

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

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

DRAFTS A AND B of ADVISORY OPINION 2011-18 are now available for comment. They were requested by Dan Backer, Esq., on behalf of Western Representation PAC, and are scheduled to be considered by the Commission at its public meeting on October 6, 2011.

If you wish to comment on DRAFTS A AND B of ADVISORY OPINION 2011-18, 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) 219-2338), 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 3 p.m. (Eastern Time) on October 5, 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) 219-2338), 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 2011-18, 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. 11-59**



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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October 3, 2011

**AGENDA ITEM**

**MEMORANDUM**

For Meeting of 10-6-11

TO: The Commission

FROM: Anthony Herman  
General Counsel

AH

**SUBMITTED LATE**

Rosemary C. Smith  
Associate General Counsel

RS

Robert M. Knop  
Assistant General Counsel

RMK

Anthony Buckley  
Attorney

AB

Subject: AO 2011-18 (Western Representation PAC) - Drafts A and B

Attached are proposed drafts of the subject advisory opinion. We have been asked to have these drafts placed on the Open Session agenda for October 6, 2011.

Attachments

1 ADVISORY OPINION 2011-18

2

3 Dan Backer, Esq.

4 DB Capitol Strategies

5 209 Pennsylvania Avenue, SE

6 Suite 2109

7 Washington, D.C. 20003

**DRAFT A**

8

9 Dear Mr. Backer:

10 We are responding to your advisory opinion request on behalf of Western  
11 Representation PAC (the "Committee"), concerning the application of the Federal  
12 Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to  
13 the Committee's reporting obligations for independent expenditures to be made by email  
14 during the 2012 Presidential primary elections. The Commission concludes that the  
15 Committee may modify the way it discloses the cost of sending independent expenditure  
16 emails on its 24-hour reports. Further, when reporting the monthly cost of its  
17 independent expenditure emails on its monthly reports, the Committee does not have to  
18 attribute these costs to the various States' Presidential primaries.

19 ***Background***

20 The facts presented in this advisory opinion are based on your letter received on  
21 August 17, 2011.

22 The Committee is a nonconnected committee. It plans to send an as-yet-  
23 undetermined number of emails to its proprietary email list in connection with the 2012  
24 Republican Presidential primary elections. Many of these emails, but not all of them,  
25 will expressly advocate the election or defeat of a clearly identified Federal candidate,  
26 and will constitute independent expenditures.

1           The Committee plans to retain a mass email service provider to send out the  
2 Committee's emails. The provider will charge a fixed monthly amount for its services,  
3 between \$1,500 and \$3,000, regardless of the number of emails to be sent. The  
4 Committee has not yet determined how many emails it will send, but states that the  
5 number of both independent expenditure and non-independent expenditure emails will be  
6 "from as few as four a month to as many as thirty." All of the emails will be sent to the  
7 entire email list, which includes voters in every state.

8           The Committee seeks to exclude the costs of sending the emails from its 24-hour  
9 and 48-hour notifications of independent expenditures. In filing its monthly reports, the  
10 Committee seeks to avoid attributing the costs of sending the independent expenditure  
11 emails to various States' Presidential preference primary elections. The Committee  
12 claims that meeting these obligations will require it to determine, for every independent  
13 expenditure email sent: 1) to which State primaries the email applies; 2) whether that  
14 email falls within that particular primary election's 24-hour or 48-hour reporting period;  
15 and 3) the cost of sending each individual email.

16    ***Questions Presented***

17           1.       *May the Committee exclude the cost of sending each independent*  
18 *expenditure email from the calculation of costs included in its 24-hour and 48- hour*  
19 *reports, provided such costs are included in the Committee's regular monthly reports?*

20           2.       *May the Committee report the actual monthly cost of its independent*  
21 *expenditure emails on its regular monthly reports without attributing these costs to the*  
22 *various States' Presidential primary elections?*

1 ***Legal Analysis and Conclusions***

2 1. ***May the Committee exclude the cost of sending each independent***  
3 ***expenditure email from the calculation of costs included in its 24-hour and 48-hour***  
4 ***reports, provided such costs are included in the Committee's regular monthly reports?***

5 Yes, the Committee may exclude the actual cost of sending each independent  
6 expenditure email from the calculation of its expenses included on its 24-hour and  
7 48-hour reports, provided that it reports the total monthly fees paid to its email vendor on  
8 a 24-hour report.

9 An "independent expenditure" is an expenditure by a person expressly advocating  
10 the election or defeat of a clearly identified candidate, that is not made in concert or  
11 cooperation with or at the request or suggestion of, among others, the candidate.

