

# HOLTZMAN VOGEL JOSEFIK PLLC

Attorneys at Law

AO 2012-25

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April 10, 2012

Anthony Herman  
General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

OFFICE OF THE  
COMMISSIONER  
2012 APR 11 PM 12:39  
FEDERAL ELECTION COMMISSION

**Re: Advisory Opinion Request**

Dear Mr. Herman,

Pursuant to 2 U.S.C. § 473f and 11 C.F.R. § 112.1, America Future Fund (AFF) and American Future Fund Political Action (AFFPA), by and through the undersigned counsel, request an advisory opinion on the questions set forth below.

AFF and AFFPA wish to engage in joint fundraising efforts together, and with several other entities, but are unsure of the permissibility of those efforts in light of the Commission's joint fundraising regulation at 11 C.F.R. § 102.17(a). AFF and AFFPA therefore seek an advisory opinion on the applicability of the joint fundraising regulations with respect to a joint fundraising committee composed of four different combinations of organizations:

- (1) American Future Fund (AFF) and American Future Fund Political (AFFPA);
- (2) AFF, AFFPA, and a Federal candidate's/officeholder's authorized campaign committee;
- (3) AFF, AFFPA, and AFFPA's non-contribution *Carey* account and/or a registered independent expenditure-only committee; and
- (4) AFF, AFFPA, AFFPA's non-contribution *Carey* account, a FEC-registered independent expenditure-only committee, and a Federal candidate's/officeholder's authorized campaign committee.

### **Additional Facts**

American Future Fund (AFF) is organized under Section 501(c)(4) of the Internal Revenue Code. AFF engages in a small amount of FEC-regulated activity, but its major purpose is not Federal election campaign activity.

American Future Fund Political Action (AFFPA) is registered with the FEC as a multicandidate, nonconnected political committee. (AFFPA is not a separate segregated fund connected to AFF.)

AFFPA is establishing a non-contribution *Carey* account pursuant to instructions provided by the Commission. See FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011) available at <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.

AFF and AFFPA propose to create one or more joint fundraising committees, with the participant combinations described above, but only if the Commission advises those actions are permissible under the Federal Election Campaign Act, as amended, and Commission regulations.

In any joint fundraising venture undertaken by the requestors, AFFPA, AFFPA's non-contribution *Carey* account, any registered independent expenditure-only committee, and any Federal candidate's/officeholder's authorized campaign committee would only receive and deposit legally permissible funds pursuant to the Act, Commission regulations, Commission Advisory Opinions, and the Commission's Statement on *Carey* referenced above, as applicable. More specifically, AFFPA and any Federal candidate's/officeholder's authorized campaign committee would accept and receive only federally-permissible funds pursuant to the limits and prohibitions set forth in 2 U.S.C. § 441a. AFFPA's non-contribution *Carey* account and any FEC-registered independent expenditure-only committee would accept funds consistent with Advisory Opinion 2010-11 (Commonsense Ten), and the Commission's statement on *Carey*.<sup>1</sup> Finally, AFF would solicit and accept non-federal funds in amounts and from sources not permissible under the Act, although no funds from foreign nationals would be solicited or accepted.

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<sup>1</sup> Funds raised for AFFPA and a Federal candidate/officeholder would be deposited in one account established by the joint fundraising committee/representative, while funds raised for AFF, AFFPA's non-contribution *Carey* account, and a FEC-registered independent expenditure-only committee would be deposited in a second account established by the joint fundraising committee/representative.

With respect to each question presented below, the participants would establish a separate political committee to act as the fundraising representative,<sup>2</sup> execute a written agreement that includes all required terms,<sup>3</sup> provide appropriate fundraising notices to all potential donors,<sup>4</sup> utilize separate depository accounts as required,<sup>5</sup> keep records and file reports as required,<sup>6</sup> allocate proceeds as required,<sup>7</sup> and pay expenses as required.<sup>8</sup>

### **Legal Background**

The Commission's regulations regarding joint fundraising activities at 11 C.F.R. § 102.17 were adopted in June 1983. *See* Transmittal of Regulations to Congress on Transfer of Funds; Collecting Agents, Joint Fundraising, 48 Fed. Reg. 26,296 (June 7, 1983). Minor revisions to these regulations were made in 1991. *See* Final Rule on Public Financing of Presidential Primary and General Election Candidates, 56 Fed. Reg. 35,898 (July 29, 1991). Finally, in the 2002 nonfederal funds rulemaking, the Commission included language indicating that the provisions set forth at Section 102.17 were affected by the Bipartisan Campaign Reform Act of 2002, and its corresponding Commission regulations at Part 300, and that language in Section 102.17 did not "supersede" the new soft money rules.<sup>9</sup> *See* 67 Fed. Reg. 49,064, 49,074, Final Rule on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money (July 29, 2002).

