

**PROPOSED RULES**

Rule 169.36a Expenditures for Communications Regarding Candidates and Ballot Questions

Rule 36a. A communication "is in assistance of" or "in opposition to" the nomination or election of a candidate or the passage of a ballot question if either of the following applies:

1) The communication contains terms of express advocacy such as, but not limited to:

"Vote for"  
"Elect"  
"Support"  
"Cast your ballot for"  
"Smith for [elective office]"  
"Cast your ballot against"  
"Vote against"  
"Defeat"  
"Reject"  
"Say NO to"

or

2) The communication is functionally equivalent to express advocacy. A communication is functionally equivalent to express advocacy if it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate or ballot question.

a) Subject to subsection (b), a communication is susceptible of no other reasonable interpretation if it:

i) is made in a period:

- (1) beginning on the 30<sup>th</sup> day before a primary and ending on the day of the primary; or
- (2) beginning on the 60<sup>th</sup> day before an election and ending on the day of the election;

and

ii) is targeted to voters in the jurisdiction(s) where the candidate or issue appears on the ballot;

and either:

iii) supports or opposes a candidate by clear inference by:

- (1) referring to the personal qualities, character, or fitness of that candidate;
- (2) endorsing or condemning that candidate's position or stance on issues; or
- (3) endorsing or condemning that candidate's public record;

or

iv) supports or opposes a ballot question by clear inference by:

- (1) referring to the name or ballot designation of the ballot question; and
- (2) endorsing or condemning the subject matter of the ballot question.

b) A communication regarding a ballot question is not susceptible of no other reasonable interpretation if the only references in the communication to the ballot question and election are:

- i) an objective statement of what is in the proposal; and
- ii) the date of the election.

Rule 39f. Independent Expenditures by Corporations, Labor Organizations, and Domestic Dependent Sovereigns. Pursuant to *Citizens United v FEC*, 130 S Ct 876, 175 L Ed 2d 753 (2010), and *Michigan Chamber of Commerce v Land*, 725 F Supp 2d 655 (2010), corporations, labor organizations, and domestic dependent sovereigns may make independent expenditures on behalf of candidates for elective office. An independent expenditure made under this Rule shall not be made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate or his or her candidate committee or their agents.