12 2 U.S.C. 431(18)(A) and (B); 11 CFR 100.16(a).

13 A political committee that makes independent expenditures aggregating \$1,000 or  
14 more after the 20<sup>th</sup> day, but more than 24 hours, before the date of a given election, must  
15 file a report describing the expenditures within 24 hours. 2 U.S.C. 434(g)(1)(A); 11 CFR  
16 104.4(c). The 24-hour filing period begins when the independent expenditure is publicly  
17 distributed or otherwise publicly disseminated. 11 CFR 104.4(c). Additional reports  
18 must be filed within 24 hours each time the political committee makes independent  
19 expenditures aggregating \$1,000 or more with respect to the same election as that to  
20 which the initial report relates. 2 U.S.C. 434(g)(1)(B); 11 CFR 104.4(c).

21 A political committee that makes independent expenditures aggregating \$10,000  
22 or more at any time up to and including the 20<sup>th</sup> day before the date of a given election  
23 must file a report describing the expenditures within 48 hours. 2 U.S.C. 434(g)(2)(A);

1 11 CFR 104.4(b)(2). The 48-hour reporting period begins when the independent  
2 expenditure is publicly distributed or otherwise publicly disseminated. 11 CFR  
3 104.4(b)(2). Additional reports must be filed within 48 hours each time the political  
4 committee makes additional independent expenditures aggregating \$10,000 or more with  
5 respect to the same election as that to which the initial report relates. 2 U.S.C.  
6 434(g)(2)(B); 11 CFR 104.4(b)(2). In Advisory Opinion 1999-37 (X-PAC), the  
7 Commission concluded that a political committee's distribution of an express advocacy  
8 message by email would be an independent expenditure by that committee with  
9 concomitant reporting obligations if the costs exceed the \$200 threshold. Thus, the costs  
10 the Committee will incur to send out its independent expenditure emails are the type of  
11 costs the Commission has previously determined in Advisory Opinion 1999-37 (X-PAC)  
12 require disclosure.<sup>1</sup>

13 The Commission does not possess general authority to waive reporting  
14 obligations. *See* Advisory Opinion 1994-35 (Alter). In fact, the Commission has specific  
15 authority to waive reporting requirements only in connection with special elections. *See*  
16 2 U.S.C. 434(a)(9). Advisory Opinion 1995-44 (Forbes for President) interpreted the  
17 reporting requirements of the Act but did not waive them.

18 Independent expenditures are aggregated with respect to a given election  
19 regardless of which candidate is identified in the communication. 11 CFR 104.4(a),  
20 (b)(1)-(2), and (c); *see* Advisory Opinion 2003-40 (Navy Veterans) (concluding that two

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<sup>1</sup> In AO 1999-37 (X-PAC) the Commission concluded that expenses such as "registering and maintaining X-PAC's domain name . . . and the website hosting as well as any costs related to the purchase and use of hardware and software" should be reported as operating expenses. However the Commission went on to explain that if the expenses are attributable to communications such as an email containing express advocacy or to a separate website supporting or opposing specific individual candidates, they would be reportable as independent expenditure activity. *Id.*



1 separate ads for the same election, one favoring Candidate A (costing \$9,000) and the  
2 other favoring Candidate B (costing \$4,000), had to be aggregated for purposes of filing a  
3 48-hour report because the ads were related to the same election); *see also* Explanation  
4 and Justification, Bipartisan Campaign Reform Act of 2002 Reporting; Coordinated and  
5 Independent Expenditures, 68 FR 404, 406 (January 3, 2003). For purposes of  
6 aggregating independent expenditures, each State's Presidential primary election is  
7 considered a separate election. *See* Advisory Opinion 2003-40.<sup>2</sup>

8 Under the circumstances described in your request, ordinarily the calculation  
9 would entail a two-step process.<sup>3</sup> First, to calculate the cost of sending a single email to  
10 the entire list of recipients residing in every single state, the fixed monthly price for  
11 sending emails would be divided by the number of emails sent to the entire email list.  
12 Thus, the cost of sending the first email to the list would be \$3,000. However, if five  
13 emails are sent to the list in the same month, sending each email would cost \$600. The  
14 second step would usually be to determine the cost per election. As noted above, each  
15 State's Presidential primary election is considered a separate election for purposes of  
16 aggregating independent expenditures. Thus, any express advocacy email sent before the  
17 first primary election or caucus would relate to all 50 subsequent presidential primary