The Commission adopted new Section 102.17(a), which reads:

Nothing in this section shall supersede 11 CFR part 300, which prohibits any person from soliciting, receiving, directing, transferring, or spending any non-Federal funds, or from transferring Federal funds for Federal election activities.

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<sup>2</sup> See 11 C.F.R. § 102.17(b)(1).

<sup>3</sup> See 11 C.F.R. § 102.17(c)(1).

<sup>4</sup> See 11 C.F.R. § 102.17(c)(2), (5).

<sup>5</sup> See 11 C.F.R. § 102.17(c)(3)(i).

<sup>6</sup> See 11 C.F.R. § 102.17(c)(4), (8).

<sup>7</sup> See 11 C.F.R. § 102.17(c)(6).

<sup>8</sup> See 11 C.F.R. § 102.17(c)(7).

<sup>9</sup> The same language was included at 11 C.F.R. § 9034.8.

In this request, we seek further guidance on the affect of the above-referenced Part 300 BCRA regulations on Section 102.17. The 2002 Explanation and Justification indicates that “[t]he ban on national party non-Federal fundraising affects the Commission’s joint fundraising rules at 11 CFR 102.17.” See 67 Fed. Reg. 49,064, 49,074, Final Rule on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money (July 29, 2002). The regulatory language adopted at Section 102.17(a), however, is not limited to the national party rules at 11 C.F.R. §§ 300.10 – 300.13, but instead refers to the entirety of Part 300.<sup>10</sup> Moreover, the language adopted at Section 102.17(a) appears to be either imprecise or overbroad, as it is simply not the case that the Commission’s regulations at 11 C.F.R. Part 300 “prohibit[] *any person* from soliciting, receiving, directing, transferring, or spending any non-Federal funds” (emphasis added).

To the best of our knowledge, and with the exception of the narrow Levin funds provisions noted in footnote 10 herein, the Commission has not provided any further explanation of its warning at 11 C.F.R. § 102.17(u), that “[n]othing in this section shall supersede 11 CFR part 300, which prohibits any person from soliciting, receiving, directing, transferring, or spending any non-federal funds, or from transferring Federal funds for Federal election activities.” It is our understanding that some in the regulated community have been advised against including participants that are not FEC-registered political committees in various joint fundraising efforts because § 102.17(a) rendered the permissibility of doing so unclear.

As written in 1983, and revised in 1991, the joint fundraising regulations explicitly permit an organization that is not registered with the Commission as a political committee to serve as a participant in joint fundraising activities with federally-registered political committees. See 11 C.F.R. § 102.17(a)(1)(i) (“Political committees may engage in joint fundraising with other political committees or with unregistered committees or organizations.”). A joint fundraising effort that includes a non-registered participant may raise non-federal funds. See 11 C.F.R. § 102.17(c)(2)(ii)(B) (with respect to the fundraising notice, “[i]f one or more participants can lawfully accept contributions that are prohibited under the Act, a statement informing contributors that contributions from prohibited sources will be distributed only to those participants that can accept them” is required). See also 11 C.F.R. §§ 102.17(c)(3)(i), 102.17(c)(4)(ii), 102.17(c)(6)(iii). Non-registered organizations are also warned about the possible consequences of paying fundraising expenses. See 11 C.F.R. § 102.17(c)(7)(ii). Finally, the existing regulations require that all “contributions received from prohibited sources” must be reported by the fundraising representative. 11 C.F.R. § 102.17(c)(8)(i)(A).

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<sup>10</sup> There are specific references to 11 C.F.R. § 102.17 in Part 300, at 11 C.F.R. § 300.31 (Receipt of Levin funds). Requestors do not propose to engage in any joint fundraising activities with a state or local political party committee.

