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Of Counsel

July 8, 2009

VIA U.S. MAIL & ELECTRONIC MAIL

Thomaseia P. Duncan, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

AOR 2009-23

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
2009 JUL 16 PM 12:36  
OFFICE OF GENERAL  
COUNSEL

**Re: Request for Advisory Opinion Pursuant to 11 C.F.R. § 112.1**

Dear Ms. Duncan:

The Virginia Chapter of the Sierra Club (hereinafter "Virginia Chapter") requests an advisory opinion regarding the application of the Federal Election Commission's regulations to certain activities that it wishes to conduct through VA PAC Sierra Club (hereinafter "VA PAC SC"), a state-registered political organization, in connection with the 2009 and 2010 general elections. The Sierra Club Voter Education Fund (hereinafter "SC VEF"), a separate political organization established by the Sierra Club under section 527 of the Internal Revenue Code ("IRC"), requests an advisory opinion regarding its financial support of these activities. In both cases, we request that the Commission conclude that 11 C.F.R. § 106.6 does not apply to these activities, as explained below.

In November 2009, Virginia will conduct a statewide general election for Governor, Lt. Governor and Attorney General, as well as general elections for other state and local offices. The Virginia Chapter wishes to carry out through VA PAC SC issue-oriented voter drives, including voter identification, voter registration and get-out-the-vote drives, that urge the general public to register, vote and support candidates based on their support of environmental and conservation issues. For example, VA PAC SC will conduct a voter issue identification program in which respondents will be asked their views about a number of environmental issues and the impact the respondents' views will have on their voting behavior in the upcoming state, local and federal elections. VA PAC SC will also conduct voter registration and get-out-the-vote drives urging members of the public to register for and vote in the upcoming elections in order to elect candidates who support government actions to protect the environment. These election activities will not refer to any clearly identified state, local or federal candidates or political parties.

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Page 2

In addition to these issue-oriented voter activities, VA PAC SC wishes to disseminate communications that expressly advocate the election or defeat of clearly identified state and local candidates. These communications will be conducted through flyers, direct mail, telephone banks, emails, text messages, and radio. Some of these communications will include endorsements of the state and local candidates by current federal officeholders in Virginia and elsewhere who are also candidates for re-election in the 2010 election. However, there will be no reference to either the fact that these federal officeholders are candidates for re-election or the 2010 election itself.

Finally, during 2009 and 2010 VA PAC SC will disseminate issue ads through the media that educate the public concerning the positions taken by clearly identified federal officeholders from Virginia on legislation and other public policies. It is anticipated that some, if not all, of the officeholders referred to in these communications may also be candidates. The communications will not include express advocacy of the election or defeat of any such federal candidate within the meaning of 11 C.F.R. § 100.22. Nor will any broadcast messages include the functional equivalent of express advocacy within the meaning of 11 C.F.R. § 114.15.

The national Sierra Club intends to provide financial support for the Virginia Chapter's activities addressed in this Request in the form of grants from SC VEF to VA PAC SC.

Under the Commission's allocation regulation, if the activities which the Virginia Chapter and SC VEF intend to undertake were carried out or funded by a separate segregated fund or a nonconnected committee registered as a federal political committee, they would have to be paid for using no less than 50% and as much as 100% federal funds.<sup>1</sup> See 11 C.F.R. § 106.6. The Virginia Chapter and SC VEF seek an advisory opinion concluding that the FEC's allocation regulation does not apply to their proposed activities in Virginia because VA PAC SC and SC VEF are not federally registered committees and therefore may support these activities with 100% nonfederal funds.

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<sup>1</sup>In *EMILY's List v. Federal Election Commission*, 569 F. Supp. 2d 18 (D.D.C. 2008), *appeal pending*, No. 08-5422 (D.C. Cir.), a nonconnected political committee challenged the application of the allocation regulation to certain of its activities conducted through the committee's nonfederal account. See also *EMILY's List v. FEC*, 362 F. Supp. 2d 43 (D.D.C.), *aff'd*, 170 Fed. Appx. 719 (D.C. Cir. 2005). The issue presented in this advisory opinion request is not directly presented in the *EMILY's List* case.