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<sup>2</sup> The Commission notes that Advisory Opinion 1995-44 (Forbes for President) is distinguishable from Western Representation PAC's situation. In Advisory Opinion 1995-44 (Forbes for President), the Commission concluded that a Presidential candidate's principal campaign committee need not file 48-hour notifications of contributions received. Advisory Opinion 1995-44 (Forbes for President) recognizes that the 48-hour notification requirement is intended to apply to contributions received just before an election that can be used for that election. When presidential primaries follow one another in rapid succession, it can be "difficult or arbitrary" to attribute contributions received to a particular primary election given that the candidate committee may not know which primary or primaries it will spend these contributions on. In contrast, by sending emails to voters in all states where primary elections will be held, the Committee has determined that it will make independent expenditures to sway voters in all these States.

<sup>3</sup> The Commission is assuming a monthly vendor fee of \$3,000 for purposes of this advisory opinion.

1 elections. Therefore, the cost of the first email would be \$60 per primary election. When  
2 additional emails are sent, the initial \$60 cost per email would be reduced.

3 The Commission recognizes, however, that requiring the Committee to aggregate  
4 costs in this manner would be difficult, given that the number of additional emails to be  
5 sent in a given month may not be ascertained until close to the end of the month.  
6 Moreover, any reasonable estimate used to prepare a 24-hour or 48-hour report early in  
7 the month may often be subject to revision later in the month, thereby necessitating  
8 multiple amendments to previously filed 24-hour or 48-hour reports. Numerous  
9 amendments would not further the statutory goals of providing transparency at critical  
10 times before elections.

11 Accordingly, the Commission concludes that the Committee may satisfy its  
12 reporting obligations by reporting this monthly vendor fee as follows. If the first  
13 independent expenditure email in any given month is sent before the vendor is paid, the  
14 Committee must file a 24-hour notice on Schedule E of FEC Form 3X at that time. If the  
15 Committee pays the vendor before the first independent expenditure email is sent, then  
16 the Committee may file its 24-hour notice on Schedule E of FEC Form 3X either at the  
17 time of payment or at the time the first independent expenditure email.<sup>4</sup> The Committee  
18 must include memo text stating the amount has been disbursed to pay for express  
19 advocacy emails to be sent and the number of people on its email list. For example, the  
20 memo text might read: "To pay for emails to be sent to our 500,000 member email list."

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<sup>4</sup> The Commission presumes that either one of these dates will be within 20 days of a presidential primary election. Accordingly, the Commission is requiring that the amount must be disclosed by 24-hour rather than 48-hour reporting.

1 However, the Committee need not aggregate these costs in the amount it spent for the  
2 calendar year-to-date total for each State's Presidential primary election.

3 2. *May the Committee report the actual monthly cost of sending its*  
4 *independent expenditure emails on its regular monthly reports without attributing these*  
5 *costs to the various States' Presidential primary elections?*

6 Yes, the Committee may report the actual monthly cost of sending its independent  
7 expenditure emails on its regular monthly reports without attributing these costs to the  
8 various States' Presidential primaries, as described below.

9 Every political committee must file reports of its receipts and disbursements.  
10 2 U.S.C. 434(a)(1); 11 CFR 104.1(a). Nonconnected committees shall file either  
11 quarterly reports, or monthly reports which shall be filed no later than the 20<sup>th</sup> day after  
12 the last day of the month. *See* 2 U.S.C. 434(a)(4)(B); 11 CFR 104.5(c)(3).  
13 Nonconnected committees must disclose their independent expenditures on their monthly  
14 or quarterly reports. 2 U.S.C. 434(b)(4)(H)(iii); 11 CFR 104.3(b)(3)(vii). As noted  
15 above, for purposes of aggregating independent expenditures, each State's Presidential  
16 primary election is considered a separate election. *See* Advisory Opinion 2003-40. The  
17 Committee will file monthly reports.

18 Because the Committee need not aggregate the costs of its express advocacy  
19 emails on a per-election basis for the purposes of its 24-hour reports, it also need not  
20 aggregate these costs on a per-election basis on its monthly reports. Rather, the  
21 Committee must report the full amount spent on the express advocacy emails.<sup>5</sup> So that its

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<sup>5</sup> If the Committee's monthly report reflects an amount less than the amount disclosed on the 24-hour notice as a consequence of the Committee having calculated the percentage of emails that were independent expenditure emails, then the Committee must file an amended 24-hour notice.

