

## **PUBLIC COMMENTS ON DRAFT ADVISORY OPINIONS**

Members of the public may submit written comments on draft advisory opinions.

REVISED DRAFT A of ADVISORY OPINION 2011-12 is now available for comment. It was requested by Marc E. Elias, Esq., Ezra W. Reese, Esq., and Jonathan S. Berkon, Esq., on behalf of Majority PAC and House Majority PAC, and is scheduled to be considered by the Commission at its public meeting on June 30, 2011.

If you wish to comment on REVISED DRAFT A of ADVISORY OPINION 2011-12, please note the following requirements:

- 1) Comments must be in writing, and they must be both legible and complete.
- 2) Comments must be submitted to the Office of the Commission Secretary by hand delivery or fax ((202) 208-3333), with a duplicate copy submitted to the Office of General Counsel by hand delivery or fax ((202) 219-3923).
- 3) Comments must be received by 5:00 P.M. (Eastern Time) on June 29, 2011.
- 4) The Commission will generally not accept comments received after the deadline. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.
- 5) All timely received comments will be made available to the public at the Commission's Public Records Office and will be posted on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

## **REQUESTOR APPEARANCES BEFORE THE COMMISSION**

The Commission has implemented a pilot program to allow advisory opinion requestors, or their counsel, to appear before the Commission to answer questions at the open meeting at which the Commission considers the draft advisory opinion. This program took effect on July 7, 2009.

**Under the program:**

- 1) A requestor has an automatic right to appear before the Commission if any public draft of the advisory opinion is made available to the requestor or requestor's counsel less than one week before the public meeting at which the advisory opinion request will be considered. Under these circumstances, no advance written notice of intent to appear is required. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2).**
- 2) A requestor must provide written notice of intent to appear before the Commission if all public drafts of the advisory opinion are made available to requestor or requestor's counsel at least one week before the public meeting at which the Commission will consider the advisory opinion request. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2). The notice of intent to appear must be received by the Office of the Commission Secretary by hand delivery, email ([Secretary@fec.gov](mailto:Secretary@fec.gov)), or fax ((202) 208-3333), no later than 48 hours before the scheduled public meeting. Requestors are responsible for ensuring that the Office of the Commission Secretary receives timely notice.**
- 3) Requestors or their counsel unable to appear physically at a public meeting may participate by telephone, subject to the Commission's technical capabilities.**
- 4) Requestors or their counsel who appear before the Commission may do so only for the limited purpose of addressing questions raised by the Commission at the public meeting. Their appearance does not guarantee that any questions will be asked.**

**FOR FURTHER INFORMATION**

Press inquiries: Judith Ingram  
Press Officer  
(202) 694-1220

Commission Secretary: Shawn Woodhead Werth  
(202) 694-1040

Comment Submission Procedure: Rosemary C. Smith  
Associate General Counsel  
(202) 694-1650

Other inquiries:

To obtain copies of documents related to Advisory Opinion 2011-12, contact the Public Records Office at (202) 694-1120 or (800) 424-9530, or visit the Commission's website at <http://saos.nictusa.com/saos/searchao>.

**ADDRESSES**

Office of the Commission Secretary  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Office of General Counsel  
ATTN: Rosemary C. Smith, Esq.  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

**AGENDA DOCUMENT NO. 11-37-B**



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2011 JUN 28 P 5: 26

June 28, 2011

**AGENDA ITEM**

**MEMORANDUM**

TO: The Commission

FROM: Christopher Hughey *pch*  
Acting General Counsel

Rosemary C. Smith *RCS*  
Associate General Counsel

Robert M. Knop *RMK*  
Assistant General Counsel

Joanna S. Waldstreicher *JSW*  
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Theodore M. Lutz *TML*  
Attorney

Subject: Draft AO 2011-12 (Majority PAC and House Majority PAC) –  
Revised Draft A

For Meeting of 6-30-11

**SUBMITTED LATE**

Attached are proposed drafts of the subject advisory opinion. We have been asked that this draft be placed on the agenda for June 30, 2011.

Attachment

1 ADVISORY OPINION 2011-12

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4 Marc E. Elias, Esq.