### **The Entities Involved**

The Virginia Chapter is an affiliated chapter of the Sierra Club. Affiliated chapters, which are not separately incorporated and operate as part of the Sierra Club, may establish political action committees ("PACs") for the purpose of engaging exclusively in state and local political campaign activities, provided that the name of the state PAC is not the same as the Sierra Club's federally registered separate segregated fund. The state PAC must have a separate bank account maintained in its legally registered name, and chapter funds may not be commingled with PAC funds. Finally, no state or local political activity may be undertaken by a state PAC without a compliance officer.

VA PAC SC was established in 1985 by the Virginia Chapter for the purpose of carrying out state-based political campaign activities. On July 31, 2000, VA PAC SC submitted a Political Organization Notice of Section 527 Status (IRS Form 8871) ("the Notice") with the Internal Revenue Service. As part of the registration process, VA PAC SC obtained a taxpayer identification number ("TIN") in its own name that is different from the TIN of the Virginia Chapter or any other Sierra Club entity. The purpose of VA PAC SC stated in the Notice was "[p]olitical activities on state and local levels, including endorsing and making financial contributions to individual candidates." Until IRC section 527(j) was amended in 2002 to exempt so-called "qualified state or local political organizations," VA PAC SC filed Political Organization Reports of Contributions and Expenditures on IRS Form 8872. VA PAC SC is also registered and files reports with the Virginia State Board of Elections ("VA SBOE"). In registering as a political action committee with VA SBOE, the organization similarly identified itself as Virginia Sierra Club PAC, and listed Jean R. Packard as its treasurer.

VA PAC SC maintains a bank account in its own name, which is separate from the Virginia Chapter's operating account. The Virginia Chapter raises money for this account from its members and, in accordance with Virginia law, other individuals, corporations and labor organizations. Additional funds have been received from SC VEF. Funds in the VA PAC SC account have been used to make contributions to state and local candidates and to conduct other activities in support of or opposition to state and local candidates. The Virginia Chapter has not established a separate segregated fund to make contributions or expenditures in connection with federal elections within the meaning of the Federal Election Campaign Act ("the Act"), and funds from VA PAC SC have not been used to make any such contributions or expenditures.

Sierra Club is a nonprofit corporation established under California law and exempt from federal taxation under IRC section 501(c)(4). Sierra Club has established a separate segregated fund, the Sierra Club Political Committee ("SCPC"), which is registered as a federal political committee. SCPC solicits contributions, in amounts permitted by the Act, from members of the Sierra Club and deposits them into a bank account which it uses solely for contributions and expenditures in connection with federal elections. SCPC has not established a separate

nonfederal account as permitted under 11 C.F.R. § 102.5(a). Sierra Club has, however, established SC VEF as a nonfederal political organization under IRC section 527. SCPC and SC VEF each have TINs and bank accounts which are separate from each other and from the TIN and bank accounts of Sierra Club.

### **Questions Presented**

1. Whether the political activities of VA PAC SC, a nonfederal political organization, are subject to 11 C.F.R. § 106.6.
2. Whether the political activities of SC VEF, a nonfederal political organization, are subject to 11 C.F.R. § 106.6.

### **Discussion**

#### **VA PAC SC's and SC VEF's Activities Are Not Governed By the Commission's Allocation Regulation at 11 C.F.R. § 106.6.**

##### **A. The Plain Language of the Allocation Regulation Applies Only to Federally Registered Political Committees.**

Non-federal political organizations are not covered by the Commission's allocation regulation at 11 C.F.R. § 106.6. This conclusion follows from the language of the allocation regulation itself, which applies only to "[s]eparate segregated funds and non-connected committees that have established separate federal and nonfederal accounts under 11 CFR 102.5(a)(1)(i), or that make federal and nonfederal disbursements from a single account under 11 CFR 102.5(a)(1)(ii)." 11 C.F.R. § 106.6(a). Other provisions of the allocation rule similarly make clear that it is intended to reach only federally registered political committees. For example, section 106.6(e) describes permissible options for the payment of allocable expenses "by committees with separate federal and nonfederal accounts." "The committee" must pay allocable expenses entirely from "its federal account and shall transfer funds from its nonfederal account solely to cover the nonfederal share of that allocable expense." 11 C.F.R. § 106.6(e)(1)(i). Alternatively, "[t]he committee" may establish a separate allocation account into which funds from "its federal and nonfederal accounts" may be deposited solely for the purpose of paying the allocable expenses. 11 C.F.R. § 106.6(e)(1)(ii)(A). "The committee" may only transfer funds "from its federal and nonfederal accounts" to this allocation account in amounts proportionate to the federal and nonfederal share of each allocable expense. 11 C.F.R. § 106.6(e)(1)(ii)(B). And, no funds contained in the allocation account may be transferred to any other account "maintained by the committee." 11 C.F.R. § 106.6(e)(1)(ii)(C). In the same way,

section 106.6(e)(3) requires “[a] political committee” that transfers funds between accounts and pays allocable expenses to report each such transfer and disbursement pursuant to the Commission’s reporting rules for federally registered political committees.

