June 8, 2015

BY EMAIL (public_comment@ethics.state.tx.us)

Texas Ethics Commission
Attn.: Ms. Natalia Luna Ashley
P.O. Box 12070
Austin, TX 78711-2070

Re: Comments regarding proposed revisions to Tex. Admin. Code § 20.1(21) ("In connection with a campaign")

Dear Commissioners:

The Center for Competitive Politics ("CCP")[1] submits these comments in response to the Texas Ethics Commission's (the "Commission") April 16, 2015 proposal to revise its rule at Tex. Admin. Code § 20.1(21), which defines the term "in connection with a campaign." The Commission's latest proposed rulemaking is integrally related to the controversial rule[2] it adopted last October defining the term "principal purpose" for determining when an entity is regulated as a "political committee." The proposed rule also would affect when speech concerning issues of public concern is regulated as a "direct campaign expenditure." In both instances, speakers would be subject to burdensome requirements to report such speech to government authorities.

As discussed in CCP's prior written comments[3] and testimony during the Commission's October 29, 2014 meeting, CCP opposed the Commission's regulatory definition of "principal purpose." CCP nonetheless commends the Commission's latest proposal to amend the definition of the term "in connection with a campaign," which would mitigate to some extent the damage done to free speech rights by the earlier rulemaking. Still, the Commission's current proposal is not consistent with its own precedent and Texas and U.S. Supreme Court rulings in one key respect. CCP respectfully offers a suggestion below and in the attached regulatory text for how the

[1] The Center for Competitive Politics is a nonpartisan, nonprofit 501(c)(3) organization that promotes and protects the First Amendment political rights of speech, assembly, and petition. It was founded in 2005 by Bradley A. Smith, a former Chairman of the Federal Election Commission. In addition to scholarly and educational work, the Center is actively involved in targeted litigation against unconstitutional laws at both the state and federal levels. For instance, it presently represents nonprofit, incorporated educational associations in challenges to state campaign finance laws in Colorado and Delaware and recently won a case in the Nevada Supreme Court. It is also involved in litigation against the state of California.

[2] *See*, *e.g.*, Joe Nixon, Tex. Tribune, "'Dark money' rule a loss for free speech in Texas," Oct. 30, 2014, *at* http://www.tribtalk.org/2014/10/30/dark-money-rule-a-loss-for-free-speech-in-texas/.

[3] CCP incorporates by reference its prior comments. *See* "Constitutional Issues with Rule Proposed August 21, 2014," Oct. 8, 2014, *at* http://www.campaignfreedom.org/wp-content/uploads/2014/10/DOC109.pdf.

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Commission may conform the rule with the relevant jurisprudence, and provides some additional suggestions for how the rule may be enhanced to protect core First Amendment activities.

I. OVERVIEW OF THE LAW

In order to fully grasp how the Commission's current proposed rulemaking and CCP's suggested amendments affect the regulatory framework, it is useful to first review that regulatory framework.

A) General Definitions and Registration and Reporting Requirements

In Texas, "a group of persons that has as a *principal purpose* accepting political contributions or making political expenditures" is required to register as a political committee, adhere to strict recordkeeping requirements, and continuously file burdensome reports with the Commission itemizing detailed information about the group's contributions, donors, expenditures, and payees.[4]

A "political expenditure" is defined as "a campaign expenditure or an officeholder expenditure."[5] A "campaign expenditure," in turn, is defined as "an expenditure made by any person *in connection with a campaign* for an elective office or on a measure."[6] (An "officeholder expenditure" is an expenditure made by an officeholder for performing official duties, and is not relevant to the issues discussed here.[7])

A "direct campaign expenditure" is defined as a "campaign expenditure" that is:

> (A) [] made without the prior consent or approval of the candidate or officeholder on whose behalf the expenditure was made; or
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> (B) [] made in connection with a measure, but is not a political contribution to a political committee supporting or opposing the measure.[8]

A sponsor of a "direct campaign expenditure" also must register and report as a "general purpose political committee."[9]

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4 *See* Tex. Elec. Code §§ 251.001(12) (emphasis added) and 254.001 *et seq*.

5 *Id*. § 251.001(10).

6 *Id*. § 251.001(7) (emphasis added).

7 *See id*. § 251.001(9).

8 *Id*. § 251.001(8); Tex. Admin. Code § 20.1(5).