5 Ezra W. Reese, Esq.

6 Jonathan S. Berkon, Esq.

7 Perkins Coie LLP

8 700 Thirteenth St., NW Suite 600

9 Washington, DC 20005-3960

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**REVISED DRAFT A**

11 Dear Messrs Elias, Reese, and Berkon:

12 We are responding to your advisory opinion request on behalf of Majority PAC  
13 (formerly known as Commonsense Ten) and House Majority PAC (the "Committees"),  
14 concerning the application of the Federal Election Campaign Act of 1971, as amended  
15 (the "Act"), and Commission regulations, to the Committees' plan to ask Federal  
16 officeholders and candidates, and officers of national party committees, to solicit  
17 unlimited individual, corporate, and labor organization contributions on behalf of the  
18 Committees. The Commission concludes that Federal officeholders and candidates, and  
19 officers of national party committees, remain subject to the Act's amount limitations and  
20 source prohibitions when they solicit contributions on behalf of the Committees.

21 Additionally, the Commission concludes that Federal officeholders and candidates, and  
22 national party officers, may attend, speak at, and be featured guests at fundraisers for the  
23 Committees at which unlimited individual, corporate, and labor organization  
24 contributions are solicited, so long as they restrict any solicitation they make to funds  
25 subject to limitations, prohibitions and reporting requirements of the Act.

1 ***Background***

2 The facts presented in this advisory opinion are based on your letter received on  
3 May 19, 2011, materials submitted in connection with Advisory Opinion 2010-11  
4 (Commonsense Ten), and on publicly available reports filed with the Commission.

5 On June 11, 2010, Majority PAC, under its previous name, Commonsense Ten,  
6 filed its Statement of Organization.<sup>1</sup> On the same day, it filed an Advisory Opinion  
7 Request with the Commission regarding its planned activities. In its 2010 request,  
8 Majority PAC represented that it planned to pay for independent expenditures but that it  
9 would not make any direct or in-kind contributions to Federal candidates, political party  
10 committees, or to any other political committee that makes contributions to Federal  
11 candidates or party committees. Advisory Opinion Request 2010-11 (Commonsense  
12 Ten) at 3. Majority PAC also stated that it would solicit and accept contributions from  
13 corporations and labor organizations, as well as from individuals and Federal political  
14 committees in excess of \$5,000 per calendar year. *Id.* It would not, however, solicit or  
15 accept contributions from foreign nationals, Federal contractors, or national banks or  
16 corporations organized by any law of Congress. *Id.* Majority PAC also stated that it  
17 would report all contributions aggregating in excess of \$200 a year to the Commission.  
18 *Id.* On July 22, 2010, the Commission approved the proposal in Advisory Opinion 2010-  
19 11 (Commonsense Ten). On July 27, 2010, Majority PAC filed a letter with the  
20 Commission stating that it intended to make independent expenditures and raise funds in  
21 unlimited amounts, but that it would not make any contributions to Federal candidates or

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<sup>1</sup> On March 9, 2011, Majority PAC filed an amended Statement of Organization indicating a name change from Commonsense Ten to Majority PAC.

1 to Federal political committees, whether direct, in-kind, or by means of coordinated  
2 communications.<sup>2</sup>

3 On April 11, 2011, House Majority PAC filed its Statement of Organization. On  
4 the same day, House Majority PAC filed a letter stating that it intended to make  
5 independent expenditures and raise funds in unlimited amounts, but that it would not  
6 make any contributions to Federal candidates or to Federal political committees, whether  
7 direct, in-kind, or by means of coordinated communications.

8 Both Committees represent that they have solicited and accepted contributions in  
9 accordance with Advisory Opinion 2010-11 (Commonsense Ten), and that they report  
10 these contributions to the Commission. Both Committees have filed the required  
11 disclosure reports, and these reports are available on the Commission's website.