In Advisory Opinion 2005-13 (EMILY’s List), the Commission’s only ruling to date interpreting the current allocation rule, the Commission made clear that the separate segregated funds and nonconnected committees covered by the revised allocation rule are those that “have registered as Federal political committees with the FEC.” In Advisory Opinion 2003-37, an ostensible organization calling itself Americans for a Better Country (“ABC”) sought guidance under the previous version of the allocation regulation concerning a number of activities which it wished to undertake in connection with the 2004 general election, including how it should allocate those activities between its federal and nonfederal accounts. The advisory opinion emphasized that ABC was a “non-connected political committee . . . with Federal and nonfederal accounts that registered with the Commission.” The Opinion also stated that it was “premised on the specific facts and circumstances posited in [the] request,” and that “[t]he fact that ABC is a political committee is particularly relevant.”<sup>2</sup> *Id.*

**B. The History of the Allocation Regulation Makes Clear That It Was Not Intended To Apply To Nonfederal Political Organizations.**

Weeks after the Commission issued Advisory Opinion 2003-37, it issued a Notice of Proposed Rulemaking addressing a number of the issues raised in that opinion. *See* Notice of Proposed Rulemaking, “Political Committee Status,” 69 Fed. Reg. 11,736 (Mar. 11, 2004) (hereafter “NPRM”). Although the NPRM focused on whether to amend the definition of “political committee,” it also included proposed changes in the Commission’s allocation rule as applied to federally registered political committees whose major purpose is to influence federal elections. Specifically, the Commission sought comments on whether it was “appropriate for the regulations to allow *political committees* to have nonfederal accounts and to allocate their disbursements between their Federal and nonfederal accounts.” *See* NPRM, 69 Fed. Reg. at 11,753 (emphasis added). And, it asked: “If an organization’s major purpose is to influence

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<sup>2</sup> The General Counsel’s initial draft of the advisory opinion was extremely controversial and received numerous critical comments, including comments from a number of nonprofit organizations that feared that the advisory opinion would assert interpretations of the Act that would restrict their activities. The language quoted in text was added in response to those comments. In an earlier opinion issued shortly after the Commission’s adoption of the previous version of the allocation regulation, the Commission similarly applied the allocation regulation to “a separate segregated fund, which maintains both a Federal and nonfederal account.” AO 1991-35 (Farm PAC). The only other apparent Commission administrative proceedings applying that former allocation rule also involved federally registered committees using separate federal and nonfederal accounts. MUR 5403 (ACT); AO 2003-37 (ABC), superseded at Final Rule, 69 Fed. Reg. at 68,063; Final Report of the Audit Division on Volunteer PAC (Dec. 2, 1999); Final Report of the Audit Division on Republicans for Choice PAC (Dec. 2, 1999).

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Federal elections, should the organization be required to pay for all of its disbursements out of Federal funds and therefore be prohibited from allocating any of its disbursements?" *Id.* Finally, in discussing its proposed changes, the Commission made clear that they only applied to "nonconnected committees and separate segregated funds," without suggesting that they would have any application to entities that do not fall within these categories. *See* 69 Fed. Reg. at 11,753, 11,754, 11,755.