Thus, the constitutionality of the entire regulatory scheme for the political committee and direct campaign expenditure registration and reporting requirements hinges on several interrelated key phrases, including "principal purpose" and "in connection with a campaign." The Commission (unconstitutionally, we believe) expanded the scope of the regulatory scheme through its rulemaking defining "principal purpose" last year. However, it can mitigate some of that damage by proposing a bright-line, objective, easily comprehensible and administrable definition of "in connection with a campaign." The definition should capture no more speech than is necessary to advance the state's interest in public disclosure and preventing political corruption or the appearance thereof.

B) State and Federal Precedents Pertaining to "In Connection With a Campaign" and Campaign "Expenditures"

In the seminal case *Osterberg v. Peca*, the Texas Supreme Court held that the Texas statute's use of the phrase "in connection with a campaign" was "vague" and "vulnerable to the same constitutional attacks that [the U.S. Supreme Court's] narrowing construction [in *Buckley v. Valeo*, 424 U.S. 1 (1976)] avoided."[10] The court explained that the phrase "necessarily has different meanings that depend on whether the spender is a candidate, a political committee, or an individual. More problematically, it could be read to include general issue advocacy or the general discussion of candidates."[11] The state's interest in regulating this type of speech, the court held, "may be too remote" to subject it to the campaign finance laws. Since the Commission had already adopted *Buckley*'s express advocacy standard in Opinion No. 198 (1994), the court gave "great weight" to the Commission's opinion and concluded that "a 'direct campaign expenditure' by an individual in a candidate election includes only those expenditures that 'expressly advocate' the election or defeat of an identified candidate."[12]

In *Buckley,* the U.S. Supreme Court held that the express advocacy standard requires explicit words and phrases such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," or "reject."[13] As the Commission has noted, the "trend in the

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[9] Tex. Elec. Code § 254.261(a). It is not entirely clear from the face of the statute and the Commission's regulations whether a "direct campaign expenditure" sponsor must file ongoing reports even during reporting periods when it does not make any expenditures, and this ambiguity has confounded one Texas Supreme Court Justice (who later also served as White House counsel and U.S. Attorney General). *See Osterberg v. Peca*, 12 S.W. 3d 31, 65 (Tex. 2000) (Gonzales, J. concurring) ("An individual cannot expect to file just one report and be done with it."). Nonetheless, the Commission appears to have subsequently taken the position that direct campaign expenditure reports are required only during reporting periods when expenditures are made. *See*, *e.g.*, Tex. Ethics Comm'n, *In re* John R. Barton, SC-2910271 (May 10, 2010) and *In re* Cathey C. McKinney, SC-31006188 (Jan. 4, 2011). We note that, to the extent direct campaign expenditures trigger the same continuous reporting requirements applicable to political committees for speakers who would not otherwise qualify as political committees, the requirement likely would be invalidated as being unconstitutionally burdensome. *See*, *e.g.*, *Wis. Right to Life, Inc. v. Barland*, 751 F.3d 804 (7th Cir. 2014) (holding that Wisconsin's regulation imposing political committee-like registration, reporting, and other requirements on all organizations that made independent disbursements was unconstitutional as applied to organizations not engaged in express advocacy as their major purpose).

[10] 12 S.W.3d 31, 51 (2000).

[11] *Id.*

[12] *Id.*

[13] 424 U.S. at 44 & n.52.

decisions in other jurisdictions seems to be toward the courts' insistence that a communication contain one of the phrases indicated in *Buckley* before the court will find express advocacy."[14] The Commission qualified this statement at the time by noting that the U.S. Court of Appeals for the Fifth Circuit, in which Texas lies, had not addressed the exact meaning of "express advocacy." Subsequently, the Fifth Circuit held that: (1) the phrase "expressly advocating" found in a Mississippi statute must be limited to communications that contain "explicit words advocating the election or defeat of a clearly identified candidate";[15] and (2) Louisiana's statutory definition of an "expenditure" as any payment "for the purpose of supporting, opposing, or otherwise influencing the nomination or election of a person to public office" "reaches only communications that expressly advocate the election or defeat of a clearly identified candidate" as articulated by the U.S. Supreme Court in *Buckley*.[16]

