



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
CHIEF COMMUNICATIONS OFFICER
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE

FROM: COMMISSION SECRETARY *MWD*

DATE: AUGUST 21, 2008

SUBJECT: COMMENT ON DRAFT AO 2008-06
Democratic Party of Virginia

Transmitted herewith is a timely submitted comment from Messrs. Joseph E. Sandler and Neil P. Reiff, regarding the above-captioned matter.

Proposed Advisory Opinion 2008-06 is on the agenda for Thursday, August 21, 2008.

Attachment

SANDLER, REIFF & YOUNG, P.C.FEDERAL ELECTION
COMMISSION
SECRETARIAT

2008 AUG 21 A 9 01

August 20, 2008

Via Facsimile

Honorable Mary Dove
Commission Secretary
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Draft AO 2008-06

Dear Madame Secretary:

We are submitting these brief comments on behalf of our client, the Democratic National Committee ("DNC"), with regard to Drafts A and B of Advisory Opinion 2008-06.

There are two principal issues of concern on which the two drafts differ. The first is the nature of the content that may be included in a printed piece that qualifies for the "slate card" exemption to the definitions of "contribution" and "expenditure," 2 U.S.C. §§ 431(8)(B)(v) and 431(9)(B)(iv). The requesting State Democratic Party is considering formatting its slate cards to include additional images and candidate photographs that would be used to supplement candidate pictures and text found on traditional slate cards. Draft A would find that these additional images and photographs would constitute "overuse of candidate photographs" that would disqualify the material from being treated as a slate card for purposes of the exemption. Draft A further suggests that if material features photographs of one candidate more prominently than others, such material would not qualify for the exemption.

Nothing in the plain language of the Federal Election Campaign Act of 1971 as amended (the "Act") or the Commission's regulations in any way supports such a restrictive interpretation of the scope of the slate card exemption. Indeed, most contemporary slate cards distributed by state party committees could not comply with the additional requirements imposed by Draft A. And the ambiguity of Draft A's newly-constructed restriction on "overuse" of candidate photographs and on featuring one candidate more "prominently" than another would make it difficult, as a practical matter, for state parties to understand and comply with these new restrictions. By contrast, Draft B properly acknowledges that the slate card exemption should be interpreted in a manner

Honorable Mary Dove
August 20, 2008
Page Two

"consistent with contemporary technological innovations....," Draft B at 5 quoting Advisory Opinion 1999-09, and properly concludes that the including the extra photographs would not cause the subject material to contain any prohibited information and accordingly would not disqualify the material for the slate card exemption.

The second issue of concern is the question of what may be communicated in the course of distribution of slate cards qualifying for the exemption. Both Drafts accurately acknowledge that slate cards qualifying for the exemption may be distributed by either volunteers or paid employees. Draft A, however, would conclude that paid employees would, in distributing slate cards, be prohibited from speaking about candidates or parties beyond referring to the very limited information Draft A deems acceptable for inclusion in a slate card. Again, there is simply no basis in the plain language or purpose of the slate card exemption, or the Commission's implementing regulations, to distinguish between volunteers and paid employees in terms of what can be said in the course of distributing slate cards that otherwise qualify for the exemption.

Draft B, by contrast, accurately notes that the language of the slate card exemption, while it precludes distribution by broadcast media and general public political advertising, does not exclude other methods of distribution. In particular, the language does not restrict the speech of state party employees engaged in distributing slate cards. Draft B properly concludes that the slate card exemption does not restrict the political speech of those distributing slate cards on behalf of the state party, regardless of whether such persons are volunteers or paid employees.

For these reasons, the DNC urges the Commission to adopt Draft B of Advisory Opinion 2008-6.

Thank you for forwarding our comments to the Members of the Commission for their consideration.

Sincerely yours,



Joseph E. Sandler
Neil P. Reiff

cc: Rosemary C. Smith, Esq., Associate General Counsel