



Supplemental Comments on Proposed Rulemaking for Grassroots Lobbying

April 17, 2006

Mr. Brad C. Deutsch, Assistant General Counsel
Federal Election Commission
999 E Street NW
Washington, D.C. 20463

Re: Rulemaking Petition: Exception for Certain "Grassroots Lobbying" Communications From the Definition of "Electioneering Communications"
Notice 2006-04, Vol. 71 Fed. Reg. No. 51 p. 13557

Dear Mr. Deutsch,

As one of the petitioners we strongly urge the FEC to initiate a rulemaking to consider an exemption for genuine grassroots lobbying broadcasts from the "electioneering communications" restrictions under BCRA. In support of this position we have joined a letter signed by **18** nonprofit organizations. In addition we would like to call the Commission's attention to the following points:

Congress Did Not Intend for BCRA to Limit Civic Participation.

In March 2004, while the FEC was considering a rule on political committee status that could have potentially impacted 501(c) organizations, 122 members of Congress signed a letter to the Commission that, among other things, stated,

"There has been absolutely no case made to Congress, or record established by the Commission, to support any notion that tax-exempt organizations and other independent groups threaten the legitimacy of our government when criticizing its policies. We believe instead that more, not less, political activity by ordinary citizens and the associations they form is needed in our country."



The same holds true in 2006. There is no evidence of abuse, but current FEC regulations ban all broadcasts referring to federal candidates during the election season, regardless of whether those broadcasts have anything to do with the election or not. When the ban prohibits nonprofits from petitioning the government through grassroots lobbying calls to action, it is time for the FEC to give serious consideration to an exemption for such non-electoral activity.

There is No Evidence of Abuse to Justify FEC Regulation of Genuine Grassroots Lobbying Broadcasts

Experience under the new BCRA regulations in the 2004 election demonstrates that soft money does not flow into genuine grassroots lobbying broadcasts. During this time FEC rules exempted 501(c)(3) organizations from the restrictions. If broadcasts by these organizations had contained partisan content, it is likely a complaint would have been filed at the Internal Revenue Service (IRS) for violation of the prohibition on intervention in elections. However, a report on the IRS 2004 enforcement program did not list broadcast ads as a problem area.

On Feb. 24, 2006 the IRS released its assessment of the 2004 Political Intervention Compliance Initiative (PACI), which enforced the ban on partisan election activity by charities and religious organizations. (Related documents are available on the IRS website at <http://www.irs.gov/charities/article/0,,id=154622,00.html>.) The program was part of the IRS's continuing increased activity in the enforcement area. The report reviewed complaints filed against 132 501(c)(3) organizations, 22 of which were found to not merit further investigation. The IRS has completed 82 of the remaining 110 examinations, finding partisan activity occurred in 58 of reviewed cases. Of these only three warranted revocation of tax-exempt status. In the remaining 55 cases the IRS issued written advisories and, for one organization, an excise tax. Twenty-eight cases remain open.

The FEC should note that the common fact situations the report said led to findings that groups had crossed the line into partisan activity did not include broadcast advertising. The problem areas were:

- Distribution of printed materials that encourage members to vote for a candidate (24 alleged, 9 determined)
- Endorsements from the pulpit (19 alleged, 12 determined)
- Support for a candidate on the organization's website (15 alleged, 7 determined)
- Distribution of partisan voter guides or candidate ratings (14 alleged, 4 determined)
- Campaign signs displayed (12 alleged, 9 determined)
- Preferential treatment given some candidates to speak at events (11 alleged, 9 determined) and
- Cash contributions to a political campaign (7 alleged, 5 determined)

IRS enforcement activity in 2006 has been expanded and the IRS has said enforcement in this area is a priority. This development further reduces the possibility that an exemption for grassroots lobbying ads will lead to partisan electoral broadcasts meant to be regulated by the "electioneering communications" rule.

Example of Potential Impact

On April 14, 2006 BNA reported that the American Family Business Institute (AFBI) is launching a series of broadcast ads meant to promote their position advocating repeal of the estate tax. While we disagree strongly with AFBI on the issue of the estate tax, we support their right to run grassroots lobbying broadcasts and to urge the public to contact specific members of Congress whose vote on pending legislation they deem important. AFBI said it will run the ads initially in Arkansas, Maine and Montana and expand to more states in the next few weeks. However, AFBI's ability to mention target members of Congress will be limited, since Arkansas has a primary election in May and Maine and Montana have primaries in June. A dozen other states have primaries in June as well, limiting their ability to expand the campaign. Congress is expected to take up the estate tax debate soon, so AFBI cannot plan its ads around the election calendar. This example demonstrates the real life impact of the current "electioneering communications" rule, and highlights the need for the requested rulemaking.

Conclusion

A decision to conduct a rulemaking gives the public and nonprofit sector an opportunity to be heard and the FEC the ability to consider issue on the merits, receiving suggestions and input from all interested parties. Given the gravity of the constitutional rights at stake, the Commission should allocate the resources necessary to conduct a rulemaking and give the issue serious attention.

Yours truly,

s/

Kay Guinane, Director
Nonprofit Speech Rights
OMB Watch