Seven months later the Commission announced that while it would not revise the regulatory definition of "political committee," it was adopting an addition to the regulatory definition of "contribution" and revisions to the allocation regulation applicable to nonconnected committees and separate segregated funds, effective January 1, 2005. *See* Final Rules and Transmittal of Regulations to Congress, "Political Committee Status, Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected Committees," 69 Fed. Reg. 68,056 (Nov. 23, 2004) (hereafter "Final Rules"). The Explanation and Justification issued with the Final Rules made clear that the revised allocation rules were intended to apply only to nonconnected committees and separate segregated funds with federal and nonfederal accounts. *See* Final Rules, 69 Fed. Reg. at 68,059 – 68,063 (numerous examples). Furthermore, in explaining the flat 50% minimum allocation of federal funds included in the final rules, the Commission made clear that the status of the covered entities as federal political committees provided the basis for the rule itself: "These committees have registered as *Federal* political committees with the FEC; consistent with that status, political committees should not be permitted to pay for administrative expenses, generic voter drives and public communications that refer to a political party with a greater amount of nonfederal funds than Federal funds." Final Rules, 69 Fed. Reg. at 68,062 (emphasis in original).

Finally, after a federal court ordered the Commission to provide a more reasoned explanation of its decision not to further regulate nonfederal section 527 organizations, *see Shays v. FEC*, 424 F. Supp. 2d 100 (D.D.C. 2006), the Commission issued a second explanation for this decision which further demonstrates that the allocation regulation was never intended to reach purely nonfederal political organizations such as VA PAC SC and SC VEF. In that carefully worded and comprehensive explanation, the Commission defended its decision regarding nonfederal 527 organizations by reference to the revised allocation rule, which it described as a "broad anti-circumvention measure" that "places limits on the nonfederal funds a *registered political committee* may use to engage in certain activity . . ." Supplemental Explanation and Justification, "Political Committee Status" ("Supplemental E&J"), 72 Fed. Reg. 5,595, 5,602 (Feb. 7, 2007) (emphasis added); *see also id.* at n.13 (describing the application of the allocation rule to "registered political committees with Federal and nonfederal accounts."); *id.* at 5,603 (describing prophylactic rule adopted to prevent circumvention of the new solicitation rule "by registered political committees operating both Federal and nonfederal accounts under the Commission's allocation rules."); *id.* (describing Commission's allocation regulations as applying to "a registered political committee that participates in both Federal and nonfederal

elections”). In upholding the Commission’s decision not to adopt a regulation further defining “political committee” based on the Supplemental E & J, the district court likewise stated that the allocation regulation “only applies once an organization is classified as a political committee . . .” *Shays v. FEC*, 511 F. Supp. 2d 19, 28 (D.D.C. 2007).

C. Application of the Allocation Regulation To Nonfederal Political Organizations Is Not Appropriate Because Such Entities Do Not Have A Major Purpose of Influencing Federal Elections.

In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court, in order to avoid the Act’s vagueness problems; narrowed the term “political committee” to include only those organizations under the control of a candidate or whose “major purpose” is the “nomination or election of a candidate.” *Id.* at 79. The Court explained that “[e]xpenditures of candidates and of ‘political committees’ so construed can be assumed to fall within the core area sought to be addressed by Congress. They are, by definition, campaign related.”<sup>3</sup> *Id.*; see also *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 252 n.6, 262 (1986); *McConnell v. FEC*, 540 U.S. 93, 170 n. 64 (2003). In proposing the allocation regulation, the Commission specifically referred to the “major purpose” test as the justification for revising the existing allocation rule. See NPRM, 69 Fed. Reg. at 11,753 (“If an organization’s major purpose is to influence Federal elections, should the organization be required to pay for all of its disbursements out of Federal funds and therefore be prohibited from allocating any of its disbursements?”). And, more recently, in its appellate brief defending the constitutionality of the allocation rule, the Commission repeatedly made clear that the justification for the rule depended on the fact that the entities to which it applied met the “major purpose” test.<sup>4</sup>

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<sup>3</sup> The Commission interprets the major purpose test as limiting the definition of “political committee” to those organizations whose major purpose is to influence federal elections. See, e.g., Supplemental E & J, 72 Fed. Reg. at 5,601.