## **Questions Presented**

**1. Pursuant to 11 C.F.R. § 102.17, and in light of the language adopted in 2002 at 11 C.F.R. § 102.17(a), may AFF and AFFPA serve as participants in a joint fundraising committee as set forth above? Does the Commission's warning that 11 CFR part 300 "prohibits any person from soliciting, receiving, directing, transferring, or spending any non-Federal funds, or from transferring Federal funds for Federal election activities" have any impact on either AFF or AFFPA such that any provision of § 102.17 would be deemed superseded, either in general or with respect to a particular participant? If any provisions of § 102.17 are superseded, what is the consequence with respect to the ability of AFF and AFFPA to engage in joint fundraising under § 102.17?**

For purposes of this Question, the participants' written agreement would specify that the first \$5,000 of all contributions from individuals will be allocated to AFFPA, and any amounts from individuals in excess of \$5,000 will be allocated to AFF. All corporate or labor union contributions will be allocated to AFF. Federally permissible funds that are allocable to AFFPA would be deposited in one depository account, while federally impermissible funds that are allocable to AFF would be deposited in a second depository account, as required by 11 C.F.R. § 102.17(c)(3)(i).

Pre-event publicity and solicitations would specify that AFFPA is raising funds for use in connection with Federal elections, and that AFF is raising funds to be used in a manner consistent with its status as a Section 501(c)(4) social welfare organization. With respect to AFF, would this solicitation, made in the context of the joint fundraising effort described above, generate "contributions," as the term is used at 2 U.S.C. § 431(8) and 11 C.F.R. 100.51 *et seq.*?<sup>11</sup> With respect to AFF, would the proposed joint fundraising activity be treated as "Federal campaign activity" for purposes of a Commission "major purpose" determination?

**2. Pursuant to 11 C.F.R. § 102.17, and in light of the language adopted in 2002 at 11 C.F.R. § 102.17(a), may AFF, AFFPA, and the authorized campaign committee of a Federal candidate/officeholder serve as participants in a joint fundraising committee as set forth above? Does the Commission's warning that 11 CFR part 300 "prohibits any person from soliciting, receiving, directing, transferring, or spending any non-Federal funds, or from transferring Federal funds for Federal election activities" have any impact on AFF, AFFPA, or the federal candidate/officeholder such that any provision of § 102.17 would be deemed**

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<sup>11</sup> We note that in *EMILY's List v. FEC*, the D.C. Circuit Court of Appeals invalidated portions of 11 C.F.R. § 100.57 because, "depending on the particular solicitation at issue, it requires covered non-profits to treat as hard money certain donations that are not actually made 'for the purpose of influencing' federal elections." *EMILY's List v. FEC*, 581 F.3d 1, 21 (D.C. Cir. 2009).

superseded, either in general or with respect to a particular participant? Do the restrictions set forth at 2 U.S.C. § 441i(e)(1) limit the federal candidate's/officeholder's ability to participate in this proposed joint fundraising effort?

For purposes of this Question, the participants' written agreement would specify that:

- the first \$2,500 of all contributions from individuals will be allocated to the primary election of the Federal candidate / officeholder's committee;
- the next \$2,500 of all contributions from individuals will be allocated to the general election of the Federal candidate/officeholder's committee;
- the next \$5,000 of all contributions from individuals will be allocated to AFFPA;
- any amounts from individuals in excess of \$10,000 will be allocated to AFF;
- all corporate or labor union contributions will be allocated to AFF.

As noted above, federally permissible funds that are allocable to AFFPA or the federal candidate/officeholder's campaign committee will be deposited in one depository account, while funds that are allocable to AFF will be deposited in a second depository account, as required by 11 C.F.R. § 102.17(c)(3)(i).

Pre-event publicity and solicitations would make the following representations:

- "this is a joint fundraising committee comprised of AFF, AFFPA, and the Federal candidate's/officeholder's authorized campaign committee"
- "AFFPA and the Federal candidate/officeholder's campaign committee are raising only federal funds for use in connection with Federal elections;"
- "AFF is raising non-federal funds to be used in a manner consistent with its status as a Section 501(c)(4) social welfare organization."

Accordingly, this written solicitation for funds identifies the Federal candidate's/officeholder's campaign committee as a participant in the joint fundraising committee and specifies the funds that the candidate's/officeholder's committee is seeking. The solicitation is not signed by the federal candidate/officeholder.

As described, we seek the Commission's guidance on how this solicitation would be treated under Commission regulations. Specifically, do the materials described above constitute a solicitation of funds by the federal candidate/officeholder for any of the following entities:

- (i) the federally-registered committee serving as the fundraising representative;
- (ii) all of the joint fundraising committee's participant committees;
- (iii) only some of the joint fundraising committee's participant committees (e.g., only the two committees seeking federally-permissible funds); or

(iv) only the Federal candidate's/officeholder's own committee?

