



September 19, 2011

BY ELECTRONIC MAIL

Shawn Woodhead Werth, Secretary
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Draft Interpretive Rule on When Certain Independent Expenditures are “Publicly Disseminated” for Reporting Purposes

Dear Ms. Werth:

Our firm represents numerous organizations that engage in grassroots-level organizing efforts, including some efforts that involve express advocacy for the election or defeat of clearly identified federal candidates. I am writing to express our support for the draft interpretive rule and to urge similar clarification on a related matter.

We applaud this effort by the Commission to clarify when certain types of communications, such as handbills that might be passed out by canvassers, should be deemed to have been disseminated for reporting purposes. Allowing filers to use any reasonable date as the date of dissemination is an appropriate rule, and the alternatives the draft rule offers as possible “reasonable” dates seem to us both to meet FECA’s goal of public disclosure of independent expenditures and to acknowledge the different and sometimes difficult situations that various filers face.

In a related vein, we would welcome similar guidance on reporting expenditures for compensation paid to staff involved in distributing these types of materials. For example, some organizations pay employees (sometimes staff members who work for the organizations throughout the year and sometimes seasonal employees) both to distribute these materials (e.g. via a door-to-door canvass taking place over the course of several days or weeks) and to manage such efforts.¹ Usually these canvassers orally deliver the same express advocacy message that is contained in the materials distributed. The same reporting problems also arise in the context of other person-to-person express-advocacy efforts that involve paid staff but that do not involve the distribution of the types materials discussed in the draft interpretive rule, such as live phone banks.

The employees engaged in these efforts are often part-time, hourly employees who are paid on a weekly or bi-weekly basis and whose compensation varies depending on their availability and the needs of the canvass, phone bank, or other effort. This makes it impossible to know the amount each employee will be paid until time records are reviewed at the end of each pay period.

¹ Many organizations also conduct such efforts with the help of volunteer canvassers, but those efforts raise fewer reporting complications.



If the Commission chooses to address these issues, then we recommend that the Commission permit filers to report a good-faith estimate of the amount for total employee compensation for the effort, with the date of the first such communication as the expenditure date. Should expenditures for such staff compensation exceed the estimate by more than the filing thresholds, the filer could be required to report this additional compensation on 48- or 24-hour reports. In subsequent reports filed after the actual compensation is known (typically the post-election report for committees or the year-end report for other filers making independent expenditures), the filer would report the actual compensation paid.

Thank you once again for the Commission's effort to clarify a difficult area for grassroots organizations committed to complying with the law. We would be happy to discuss with you further the particular problems facing those responsible for reporting obligations associated with such grassroots efforts.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Pomeranz'. The signature is fluid and cursive, with a long, sweeping tail on the final letter.

John Pomeranz