<sup>4</sup> See Brief For the Federal Election Commission (“FEC Brief”) in *EMILY’s List v. FEC*, at 13, No. 08-5422 (D.C. Cir) (“Moreover, the rules apply only to federal political committees, whose ‘major purpose’ is the nomination or election of federal candidates and whose expenditures ‘are, by definition, campaign related.’”)(quoting *Buckley v. Valeo*, 424 U.S. at 79); *id.* at 24 (“because organizations like EMILY’s List have registered as political committees, their major purpose is necessarily federal campaign activity”); *id.* at 28 (“As a federal political committee, EMILY’s List, by definition, has as its major purpose the nomination or election of federal candidates . . .”) (emphasis in original); *id.* at 31 (“Section 106.6(f) applies only to political committees. As we have explained, the major purpose of those organizations is ‘the nomination or election of a candidate,’ and their expenditures ‘are, by definition, campaign related.’”)(quoting *McConnell*, 540 U.S. at 170 n.64, quoting *Buckley*, 424 U.S. at 79); *id.* at 31-32 (“But because EMILY’s List is a federal political committee whose major purpose is the nomination or election of federal candidates, the Commission acted well within its discretion in concluding that when such a committee’s voter drives and public communications refer explicitly to clearly identified federal candidates, they should be financed with federal funds . . .”); *id.* at 38 (“EMILY’s List is a political committee whose major purpose is federal campaign activity . . .”); *id.* at 50 (“Especially because the major purpose of federal political committees such as EMILY’s List

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Even if it may be assumed that a political committee's or separate segregated fund's activities are intended to achieve its "major purpose" regardless of whether they are funded through its federal or nonfederal account, this is not true where the activities are carried on by a nonfederal political organization. Application of the allocation rule to entities that are not federally registered political committees and therefore do not satisfy the major purpose test would allow the Commission to do an end-run around the major purpose test by reaching entities for which this assumption is not appropriate.

Application of the allocation rule to an organization that is not registered as a federal political committee would also be inconsistent with the Supreme Court's recent decision in *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 127 S. Ct. 2652 (2007) ("*WRTL*"). In *WRTL*, the Supreme Court rejected the Commission's argument that a nonprofit corporation similar to the Sierra Club was required to use a federally registered political committee to pay for broadcast issue ads, as long as the communications did not contain the functional equivalent of express advocacy. See 127 S. Ct. at 2671. The activities which VA PAC SC and SC VEF intend to undertake in connection with the 2009 and 2010 elections will be limited to communications, including broadcast ads, that will be neither express advocacy nor its functional equivalent. Applying the allocation regulation to VA PAC SC's and SC VEF's proposed activities would have the same effect as the argument rejected by the Supreme Court because those activities would have to be supported by at least 50% federal funds from the Sierra Club's federally registered committee. The Virginia Chapter and Sierra Club themselves, therefore, could support the political campaign activities addressed in this Request with 100% nonfederal funds without coming within the allocation regulation. The result should be the same when the organizations use non-federal political organizations to support the same kinds of activities.<sup>5</sup>

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... is to influence federal elections . . ."); *id.* at 54 ("The historical prevalence of a 50% or higher ratio . . . reflects both the major purpose of federal political committees . . .") In *EMILY's List*, the district court apparently recognized the significance of the major purpose test as the basis for the allocation rule when it noted that an organization whose federal activities comprise a small portion of its overall efforts could "choose to operate as separate federal and nonfederal committees." 569 F. Supp. 2d at 50. This is, of course, exactly the situation posed in this advisory opinion request. And, the Commission cited this observation by the district court with apparent approval in its appeal brief. See FEC Brief at 27.

<sup>5</sup> If a tax-exempt organization such as the Sierra Club pays for activities of this kind from its regular general treasury account, it risks the application of significant federal taxes as a result of those activities. See 26 U.S.C. § 527(f)(1). It is that unfavorable tax consequence, not any desire to avoid the Commission's allocation rule, which causes tax-exempt section 501(c) groups to establish 527 accounts such as VA PAC SC and SC VEF. The Commission has already recognized that a nonprofit organization does not have to use hard money if activities such as those addressed here are conducted through its general treasury fund; there is no valid reason why a wholly tax-driven decision that is explicitly encouraged by the Internal Revenue Code for an organization's legitimate political activities should cause it to have to use a minimum of 50% and as much as 100% federal funds to support those activities. See generally 2 U.S.C. § 438(f) (requiring the FEC and the Internal Revenue Service to work together and consult in promulgating regulations).