If these materials are construed to include, among other things, a solicitation of funds by the Federal candidate/officeholder for AFF, are 2 U.S.C. § 441i(e)(J) and 11 C.F.R. § 300.65 applicable?

Finally, if AFF advances no more than its proportionate share of fundraising costs (pursuant to Section 102.17(b)(3), and pays no more than its allocated share of joint fundraising expenses (pursuant to Section 102.17(c)(7)), will AFF be deemed to have made a contribution (either monetary or in-kind) to either AFFPA or the Federal candidate's/officeholder's authorized campaign committee?

**3. Pursuant to 11 C.F.R. § 102.17, and in light of the language adopted in 2002 at 11 C.F.R. § 102.17(a), may AFF, AFFPA, and AFFPA's non-contribution *Carey* account serve as participants in a joint fundraising committee as set forth above? Does the Commission's warning that 11 CFR part 300 "prohibits any person from soliciting, receiving, directing, transferring, or spending any non-Federal funds, or from transferring Federal funds for Federal election activities" have any impact on AFF, AFFPA, or AFFPA's non-contribution *Carey* account, such that any provision of § 102.17 would be deemed superseded, either in general or with respect to a particular participant?**

For purposes of this Question, the participants' written agreement would specify that the first \$5,000 of all contributions from individuals will be allocated to AFFPA, and any amounts from individuals in excess of \$5,000 will be split evenly between AFF and AFFPA's non-contribution *Carey* account. All corporate or labor union contributions will be split evenly between AFF and AFFPA's non-contribution *Carey* account. Federally permissible funds that are allocable to AFFPA would be deposited in one depository account, while any funds that are allocable to AFF or AFFPA's non-contribution *Carey* account would be deposited in a second depository account, as required by 11 C.F.R. § 102.17(c)(3)(i).

Would any of the answers provided in response to Question #3 change if AFFPA's non-contribution *Carey* account were either replaced or joined by a FEC-registered independent expenditure-only committee as a participant?

**4. Pursuant to 11 C.F.R. § 102.17, and in light of the language adopted in 2002 at 11 C.F.R. § 102.17(a), may AFF, AFFPA, AFFPA's non-contribution *Carey* account, a FEC-registered independent expenditure-only committee, and the authorized campaign committee of a federal candidate/officeholder serve as participants in a joint fundraising committee as set forth above? Does the Commission's warning that 11 CFR part 300**

**“prohibits any person from soliciting, receiving, directing, transferring, or spending any non-Federal funds, or from transferring Federal funds for Federal election activities” have any impact on AFF, AFFPA, AFFPA’s non-contribution *Carey* account, a FEC-registered independent expenditure-only committee, or the authorized committee of a federal candidate/officeholder such that any provision of § 102.17 would be deemed superseded, either in general or with respect to a particular participant? If any provisions are superseded, what is the consequence to the proposed participants?**

**For purposes of this Question, the participants’ written agreement would specify that the first \$5,000 of all contributions from individuals will be allocated to the Federal candidate / Officeholder’s committee (\$2,500 would be designated to the primary election, and \$2,500 would be designated to the general election), the next \$5,000 from individuals would be allocated to AFFPA, and any amounts from individuals in excess of \$10,000 will be split evenly between AFFPA’s non-contribution *Carey* account and the FEC-registered independent expenditure-only account. All corporate or labor union contributions will be split evenly between AFF, AFFPA’s non-contribution *Carey* account, and the FEC-registered independent expenditure-only account. Federally permissible funds that are allocable to AFFPA or the federal candidate / officeholder’s campaign committee would be deposited in one depository account, while any funds that are allocable to AFF, AFFPA’s non-contribution *Carey* account, and the FEC-registered independent expenditure-only account would be deposited in a second depository account, as required by 11 C.F.R. § 102.17(c)(3)(i).**

**Pre-event publicity and solicitations would make the following representations:**

- **“this is a joint fundraising committee comprised of AFF, AFFPA, AFFPA’s non-contribution *Carey* account, the FEC-registered independent expenditure-only committee, and the authorized campaign committee of a federal candidate/officeholder;”**
- **“AFFPA and the Federal candidate/officeholder’s campaign committee are raising only federally-permissible funds for use in connection with Federal elections;”**
- **“AFFPA’s non-contribution *Carey* account and the FEC-registered independent expenditure-only committee are raising lawfully permitted funds for use in connection with Federal elections;” and**
- **“AFF is raising non-federal funds to be used in a manner consistent with its status as a Section 501(c)(4) social welfare organization.”**