Prior to its ruling in *Citizens United*, which abolished the erstwhile federal prohibition against corporate funding of so-called "electioneering communications" and independent expenditures, the U.S. Supreme Court had also held that corporations could be prohibited from sponsoring electioneering communications[17] only to the extent that they were the "functional equivalent of express advocacy."[18] The Court explained that "an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."[19]

In determining whether speech is the "functional equivalent of express advocacy," the Court looked at the following factors: (1) whether the speech "is consistent with that of a genuine issue ad," and specifically whether it "focus[es] on a legislative issue, take[s] a position on the issue, exhort[s] the public to adopt that position, and urge[s] the public to contact public officials with respect to the matter"; and (2) whether the speech lacks "indicia of express advocacy," and specifically whether it "do[es] not mention an election, candidacy, political party, or challenger" and "do[es] not take a position on a candidate's character, qualifications, or fitness for office."[20] The Court did not explain how these criteria were to be weighed relative to each other, or whether both criteria had to be met in

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[14] Tex. Ethics Comm'n Op. No. 198.

[15] *Chamber of Commerce of the United States v. Moore*, 288 F.3d 187, 196 (5th Cir. 2002).

[16] *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 663 and 665 (5th Cir. 2006).

[17] An "electioneering communication" is "any broadcast, cable, or satellite communication which--(I) refers to a clearly identified candidate for Federal office; (II) is made within--(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or (bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and (III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate." 52 U.S.C. § 30104(f)(3)(A)(i).

[18] *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449 (2007).

[19] *Id.* at 469-470.

[20] *Id.* at 470.

order for a communication to be exempt from treatment as the functional equivalent of express advocacy.[21]

II. ANALYSIS OF THE COMMISSION'S PROPOSED RULEMAKING

The first part of the Commission's proposed definition of "in connection with a campaign" is consistent with its conclusion in Op. No. 198 and key Texas and U.S. Supreme Court precedents. The text of proposed Tex. Admin. Code § 20.1(21)(A)(i) and (B)(i) follows *Buckley*'s "magic words" standard and gives speakers bright-line, easily understandable guidance as to whether their speech will be regulated or not.[22] CCP strongly supports this part of the proposed rule.

The second part of the Commission's proposed definition, to be codified at Tex. Admin. Code § 20.1(21)(A)(ii) and (B)(ii), does not fare so well against the high standards set by the Commission's own precedent and rulings by the Supreme Court of Texas, U.S. Supreme Court, and the U.S. Court of Appeals for the Fifth Circuit. This part of the proposed regulation appears to be a hybrid of the federal electioneering communications definition[23] and the Federal Election Commission's controversial definition of "express advocacy" at 11 C.F.R. § 100.22(b), which purports to be based on a ruling by the U.S. Court of Appeals for the Ninth Circuit in *Furgatch v. FEC*.[24] It invites regulators to look not only at the language used in a communication, but also to "external events, such as the proximity of an election," and asks whether the communication as a whole is "susceptible of no other reasonable interpretation than to urge the election or defeat of the candidate." This approach has been sharply and repeatedly rejected by various courts:

- Per the U.S. Court of Appeals for the Fifth Circuit, the *Furgatch* standard, permitting speech to be regulated as express advocacy "when read as a whole, and with limited reference to external events, [is] susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate," was "too vague and reaches too broad an array of speech to be consistent with the First Amendment as interpreted in *Buckley* and *MCFL*.[25]

- Per the Washington State Supreme Court, the *Furgatch* standard's consideration of "context" in "determining whether a communication is express advocacy . . . invites too much in the way of regulatory and judicial assessment of the meaning of political speech" and was contrary to the U.S. Supreme Court's holding in *Buckley*.[26]

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[21] *See id.*

[22] Although the language in proposed Tex. Admin. Code § 20.1(21)(A)(i)(II) technically is not part of the *Buckley* "magic words" standard, it is nonetheless consistent with the U.S. Supreme Court's holding in *FEC v. Mass. Citizens for Life*, 479 U.S. 238 (1986), which followed *Buckley*.

[23] *See* note 17, *supra*.

[24] *See* Explanation and Justification for Final Rules on Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35291 (Jul. 6, 1995).

[25] *Chamber of Commerce of the United States v. Moore*, 288 F.3d 187, 193-194 (5th Cir. 2002).