1 disclosure will be as complete as possible, the Committee must include memo text stating  
2 the number of express advocacy emails sent and the number of people on the email list.  
3 For example, the memo text might read: "10 emails sent to our 500,000 member email  
4 list."

5 This response constitutes an advisory opinion concerning the application of the  
6 Act and Commission regulations to the specific transaction or activity set forth in your  
7 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any  
8 of the facts or assumptions presented, and such facts or assumptions are material to a  
9 conclusion presented in this advisory opinion, then the requestor may not rely on that  
10 conclusion as support for its proposed activity. Any person involved in any specific  
11 transaction or activity which is indistinguishable in all its material aspects from the  
12 transaction or activity with respect to which this advisory opinion is rendered may rely on  
13 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or  
14 conclusions in this advisory opinion may be affected by subsequent developments in the  
15 law, including, but not limited to, statutes, regulations, advisory opinions, and case law.  
16 The cited advisory opinions are available on the Commission's website, [www.fec.gov](http://www.fec.gov), or  
17 directly from the Commission's Advisory Opinion searchable database at  
18 <http://www.fec.gov/searchao>.

19 On behalf of the Commission,

20  
21  
22 Cynthia L. Bauerly  
23 Chair

1 ADVISORY OPINION 2011-18

2

3 Dan Backer, Esq.

4 DB Capitol Strategies

5 209 Pennsylvania Avenue, SE

6 Suite 2109

7 Washington, D.C. 20003

**DRAFT B**

8

9 Dear Mr. Backer:

10 We are responding to your advisory opinion request on behalf of Western  
11 Representation PAC (the "Committee"), concerning the application of the Federal  
12 Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to  
13 the Committee's reporting obligations for independent expenditures to be made by email  
14 during the 2012 Presidential primary elections. The Commission concludes that the costs  
15 of the Committee's email service provider are properly treated as overhead or general  
16 administrative expenses. Accordingly, these costs are not required to be included in the  
17 Committee's calculation of its expenses included on its 24- and 48- hour reports, nor are  
18 they required to be attributed to the various States' Presidential primaries on its monthly  
19 reports.

20 ***Background***

21 The facts presented in this advisory opinion are based on your letter received on  
22 August 17, 2011.

23 The Committee is a nonconnected committee. It plans to send an as-yet-  
24 undetermined number of emails to its proprietary email list in connection with the 2012  
25 Republican Presidential primary elections. Many of these emails, but not all of them,

1 will expressly advocate the election or defeat of a clearly identified Federal candidate,  
2 and will constitute independent expenditures.

3 The Committee plans to retain a mass email service provider to send out the  
4 Committee's emails. The provider will charge a fixed monthly amount for its services,  
5 between \$1,500 and \$3,000, regardless of the number of emails to be sent. The  
6 Committee has not yet determined how many emails it will send, but states that the  
7 number of both independent expenditure and non-independent expenditure emails will be  
8 "from as few as four a month to as many as thirty." All of the emails will be sent to the  
9 entire email list, which includes voters in every state.

10 The Committee seeks to exclude the costs of sending the emails from its 24- and  
11 48-hour notifications of independent expenditures. In filing its monthly reports, the  
12 Committee seeks to avoid attributing the costs of sending the independent expenditure  
13 emails to various States' Presidential preference primary elections. The Committee  
14 claims that meeting these obligations will require it to determine, for every independent  
15 expenditure email sent: 1) to which State primaries the email applies; 2) whether that  
16 email falls within that particular primary election's 24- or 48-hour reporting period; and  
17 3) the cost of sending each individual email.

18 ***Questions Presented***

19 1. *May the Committee exclude the cost of sending each independent*  
20 *expenditure email from the calculation of costs included in its 24- and 48- hour reports,*  
21 *provided such costs are included in the Committee's regular monthly reports?*

1           2.       *May the Committee report the actual monthly cost of its independent*  
2 *expenditure emails on its regular monthly reports without attributing these costs to the*  
3 *various States' Presidential primary elections?*

4 ***Legal Analysis and Conclusions***

5           1.       *May the Committee exclude the cost of sending each independent*  
6 *expenditure email from the calculation of costs included in its 24- and 48-hour reports,*  
7 *provided such costs are included in the Committee's regular monthly reports?*

8           Yes, the Committee may exclude the actual cost of sending each independent  
9 expenditure email from the calculation of its expenses included on its 24- and 48- hour  
10 reports.<sup>1</sup>

11           An “independent expenditure” is an expenditure by a person expressly advocating  
12 the election or defeat of a clearly identified candidate, that is not made in concert or  
13 cooperation with or at the request or suggestion of, among others, the candidate.