**As was the case in Question #2, this written solicitation for funds identifies the Federal candidate’s/officeholder’s campaign committee as a participant in the joint fundraising committee and specifies the funds that the candidate’s/officeholder’s committee is seeking. The solicitation is not signed by the federal candidate/officeholder.**

Do the materials described above constitute a solicitation of funds by the Federal candidate/officeholder to AFFPA's non-contribution *Carey* account and/or the FEC-registered independent expenditure-only committee? If yes, is that solicitation impermissible under 2 U.S.C. § 441i(e)? May the joint fundraising committee include a notice, pursuant to 11 C.F.R. § 300.64, indicating that the Federal candidate/officeholder is not soliciting funds in excess of the federal source and amount limitations?

If each participant pays no more than its proportionate share of fundraising costs (pursuant to Section 102.17(b)(3)), and pays no more than its allocated share of joint fundraising expenses (pursuant to Section 102.17(c)(7)), will any participants be deemed to have made a contribution (either monetary or in-kind) to any other participant? Does participation in the joint fundraising activities described in this Question threaten the independent-expenditure only committee status of either the FEC-registered independent-expenditure only committee or AFFPA's non-contribution *Carey* account?

For purposes of this question, does the Commission's response differ in any way if the following factual variations are considered:

- (1) *Scenario 1:* The FEC-registered independent expenditure-only committee is a general purpose "Super PAC" that is not dedicated to electing any particular candidate.
- (2) *Scenario 2:* The FEC-registered independent expenditure-only committee is a so-called "candidate specific Super PAC" that is dedicated to electing a particular candidate. The Federal officeholder's/candidate's campaign committee is the authorized committee of the candidate that the Super PAC intends to help elect.

**Conclusion**

Please do not hesitate to contact us if we can provide any further information to the Commission as it considers this request. We will be available for questions at the Commission's open session consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to be "Jason Torchinsky". The signature is fluid and cursive, with a long horizontal stroke at the end.

**Jason Torchinsky**

**Michael Bayes**

**Counsel to American Future Fund and**

**American Future Fund Political Action**

June 19, 2012

Nevin Stipanovic  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Dear Mr. Stipanovic,

By this letter, I do hereby confirm my intention to join the Advisory Opinion Request of American Future Fund (AFF) and American Future Fund Political Action (AFFPA), pertaining to various joint fundraising activities. All requestors are represented by attorneys from Holtzman Vogel Josefiak PLLC.

Sincerely,

A handwritten signature in black ink, appearing to read "David McIntosh". The signature is written in a cursive style with a large initial "D".

David McIntosh  
David McIntosh For Indiana



RE: AFF and AFFPA advisory opinion request

Mike Bayes

to:

NStipanovic@fec.gov

07/24/2012 09:41 AM

Cc:

Jason Torchinsky, "rknop@fec.gov", "ABell@fec.gov", Mike Bayes

Hide Details

From: Mike Bayes <jmbayes@hvjlaw.com>

To: "NStipanovic@fec.gov" <NStipanovic@fec.gov>,

Cc: Jason Torchinsky <jtorchinsky@hvjlaw.com>, "rknop@fec.gov" <rknop@fec.gov>,

"ABell@fec.gov" <ABell@fec.gov>, Mike Bayes <jmbayes@hvjlaw.com>

History: This message has been forwarded.

Mr. Stipanovic,

The information below is accurate.

Thank you,

Michael Bayes

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**From:** NStipanovic@fec.gov [<mailto:NStipanovic@fec.gov>]

**Sent:** Monday, July 23, 2012 5:49 PM

**To:** Mike Bayes

**Cc:** Jason Torchinsky; rknop@fec.gov; ABell@fec.gov; NStipanovic@fec.gov

**Subject:** AFF and AFFPA advisory opinion request

Dear Mr. Bayes:

In our communications, you provided us with additional information regarding American Future Fund's (AFF) and American Future Fund PAC's (AFFPA) request for an advisory opinion. We have set out below our understanding of certain points that you made. Please review the statements below and either confirm their accuracy or correct any misperceptions.