[26] *Wash. State Republican Party v. Wash. State Pub. Disclosure Comm'n*, 141 Wash. 2d 245, 267-268 (Wash. 2000).

- Per the U.S. District Court for the District of Maine, under 11 C.F.R. § 100.22(b), "what is issue advocacy a year before the election may become express advocacy on the eve of the election and the speaker must continually re-evaluate his or her words as the election approaches. That is sufficient evidence of First Amendment 'chill' to entitle the plaintiffs to relief."[27]

Moreover, the proposed "no other reasonable interpretation" ("NORI") standard, while superficially similar to the U.S. Supreme Court's "functional equivalent of express advocacy" standard in *Wisconsin Right to Life* ("*WRTL*"), is not the same as, and does not follow, the *WRTL* standard. As a preliminary matter, it is important to note that the *WRTL* decision addressed a very narrow and particular category of speech– *i.e.*, electioneering communications, and held that such speech could be regulated as a campaign "expenditure" if it was the "functional equivalent of express advocacy." The decision did not address whether other more general types of speech outside the realm of "electioneering communications" could be regulated as express advocacy if it is deemed to be "functionally equivalent" to express advocacy.

The Commission's proposed rule limits the application of the NORI standard to a particular category of speech that, as noted above, is similar to the electioneering communications at issue in *WRTL*. Specifically, before the NORI standard may even be considered, the speech must first meet several thresholds; it must: (1) "refer[] to a clearly identified candidate"; (2) be distributed within certain time windows; and (3) be distributed to a particular audience. So far so good.

Where the Commission's proposal deviates from the U.S. Supreme Court's *WRTL* holding is in the rule's consideration of "external events." This additional verbiage, although few in words, makes all the difference in the world, casting a deep chill on speech protected by the First Amendment. As such, it throws the proposed regulation (and, by extension, the entire regulatory scheme) into constitutional jeopardy and disarray. Specifically, while the proposal suggests "proximity of an election" as one "external event" that regulators may consider, it fails to spell out what other external factors may be deemed relevant.

What if a disaster preparedness advocacy group sponsors an ad calling on all candidates by name to support more funding for the group's core issue, and a natural disaster suddenly strikes and unexpectedly becomes a major campaign issue? Could that affect whether the ad is viewed as favoring certain candidates over others? Continuing with this scenario, what if one candidate takes exception and publicly starts denouncing the ad as being unfavorable to his candidacy? Should this external context matter to how regulators treat the ad? Not to be too facetious, but should what a regulator had for breakfast matter? That is, after all, an "external event."

The point is, the proposed "external event" language in the Commission's proposed formulation of the NORI standard unconstitutionally chills speech. It is "too vague and reaches too broad an array of speech to be consistent with the First Amendment" (U.S. Court of Appeals for the Fifth Circuit), "invites too much in the way of regulatory and judicial assessment of the meaning of

[27] *Maine Right to Life Comm. v. FEC*, 914 F. Supp. 8, 13 (D. Me. 1996); *aff'd per curiam*, 98 F.3d 1 (1st Cir. 1996), *cert. denied*, 522 U.S. 810 (1997).

political speech" (Washington State Supreme Court), and forces "the speaker [to] continually re-evaluate his or her words as the election approaches" (U.S. District Court for the District of Maine).

More importantly, the U.S. Supreme Court did not look to any external factors in *WRTL* in determining whether speech was the "functional equivalent" of express advocacy. Rather, it looked only at the speech itself, and whether its content was "consistent with that of a genuine issue ad" and whether it contained any "indicia of express advocacy." Thus, to the extent the Commission may have been looking to broaden the definition of a campaign "expenditure" beyond the *Buckley* "magic words" standard, and to the extent the Supreme Court's *WRTL* decision might be seen as broadening the *Buckley* standard, the proposed rule here is still not consistent with the Supreme Court's holdings.

III. CCP'S SUGGESTED AMENDMENTS TO THE COMMISSION'S PROPOSED RULES

For the reasons discussed above, CCP urges the Commission to strike the "external events" language in proposed Tex. Admin. Code § 20.1(21)(A)(ii)(IV) and (B)(ii)(IV), and replace it with language specifying that a regulator may look at "the context of only the communication itself" in determining whether speech is "in connection with a campaign" and therefore is regulated as a campaign "expenditure." Such an approach would make the proposal more consistent with the Supreme Court's ruling and formulation of the "functional equivalent of express advocacy" standard in *WRTL*.