D. Nonfederal Political Organizations Remain Regulated Under 11 C.F.R. § 102.5(b)(1).

Since 1980, the Commission's regulations have provided that if an organization does not qualify as a federal political committee, it must be able to "demonstrate through a reasonable accounting method that, whenever [the] organization makes a contribution or expenditure, or [exempt] payment, the organization has received sufficient funds subject to the limitations and prohibitions of the Act to make such contribution, expenditure or payment." 11 C.F.R. § 102.5(b)(1). The E & J issued with the 1980 regulation makes clear that it was intended to address a situation where an organization does not qualify as a federal political committee but finances both federal and nonfederal campaign activity:

Subsection (b) deals with organizations which finance both federal and nonfederal election activity, but which do not qualify as political committees under the Act. Such organizations must demonstrate through a reasonable accounting method that their federal activity is financed with funds subject to the limitations and prohibitions of the Act. Upon request, the committee must supply the Commission with records which demonstrate compliance with subsection (b).

Notice, "Amendments to Federal Election Campaign Act of 1971; Regulations Transmitted to Congress," 45 Fed. Reg. 15,080, 15,084 (Mar. 7, 1980).

Under 11 C.F.R. § 102.5(a)(1), "[o]rganizations that are political committees under the Act, other than national party committees" may establish separate accounts to support their federal and nonfederal activities. In contrast, section 102.5(b) was specifically addressed to "[o]rganizations that are not political committees under the Act," for which there was some doubt whether the Commission had authority to require the establishment of separate accounts. Thus, the legislative history of the Federal Election Campaign Act Amendments of 1979, Pub. L. 96-187, 93 Stat. 1339-69 (Jan. 8, 1980), which apparently served as the source of section 102.5(b), stated:

... the bill does not require an organization which is not a political committee to establish a separate account for Federal purposes. Such organizations will, of course, be required to show by reasonable accounting methods that the funds used for Federal election purposes are, in fact, not funds from prohibited sources. It is the opinion of the Committee that the Commission has the authority to require separate accounts only for organizations which are political committees within the meaning of the Act.

H. Rep. No. 96-422, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. 6 (Sept. 7, 1979).

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Accordingly, recognition that nonfederal political organizations are not covered by the Commission's allocation regulation would leave such organizations subject to long-standing and exacting source of funds and accounting requirements if they do engage in federal contributions and expenditures to a limited degree.

### **Conclusion**

Based on this analysis, the Commission should conclude that VA PAC SC and SC VEF are not required to use federal funds to support the activities addressed here. There would be no question about the lawfulness of Sierra Club using 100% nonfederal funds for the proposed activities if Sierra Club did not have a separate segregated fund that is registered as a federal political committee. Forcing organizations to give up legitimate political activities merely to avoid the application of a draconian allocation scheme designed to apply only to entities that are federally registered political committees is contrary to the Act and the Commission's regulations.

Respectfully submitted,



**Michael B. Trister**  
**B. Holly Schadler**  
**Counsel for the Sierra Club, the Virginia Chapter of**  
**the Sierra Club, the Sierra Club Voter Education**  
**Fund and the VA PAC Sierra Club**



"Jennifer Manguera"  
<jmanguera@itsrlaw.com>  
07/31/2009 12:32 PM

To <jblume@fec.gov>  
cc  
bcc  
Subject Response letter from Mike Trister

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2009 JUL 31 PM 12:41

OFFICE OF GENERAL  
COUNSEL

Hello,

Please find the attached letter from Mike Trister in regards to the Request for Advisory Opinion.

Thank you,

Jennifer Manguera  
Assistant to Mike Trister



Lichtman, Trister & Ross Advisory Opinion letter 7-31-09.pdf

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LAURENCE E. GOLD  
ALEXANDER W. DEMOTS  
Of Counsel

July 31, 2009

**By Electronic and Regular Mail**

Joshua Blume, Esq.  
Office of General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

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2009 JUL 31 PM 12:4  
OFFICE OF GENERAL  
COUNSEL

Re: Advisory Opinion Request Submitted On Behalf of the  
Virginia Chapter of Sierra Club, the Sierra Club, the Sierra  
Club Voter Education Fund, and the VA PAC Sierra Club

Dear Mr. Blume:

This letter responds to the questions you raised with me by telephone on July 15, 2009 in connection with the above-referenced Request for Advisory Opinion ("AOR") submitted on July 8, 2009.