12 ***Questions Presented***

13 1. *May Federal officeholders and candidates, and officers of national party*  
14 *committees, solicit unlimited contributions from individuals, corporations, and labor*  
15 *organizations on behalf of political committees that make only independent expenditures?*

16 2. *If the answer to Question One is no, may Federal officeholders and*  
17 *candidates, and officers of national party committees, participate in fundraisers for such*  
18 *political committees, at which unlimited individual, corporate, and labor organization*  
19 *contributions will be solicited, so long as the officeholders, candidates, and officers do*  
20 *not themselves solicit such contributions?*

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<sup>2</sup> The Commission approved the use of a template for this type of letter in Advisory Opinion 2010-09 (Club for Growth).

1 ***Legal Analysis and Conclusions***

2 1. ***May Federal officeholders and candidates, and officers of national party***  
3 ***committees, solicit unlimited contributions from individuals, corporations, and labor***  
4 ***organizations on behalf of political committees that make only independent expenditures?***

5 No, Federal officeholders, candidates, and officers of national party committees  
6 may not solicit unlimited contributions from individuals, corporations, or labor  
7 organizations on behalf of independent expenditure-only political committees  
8 (“IEOPCs”). However, Federal officeholders and candidates, and officers of national  
9 party committees, may solicit up to \$5000 from individuals (and any other source not  
10 prohibited by the Act from making a contribution to a political committee) on behalf of  
11 an IEOPC, because those funds are subject to the Act’s amount limitations and source  
12 prohibitions.<sup>3</sup>

13 The Act limits contributions by any person to “any other political committee”  
14 (other than authorized candidate committees, and national and state party committees) to  
15 \$5000 per calendar year. 2 U.S.C. 441a(a)(1)(C). Furthermore, national banks,  
16 corporations, labor organizations, Federal contractors, and foreign nationals are  
17 prohibited from making any contribution in connection with any federal election. 2  
18 U.S.C. 441b(a), 441c, 441e.

19 On January 21, 2010, the U.S. Supreme Court held in *Citizens United* that  
20 corporations may make unlimited independent expenditures and electioneering  
21 communications using corporate treasury funds. *Citizens United v. FEC*, 558 U.S. \_\_\_,  
22 130 S.Ct. 876, 913 (2010). On March 26, 2010, shortly after the *Citizens United*

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<sup>3</sup> See 2 U.S.C. 441i(e)(1)(A); 11 CFR 300.61.



1 decision, the U.S. Court of Appeals for the District of Columbia Circuit held that the  
2 Act's contribution limits are unconstitutional as applied to individuals' contributions to  
3 political committees that make only independent expenditures. *SpeechNow.org v. FEC*,  
4 599 F.3d 686, 696 (D.C. Cir. 2010) (*en banc*). Consistent with the *Citizens United* and  
5 *SpeechNow* opinions, the Commission concluded that corporations, labor organizations,  
6 political committees, and individuals may each make unlimited contributions to IEOPCs,  
7 and that these IEOPCs may solicit unlimited contributions from these sources. Advisory  
8 Opinion 2010-11 (Commonsense Ten). The Committees have registered as IEOPCs, and  
9 therefore may accept unlimited contributions from individuals, political committees,  
10 corporations, and labor organizations.

11         However, Federal officeholders and candidates, their agents, and entities directly  
12 or indirectly established, financed, or maintained, or controlled by, or acting on behalf of,  
13 Federal officeholders and candidates, may not raise or spend funds in connection with an  
14 election for Federal office, "unless the funds are subject to the limitations, prohibitions,  
15 and reporting requirements" of the Act. 2 U.S.C. 441i(e)(1)(A); 11 CFR 300.61. Persons  
16 subject to section 441i(e) also may not raise or spend funds in connection with any  
17 election other than an election for Federal office unless the funds are raised within the  
18 Act's contribution limits and are not from prohibited sources. 2 U.S.C. 441i(e)(1)(B); 11  
19 CFR 300.62. Similarly, national party committees, their officers and agents, and any  
20 entity that is directly or indirectly established, financed, maintained, or controlled by a  
21 national party committee or a national congressional campaign committee, may not  
22 solicit, receive, direct or spend "any funds [] that are not subject to the limitations,

1 prohibitions, and reporting requirements of the Act.” 2 U.S.C. 441i(a)(1); 11 CFR  
2 300.10(a).