14 2 U.S.C. 431(18)(A) and (B); 11 CFR 100.16(a).

15           A political committee that makes independent expenditures aggregating \$1,000 or  
16 more after the 20<sup>th</sup> day, but more than 24 hours, before the date of a given election, must  
17 file a report describing the expenditures within 24 hours. 2 U.S.C. 434(g)(1)(A); 11 CFR  
18 104.4(c). The 24-hour filing period begins when the independent expenditure is publicly  
19 distributed or otherwise publicly disseminated. 11 CFR 104.4(c). This will be the date  
20 the Committee sends its emails to the list. Additional reports must be filed within 24  
21 hours each time the political committee makes independent expenditures aggregating

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<sup>1</sup> This advisory opinion addresses the costs of the Committee's email service provider only. The Request does not ask about, nor does this advisory opinion address, any additional marginal costs the Committee may incur, such as contracting with an outside vendor to design or develop any particular independent expenditure emails.

1 \$1,000 with respect to the same election as that to which the initial report relates.

2 2 U.S.C. 434(g)(1)(B); 11 CFR 104.4(c).

3 A political committee that makes independent expenditures aggregating \$10,000

4 or more at any time up to and including the 20<sup>th</sup> day before the date of a given election

5 must file a report describing the expenditures within 48 hours. 2 U.S.C. 434(g)(2)(A);

6 11 CFR 104.4(b)(2). The 48-hour reporting period begins when the independent

7 expenditure is publicly distributed or otherwise publicly disseminated. 11 CFR

8 104.4(b)(2). This will also be the date the Committee sends its emails to the list.

9 Additional reports must be filed within 48 hours each time the political committee makes

10 additional independent expenditures aggregating \$10,000 with respect to the same

11 election as that to which the initial report relates. 2 U.S.C. 434(g)(2)(B); 11 CFR

12 104.4(b)(2).

13 In Advisory Opinion 1999-37 (X-PAC), a political committee asked about the

14 reporting requirements for independent expenditure emails it planned to make available

15 by downloading from its website as well as through email messages sent directly to

16 subscribers of its email list. The Commission, citing 11 CFR 106.1(c)(1), concluded that

17 X-PAC's costs of registering and maintaining its domain name and website hosting, as

18 well as any costs relating to the purchase and use of computer hardware and software,

19 were properly treated as overhead and operating expenses that were not required to be

20 included in calculating its expenses included on its independent expenditure reports,



1 unless those expenses were made on behalf of clearly identified candidates and could be  
2 directly attributed to those candidates.<sup>2</sup>

3 Here, the Committee represents that it will pay a fixed monthly fee for its mass  
4 email service provider, regardless of the number of emails to be sent, and regardless of  
5 whether those emails constitute independent expenditures. Accordingly, as with the  
6 requester's website and other computer-related expenses in AO 1999-37, the costs of the  
7 Committee's email service provider are properly treated as operating expenses and are  
8 not required to be included in its calculation of expenses included on its 24- and 48- hour  
9 reports.

10 2. *May the Committee report the actual monthly cost of sending its*  
11 *independent expenditure emails on its regular monthly reports without attributing these*  
12 *costs to the various States' Presidential primary elections?*

13 This question is moot, given the answer to Question 1, above. Because the  
14 Commission concludes the costs of the Committee's mass email service provider are  
15 properly treated as operating expenses, they are not required to be reported as actual costs  
16 related to particular independent expenditure emails on the Committee's Form 3X  
17 Schedule E, nor are they required to be attributed to the various States' Presidential  
18 primary elections. Rather, these costs should be included as part of the Committee's

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<sup>2</sup> The Commission also noted that "X-PAC's initial distribution of such [independent expenditure] advertisements as attachments to e-mail messages that it sends, or as text (or graphic) content of the e-mail itself, would be X-PAC's own communications. Accordingly, they would represent X-PAC's independent expenditures with concomitant reporting obligations if the costs exceed the \$200 calendar year threshold described above." However, pursuant to the main holding of the advisory opinion, such "concomitant reporting obligations" would only have attached to X-PAC's initial distribution of e-mail independent expenditures to the extent X-PAC incurred marginal costs directly attributable to those particular e-mails, as opposed to administrative and overhead costs attributable to X-PAC's e-mail service provider generally. Here, given the facts as described by the requester, the Commission concludes Western Representative PAC will incur a monthly fixed cost for its e-mail service provider, and which cost is not directly attributable to its particular e-mail independent expenditures.