1. You first noted that while the AOR states that neither VA PAC Sierra Club ("VA PAC SC") nor Sierra Club Voter Education Fund ("SC VEF") has registered as a federal political committee, the AOR does not state that neither of these entities is in fact a federal political committee. The AOR does state, however, that when VA PAC SC registered with the Internal Revenue Service under section 527 it stated that its purpose was "[p]olitical activities on state and local levels, including endorsing candidates and making financial contributions to individual candidates." The AOR further states that "funds in the VA PAC SC account have been used to make contributions to state and local candidates and to conduct other activities in support or opposition to state and local candidates"; that the Virginia Chapter "has not established a separate segregated fund to make contributions or expenditures in connection with federal elections, and funds from VA PAC SC have not been used to make contributions to federal candidates or to make expenditures in support of or opposition to federal candidates."

With respect to SC VEF, the AOR states that it has been established as "a nonfederal political organization."

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We believe that these representations are sufficient to allow the Commission to treat VA PAC SC and SC VEF as nonfederal entities for purposes of responding to the AOR. If the Commission wishes to state in its Advisory Opinion that it is accepting these facts as true for purposes of the Opinion, we would have no objection.

2. You asked whether VA PAC SC is still registered with the IRS as a 527 organization even though it no longer files periodic reports on IRS Form 8872. As I explained to you, VA PAC SC is still considered a 527 organization even though it is no longer required to file periodic reports with the IRS.

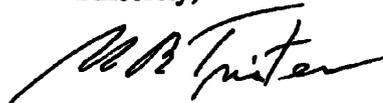
3. You asked whether VA PAC SC has a charter or similar organizing document. We have been unable to locate any such document. As noted in the AOR, and above, in its Notice to the IRS, the organization stated that its purpose is "[p]olitical activities on state and local levels, including endorsing and making financial contributions to individual candidates." Sierra Club's internal operating guidelines for state chapter political committees states that "[s]tate and local PAC funds cannot be used to make direct or in-kind contributions to federal candidates."

4. You finally asked whether SC VEF has a charter or similar organizing document. This organization was established by a resolution of the Sierra Club Board of Directors that reads as follows:

"The Sierra Club hereby establishes a separate segregated fund (the Fund) under Internal Revenue Code Section 527(f)(3). This Fund is established for the purpose of supporting the Club's efforts to educate people about public officials' environmental records, voting records and positions or candidates for election to Congress, the Presidency, and state and local offices. Based on this information, the public can make judgements about the environmental positions and qualifications of their elected officials and candidates. The Fund is prohibited from expending funds to expressly advocate the election or defeat of any particular candidate or party. The Fund may make payments to other appropriate organizations for the purposes described above."

Please let me know if you require any further information.

Sincerely,



Michael B. Trister



"Holly Schadler"  
<hschadler@ltsrlaw.com>  
08/14/2009 12:24 PM

To <JBlume@fec.gov>  
cc <rknop@fec.gov>  
bcc

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2009 AUG 14 PM 12: 32

Subject RE: Your Advisory Opinion Request  
OFFICE OF GENERAL  
COUNSEL

Mr. Blume, The attached document as you drafted it is an accurate summary of our conversations.

Holly Schadler

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**From:** JBlume@fec.gov [mailto:JBlume@fec.gov]  
**Sent:** Friday, August 14, 2009 11:02 AM  
**To:** Holly Schadler  
**Cc:** rknop@fec.gov  
**Subject:** Your Advisory Opinion Request

Hello, Ms. Schadler. Attached please find a narrative summary of the content of conversations we had on August 11 and 12 for your review. Please let me know if this is an accurate summary of those conversations. If you believe that it contains inaccuracies, please do not hesitate to indicate them.

Thanks very much.

Joshua Blume  
Attorney, Policy Division  
Federal Election Commission  
999 E Street, N.W., Room 642  
Washington, D.C. 20463  
(202) 694-1533  
jblume@fec.gov

## Sierra Club AOR

This summary reflects our telephone conversations of August 11 and August 12, 2009.

1. You represent that the VA PAC Sierra Club and the Sierra Club Voter Education Fund are not political committees as defined in either 2 USC 431(4)(A) or 2 USC 431(4)(B).
2. None of the proposed communications and activities you describe on pages 1 and 2 of your July 8, 2009 request letter will involve the express advocacy of the election or defeat of a Federal candidate.
3. The proposed communications described in the first paragraph of page 2 of your request letter, in which Federal officeholders who are also candidates for re-election in 2010 will endorse Virginia state and local candidates, will be disseminated only during the 2009 non-federal election year.
4. The communications described in the second paragraph of page 2 of your request letter, which involve the dissemination of "issue ads," will not be coordinated with any Federal candidates.