The attached "redline" indicates the specific changes CCP proposes to the Commission's proposal. The attached redline also suggests the following additional revisions:

A) Contributions; "For the Purpose of"

Proposed Tex. Admin. Code § 20.1(21)(A)(iv) treats as a campaign "expenditure" any contribution that is given to a political committee "for the purpose of supporting or opposing a candidate." This formulation is unconstitutionally vague for two interrelated reasons. First, it is unclear whether a transaction becomes an "expenditure" only if it is given to an entity that already qualifies as a political committee, or whether the nature of the transaction itself could determine whether it is "for the purpose of supporting or opposing a candidate," thereby converting the recipient entity into a political committee and the transaction into an "expenditure." Neither the existing statutory nor regulatory definitions of "contribution" and "campaign contribution" resolve this ambiguity.[28]

Second, the U.S. Supreme Court in *Buckley* held that similar language in the federal statute – defining contributions and expenditures as being made "for the purpose of... influencing" the nomination or election of candidates for federal office – was unconstitutionally vague and ambiguous.[29] For both the purposes of the contribution limits and reporting requirements, the Court held that the term "contribution" applies only to "contributions made directly or indirectly to a candidate, political party, or campaign committee, and contributions made to other organizations or

[28] *See* Tex. Election Code § 251.001(2) and (3); Tex. Admin. Code § 20.1(3).

[29] 424 U.S. at 77.

individuals but earmarked for political purposes, but also all expenditures placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate."[30]

Accordingly, CCP urges the Commission to clarify that a contribution is only an "expenditure" when it is given to an entity which, at the time of the contribution, already qualifies as a political committee.

B) Internet Communications

The proposal treats any communications posted on the Internet or distributed by e-mail as campaign expenditures if they meet the NORI content standard discussed above, unless they are otherwise exempt as discussed below. Given the usually negligible cost of posting and distributing content on the Internet and by e-mail, and the pervasiveness of everyday citizens using the Internet to exchange political ideas, it makes no sense to treat speech over the Internet in general as "expenditures" subject to regulation. The Federal Election Commission generally has exempted unpaid Internet communications from the federal definitions of "contributions" and "expenditures,"[31] and CCP urges the Commission to do the same.

C) Exemptions From the Definition of "Expenditure"

The proposed rule exempts from the definition of an "expenditure" only news stories, commentary, and editorials published in broadcast, cable, Internet, and print media. While CCP supports these exemptions, we believe the following additional exemptions would lessen the burdens of participatory democracy and increase the opportunities for citizens to engage in grassroots political activity free from regulatory red tape:

Candidate Appearances. Candidates and representatives of ballot measure committees routinely visit voters at their homes and workplaces, as well as at venues provided by civic and social organizations and educational facilities. These interactions benefit both the candidates and the voters by facilitating an exchange of information, ideas, and concerns, and they are a bedrock of our democratic system. Despite how commonplace such visits are, they often occur in a regulatory grey area, since the provision of such venues technically could be considered something of value and an in-kind contribution to the candidate or ballot measure committee. Permitting a candidate or representative of a ballot measure to visit and speak with voters should not be regulated as a campaign contribution or expenditure. Federal law and regulations contain various exemptions for such candidate appearances.[32]

Candidate Debates and Forums. Similar to the candidate appearances discussed above, debates and forums featuring candidates and representatives of ballot committees are a common and crucial institution of democracy. Sponsors of candidate debates and forums should not be subject to

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[30] *Id.* at 23 n.24 and 78.

[31] *See* 11 C.F.R. §§ 100.94 and 100.155.

[32] *See* 52 U.S.C. § 30101(8)(B)(ii); 11 C.F.R. §§ 100.75 and .76, 110.12, and 114.3(c)(2).

regulation for making campaign contributions or expenditures. Federal regulations exempt debate costs from being regulated as contributions and expenditures.[33]

Voter Guides. Similar to the candidate appearances, debates, and forums discussed above, voter guides provide voters with important information about candidates and ballot measures that they need to make informed decisions in the voting booth. So long as they are not promoting certain candidates or ballot measures over others, sponsors of voter guides should not be subject to regulation for making campaign contributions or expenditures. Federal regulations exempt such voter guides from being regulated as contributions and expenditures.[34]

Volunteer Activity. Volunteering for a political campaign is one of the most fundamental forms of grassroots political participation, and surely cannot be regulated as making a contribution or expenditure. Federal law exempts volunteer activity and associated expenses from such regulation.[35]

Communications by Charitable Organizations. Charitable organizations are already prohibited under federal law from "participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."[36] Their activities should be presumed not to be campaign contributions or expenditures under state campaign finance law.

