



"Sandstrom, Karl J. (Perkins
Coie)"
<KSandstrom@perkinscoie.co
m>

01/06/2010 12:18 PM

To <ELynch@fec.gov>, <dadkins@FEC.gov>

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bcc

Subject Supplemental testimony

<<petersen ltr-01062010-120132PM.pdf>> Please find attached my supplemental testimony on behalf of the ASDC in connection with the Proposed Rulemaking for the Definition of Federal Election Activity. This testimony is provided in response to Commission hearing request for additional comment to be submitted by January 6th.

Karl J. Sandstrom | Perkins Coie LLP

607 Fourteenth Street N.W.

Washington, D.C. 20005-2011

PHONE: 202.628.6600

DIRECT: 202.434.1639

FAX: 202.434.1690

E-MAIL: Ksandstrom@perkinscoie.com

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607 Fourteenth Street N.W.
Washington, D.C. 20005-2011

PHONE: 202.628.6600

FAX: 202.434.1690

www.perkinscoie.com

Karl J. Sandstrom
PHONE: (202) 434-1639
FAX: (202) 654-9144
EMAIL: KSandstrom@perkinscoie.com

January 6, 2010

Hon. Matthew Petersen
Chairman
Federal Elections Commission
999 E Street, NW
Washington, DC 20463

Dear Chairman Petersen:

This letter expands upon the testimony that I provided on behalf of the Association of State Democratic Chairs at the Commission's December 16th hearing on proposed changes in the definition of federal election activity. At the hearing, a number of Commissioners asked the witnesses how the Commission could comply with the Court of Appeal's order without including in the definition of "get-out-to-vote activity" and "voter registration activity" exhortations to vote or to register to vote.

My client's response is that the focus of the regulation should be the purpose of the activity and not how it is accomplished. For example, distributing candidate or party campaign materials a month before an election serves a different purpose than door-to-door canvassing on Election Day. The former is an attempt to persuade voter of the virtues of a candidate or a party and the latter is intended to prompt known supporters to actually vote. Both of these activities commonly include language that could be fairly considered to be an exhortation to vote or to register to vote. However, it is not the inclusion of an exhortation that marks the difference between these activities. Rather it is the timing, content and target of the activities that distinguishes get-out-the-vote and voter registration activity from other campaign activity.

Congress made a choice not to regulate all campaign activities but only those specifically intended and designed to register voters and turn out supporters. To be faithful to the language of the statute and properly reflect Congress's limited purpose, my client urges the Commission to adopt functional definitions of get-out-the-vote and voter registration activity. My client believes that a definition of get-out-the-vote activity along the following lines would fully comply with the Court's order and would provide sufficient guidance for state and local party committees to comply with the law:

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Get-out-the-vote activity is any activity that a reasonable person engaged in political campaign management would consider to be targeted at expected supporters of a candidate or political party for the purpose of facilitating or enabling voting by the targeted group. Examples include providing transportation to the polls; distributing or collecting absentee ballot applications; door-to-door canvassing on or immediately preceding Election Day; and phone calls on or immediately preceding Election Day urging citizens to vote.


A similar functional definition of voter registration activity might read:

Voter registration is any activity that a reasonable person engaged in political campaign management would consider to be designed to facilitate or enable an eligible citizen to register to vote. Examples include a program of providing assistance to citizens in completing voter registration applications; distributing and collecting voter registration applications; and conducting voter registration drives. It does not include merely responding to questions from the public regarding how to register, making voter registration applications available at a party office or communications emphasizing the importance of registering to vote.

By focusing on the purpose of the activity as it would be understood by a reasonable person employed in the field, the Commission would avoid having to characterize an activity based on whether the particular words of a public communication are incidental to the overall communication. Such judgments are very subjective and do not provide the upfront guidance that the volunteers who largely staff state and local party committees need to conform their conduct to the law.

My client appreciates the opportunity to elaborate on its testimony and hopes that the Commission will find these comments useful in fashioning a regulation that serves both the demands of the governing statute and the needs of the regulated public for clear guidance for complying with the law.

Very truly yours,



Karl J. Sandstrom