3 Section 441i was enacted by Congress long after the Act’s contribution limits and  
4 source prohibitions.<sup>4</sup> It was upheld by the Supreme Court in *McConnell v. FEC*, 540  
5 U.S. 93, 181-184 (2003), and remains valid since it was not disturbed by either *Citizens*  
6 *United* or *SpeechNow*. See, e.g., *RNC v. FEC*, 698 F. Supp. 2d 150, 156-60 (D.D.C.  
7 2010), *aff’d* 130 S. Ct. 3544 (2010).

8 It is clear that under *Citizens United*, the Committees may accept unlimited  
9 contributions from individuals, corporations, and labor organizations; however, the Act’s  
10 solicitation restrictions remain applicable to *contributions solicited by* Federal candidates,  
11 officeholders, and national party committees and their agents. Thus, Federal candidates,  
12 officeholders, and national party committees and their agents may only solicit  
13 contributions of up to \$5000 from individuals (other than foreign nationals or federal  
14 contractors) and Federal political action committees for an IEOPC.

15 2. *If the answer to Question One is no, may Federal officeholders and candidates,*  
16 *and officers of national party committees, participate in fundraisers for such political*  
17 *committees, at which unlimited individual, corporate, and labor organization*  
18 *contributions will be solicited, so long as the officeholders, eandidates, and officers do*  
19 *not themselves solicit such contributions?*

20 Yes, Federal officeholders and candidates, and officers of national party  
21 committees, may attend, speak at, or be featured guests at fundraisers for the Committees,

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<sup>4</sup> Congress passed the solicitation prohibition at 2 U.S.C. 441i as part of the 2002 Bipartisan Campaign Reform Act of 2002 (“BCRA”).

1 at which unlimited individual, corporate, and labor organization contributions will be  
2 solicited, so long as the officeholders, candidates, and officers of national party  
3 committees restrict any solicitations they make to funds subject to the limitations,  
4 *prohibitions, and reporting requirements of the Act.*

5 In April 2010, the Commission adopted revised regulations covering  
6 “participation by Federal candidates and officeholders at fundraising events in connection  
7 with an election for Federal office . . . at which funds outside the amount limitations and  
8 source prohibitions of the Act or Levin funds are solicited.” 11 CFR 300.64(a).<sup>5</sup> Under  
9 the revised regulations, a Federal candidate or officeholder may “[a]ttend, speak at, or be  
10 a featured guest” at such a fundraising event. 11 CFR 300.64(b)(1). In the course of  
11 participating in such an event, however, a Federal candidate or officeholder may not  
12 solicit any funds that are not “subject to the limitations, prohibitions, and reporting  
13 requirements of the Act.” 11 CFR 300.61. Rather, a Federal candidate or officeholder  
14 who solicits funds at such an event must limit any solicitation “to funds that comply with  
15 the amount limitations and source prohibitions of the Act.” 11 CFR 300.64(b)(2).

16 This response constitutes an advisory opinion concerning the application of the  
17 Act and Commission regulations to the specific transaction or activity set forth in your  
18 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any  
19 of the facts or assumptions presented, and such facts or assumptions are material to a  
20 conclusion presented in this advisory opinion, then the requestor may not rely on that  
21 conclusion as support for its proposed activity. Any person involved in any specific  
22 transaction or activity which is indistinguishable in all its material aspects from the

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<sup>5</sup> *See also Final Rules for 11 CFR 300.64: Participation by Federal Candidates and Officeholders at Non-Federal Fundraising Events*, 75 FR 24375 (May 5, 2010), available at [www.fec.gov/fosers](http://www.fec.gov/fosers).

1 transaction or activity with respect to which this advisory opinion is rendered may rely on  
2 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or  
3 conclusions in this advisory opinion may be affected by subsequent developments in the  
4 law including, but not limited to, statutes, regulations, advisory opinions, and case law.  
5 The cited advisory opinions are available on the Commission's website, [www.fec.gov](http://www.fec.gov), or  
6 directly from the Commission's Advisory Opinion searchable database at  
7 <http://www.fec.gov/searchao>.

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On behalf of the Commission,

Cynthia L. Bauerly  
Chair