1. **AFF and AFFPA are not affiliated for FEC purposes.** The two organizations have some overlapping management, but they operate separately. Similarly, any independent expenditure-only committee (IEOPC) that participates in a joint fundraising committee (JFC) would not be affiliated with AFFPA.
2. **Scope of the joint fundraising activity – the JFCs would solicit funds in writing, and/or by telephone, or other forms of direct contact.** The JFCs would also hold one or more fundraising events. But no funds would be solicited at the fundraising events. Solicitations would take place in advance of rather than at the fundraising events.
3. **Fundraising Expenses – the participants intend to allocate joint fundraising expenses in proportion to funds raised and distributed to each participant.** Each party will pay their own fundraising expenses. The joint fundraising representative will adhere to the Commission's three step guidance appearing in the most recent Congressional Candidates and Committees Guide (2011 ed.) at pp. 135-137.
4. **Advances and start-up costs – to the extent that advanced funds are needed, the requestors have not determined with any specificity how, or by what method, those funds will be advanced.** If funds are

required to be advanced, however, the requestors will advance those funds in a manner that does not result in any impermissible in-kind contributions.

5. Additional requestors – Mr. David McIntosh and David McIntosh For Indiana have been added as requestors.

6. Solicitations by JFCs when a Federal candidate or authorized committee is a participant – the solicitations would indicate that the candidate is one of the participants in the JFC. But the Federal candidate would not hold titles, such as an “honorary chairperson,” that identify the candidate as serving in a position specifically related to fundraising. On pre-event solicitations materials, the Federal candidate could be identified as the event’s speaker. But the candidate would not be featured any more or less prominently in the JFC’s public materials than the other JFC participants.

7. Federal candidate’s role in the JFC – a Federal candidate or representative of a candidate will have the opportunity to review and edit all materials prepared for use in connection with joint fundraising efforts, just like any other participant in the JFC. But otherwise the candidate or the candidate’s representative will not be involved in preparing any of the JFC materials. The candidate or the candidate’s representative also may coordinate scheduling logistics with other JFC participants regarding candidate appearances at fundraising events. And the candidate or the candidate’s representative may provide the names of potential individual contributors to other JFC participants.

8. The question on page 9 of the Request – “May the joint fundraising committee include a notice, pursuant to 11 CFR 300.64, indicating that the Federal candidate/officeholder is not soliciting funds in excess of the federal source and amount limitations” – is only relevant if the Commission decides that the solicitation is impermissible under section 441i(e). In that event, you ask if a notice under section 300.64(b)(2)(i) would cure a finding that the proposed solicitation is impermissible.

a. The section 300.64 notice would state that “the solicitation . . . does not seek funds in excess of \$[Federally permissible amount], and does not seek funds from corporations, labor organizations, national banks, federal government contractors, or foreign nationals.”

9. IEOPC or AFFPA’s *Carey* account communications – the participating IEOPC or AFFPA’s *Carey* account may use funds raised through the JFC to support the candidacy of the participant Federal candidate through public communications. Such public communications may contain express advocacy. The public communications that do not contain express advocacy may or may not identify or refer to the Federal candidate participating in the JFC.

a. At no time would the IEOPC or AFFPA’s *Carey* account engage in any public communication (other than the fundraising invite for the JFC) at the request or suggestion of any candidate, or in which any candidate was materially involved in the creation, production, or distribution of any such communication.

b. The participating IEOPC or AFFPA’s *Carey* account would not be providing, communicating or discussing with the participating Federal candidate or authorized committee any information about the plans, activities or needs beyond those involving the specific JFC fundraising event.

c. Solicitations by JFCs involving an IEOPC or AFFPA’s *Carey* account would not indicate how the IEOPC or AFFPA’s *Carey* account would use the funds received.

10. In question 3 of the request you state that an IEOPC may join a JFC involving AFF, AFFPA,

and AFFPA's non-contribution account. In that event, the fundraising proceeds would be allocated as follows: the first \$5,000 received by the fundraising representative would be allocated to AFF and any amounts from individuals in excess of \$5,000 would be split evenly between AFF, AFFPA's non-contribution account, and the IEOPC; all corporate and labor organization funds received would be split evenly between AFF, AFFPA's non-contribution account, and the IEOPC.

11. Question 4 of the request states that the first \$5,000 received by the fundraising representative would be allocated to the Federal candidate's or officeholder's committee. You clarify that the first \$2,500 received by the fundraising representative would be allocated to the Federal candidate's or officeholder's primary election and the next \$2,500 would be allocated to the Federal candidate's or officeholder's general election.

Please respond via email. Your response may be treated as a supplement to the AFF and AFFPA advisory opinion request and, as such, may be posted on the Commission's website.

Thank you very much for your cooperation.

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Neven F. Stipanovic  
Attorney, Policy Division  
Office of General Counsel  
U.S. Federal Election Commission  
Tel: 202-694-1650