Branch;
- urges the incumbent officeholder to take a particular position or action with respect to the public policy, or urges the general public to contact the incumbent officeholder for the purpose of encouraging him to take a certain position or action;
- does not reference the individual's character, qualifications, or fitness for office;
- does not reference any Federal election or a political party; and
- does not promote, support, attack, or oppose any candidate for Federal office.

A petition requesting a rulemaking was filed on February 16, 2006, by the AFL-CIO, the Alliance for Justice, the U.S. Chamber of Commerce, the National Education Association, and OMB Watch. Over 200 charitable, educational, and religious nonprofit associations representing the entire spectrum of American politics, including the ACLU and the National Council of Nonprofit Associations, filed comments with the FEC supporting the request. All of these organizations emphasized that the FEC's current regulation on electioneering communications stifles their ability to communicate with Congress and the Executive Branch on vitally important public policy issues, issues that can impact basic rights, lives and livelihoods."

BCRA itself contains several exemptions to the electioneering communications provision and provides the FEC with the express authority to issue regulations exempting other communications. The chief sponsors of BCRA's electioneering communications provision, Senators Olympia Snowe and James Jeffords, both stated in the 2002 floor debates that this restriction was not intended to limit grassroots lobbying communications. Senator Jeffords said that the electioneering communications provisions would "not affect the ability of any organization to urge grassroots contacts with lawmakers on upcoming votes. . . . The Snowe-Jeffords provisions do not stop the ability of any organization to urge their members and the public through grassroots communications to contact their lawmakers on upcoming issues or votes. . . . Any organization can, and should be able to, use their grassroots communications to urge citizens to contact their lawmakers. Under the Snowe-Jeffords provisions any organization still can undertake this most important task."

BCRA's primary sponsors - Senators McCain and Feingold, and Congressmen Shays and Meehan - proposed a lobbying exemption for what they called "true issue ads with a legislative objective" in comments submitted to the Commission in 2002. This proposed rule accomplishes exactly that by providing an exemption for true issue ads.

It is my hope that this proposal will contribute to the thoughtful debate that has already taken place on this issue, and will lead to the Commission approving an exemption for grassroots lobbying communications that protects the fundamental right of the people to petition their government and properly implements BCRA as intended by its drafters and supporters.