Internal Corporate and Union Communications. Corporations and unions should be permitted to communicate with their directors, officers, employees, members, and the spouses of such individuals about political issues without such communications being treated as campaign "expenditures." The federal regulations provide for such an exemption.[37]

IV. CONCLUSION

With its latest proposed rulemaking, the Commission has taken a good step toward mitigating the damage done to Texans' First Amendment rights by its political committee "principal purpose" rulemaking last October. The proposed rule would clarify and narrow the scope of what activities are "in connection with a campaign" and, therefore, may be subject to regulation as campaign "expenditures" and count toward a speaker's "principal purpose" under the political committee registration and reporting requirements, or trigger direct campaign expenditure registration and reporting requirements. Nonetheless, the proposal's attempt to reach speech beyond *Buckley*'s limited universe of magic words of express advocacy is unconstitutionally vague and overbroad and deviates from the U.S. Supreme Court's "functional equivalent" of express advocacy concept. CCP strongly urges the Commission to conform its proposed rule with the Supreme Court's ruling as discussed above, and to implement CCP's other suggestions.

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[33] *See* 11 C.F.R. §§ 100.92 and 100.154.

[34] *See id.* § 114.4(c)(5).

[35] *See* 52 U.S.C. § 30101(8)(B)(i); 11 C.F.R. § 100.77.

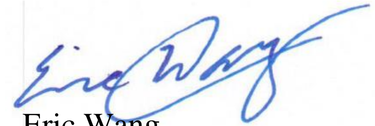
[36] 26 U.S.C. § 501(c)(3).

[37] *See*, *id.* § 11 C.F.R. § 114.3.

Should you have any questions about our comments or would like CCP's assistance in any way, please feel free to contact us at 703-894-6800.

Respectfully yours,

David Keating
President



Eric Wang,
Senior Fellow[38]

Enclosure

[38] Eric Wang is also Special Counsel in the Election Law practice group at the Washington, D.C. law firm of Wiley Rein, LLP. Any opinions expressed herein are those of the Center for Competitive Politics, and not necessarily those of his firm or its other clients.

§ 20.1. Meaning of "In Connection with a Campaign"
Text of Proposed Rule

The proposed new language is indicated by underlined text.

Chapter 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES
Subchapter A. GENERAL RULES

20.1 Definitions

(21) In connection with a campaign:

(A) An expenditure is made in connection with a campaign for an elective office if it is:

(i) made for a communication that expressly advocates the election or defeat of a clearly identified candidate by:

(I) using such words as "vote for," "elect," "support," "vote against," "defeat," "reject," "cast your ballot for," or "Smith for city council;" or

(II) using such phrases as "elect the incumbent" or "reject the challenger," or such phrases as "vote pro-life" or "vote pro-choice" accompanied by a listing of candidates described as "pro-life" or "pro-choice;"

(ii) made for a communication broadcast by radio, television, cable, or satellite or distributed by print or electronic media, including any print publication, mailing, communications placed for a fee on another person's or entity's Internet website, paid electronic mail service where there is a per-message charge, or automated phone bank, that:

(I) refers to a clearly identified candidate;

(II) is distributed within 60 days before a general, special, or runoff election, or 30 days before a primary election, for the office sought by the candidate;

(III) targets a mass audience or group in the geographical area the candidate seeks to represent; and

(IV) includes slogans or individual words that, without reference to the intent of the person making the communication and ~~with limited reference to external events, such as the proximity of an election, are~~, in the context of only the communication itself, is susceptible of no other reasonable interpretation than to urge the election or defeat of the candidate;

(iii) made by a candidate or political committee ~~to support or oppose a candidate~~; or

(iv) a ~~campaign~~ contribution to:

(I) a candidate; or

(II) an entity which, at the time of the contribution, already qualifies as a political committee ~~for the purpose of supporting or opposing a candidate~~.

(B) An expenditure is made in connection with a campaign on a measure if it is:

(i) made for a communication that expressly advocates the passage or defeat of a clearly identified measure by:

(I) using such words as “vote for,” “support,” “vote against,” “defeat,” “reject,” or “cast your ballot for;”

(ii) made for a communication broadcast by radio, television, cable, or satellite or distributed by print or electronic media, including any print publication, mailing, communications placed for a fee on another person’s or entity’s Internet website, paid electronic mail service where there is a per-message charge, or automated phone bank, that:

(I) refers to a clearly identified measure;

(II) is distributed within 60 days before the election in which the measure is to appear on the ballot;

(III) targets a mass audience or group in the geographical area in which the measure is to appear on the ballot; and

(IV) includes slogans or individual words that, without reference to the intent of the person making the communication, and ~~with limited reference to external events, such as~~in the ~~proximity~~context of ~~an election, are~~only the communication itself, is susceptible of no other reasonable interpretation than to urge the passage or defeat of the measure;

(iii) made by a political committee to support or oppose a measure; or

(iv) a campaign contribution to an entity which, at the time of the contribution, already qualifies as a political committee ~~for the purpose of supporting or opposing a measure~~.

(C) An expenditure made in connection with a campaign for an elective office or a measure shall not include:

(i) The payment by any corporation or labor organization for the costs of communicating with its directors, officers, employees, members, and the spouses of such individuals, about any subject, regardless of whether such communications are made in coordination with any candidate or political committee;

(ii) Permitting a candidate or representative of a measure political committee to appear at any residence or the facilities of any corporation, labor organization, social or civic organization, or educational institution to speak about the candidate's campaign or about a measure, if the venue is furnished by the venue's owner and is not paid for by a third party, and the venue is not a sports stadium, coliseum, convention center, hotel ballroom, concert hall, or other similar public arena;

(iii) The payment of costs of hosting a debate or candidates' forum, if at least two opposing candidates with respect to any given office sought, or representatives of at least two opposing political committees with respect to any measure on the ballot, are invited with the same or similar advance notice and method of invitation;

(iv) The preparation and distribution of voter guides, subject to the following:

(I) The sponsor may include in the voter guide similar biographical information on each featured candidate, such as education, employment positions, offices held, and community involvement or similar background information on each candidate;

(II) Comparable information shall be provided on each candidate featured in the voter guide for a particular office or each candidate featured shall be provided an equal opportunity to respond to questions;

(III) No featured candidate receives greater prominence in the voter guide than any other candidate, or substantially more space for descriptions of the candidate's positions or responses;

(IV) For each measure featured in the voter guide, one or more representatives of political committees for and against each measure shall be provided an equal opportunity to present their arguments. If there is no political committee either for or against a measure in the voter guide, individuals who do not represent a political committee may argue for or against the measure; and

(V) The sponsor of the voter guide shall not include any message of the sponsor that constitutes an expenditure under 20.1(21)(A) or 20.1(21)(B);

(iv) The value of services provided without compensation by any individual who volunteers for the benefit of any candidate or political committee, or any unreimbursed payment for expenses related to such volunteer activity;

(v) The cost of invitations, food and beverages if such items are voluntarily provided by an individual volunteering personal services on the individual's residential premises if the aggregate cost is less than $2,000 on behalf of a candidate or on behalf of a political committee in a calendar year;

(vi) The payment for any communication by any organization that is eligible to receive tax-deductible donations under 26 U.S.C. § 170 (or any successor provision) and regulations of the U.S. Department of Treasury; or

(vii) Any cost incurred ~~in~~for covering or carrying a news story, commentary, or editorial by ~~any~~a broadcasting station ~~(including a~~or cable television operator, ~~programmer or producer),~~ Internet website, or newspaper~~, magazine,~~ or other periodical publication, including ~~any~~an Internet or other electronic publication, ~~is not a campaign expenditure~~if the cost for the news story, commentary, or editorial is not paid for by, and the medium is not owned or controlled by, a candidate or political committee.

(D) For purposes of this section:

(i) a candidate is clearly identified by a communication that includes the candidate's name, office sought, office held, likeness, photograph, or other apparent and unambiguous reference; and

(ii) a measure is clearly identified by a communication that includes the measure's name or ballot designation (such as "Proposition 1"), purposes, election date, or other apparent and unambiguous reference.