

PUBLIC COMMENTS ON DRAFT ADVISORY OPINIONS

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

DRAFT ADVISORY OPINION 2012-34 is now available for comment. It was requested by Laurence A. Levy, Esq., on behalf of Freedom PAC and Friends of Mike H, and is scheduled to be considered by the Commission at its public meeting on November 15, 2012. The meeting will begin at 10:00 a.m. and will be held in the 9th Floor Hearing Room at the Federal Election Commission, 999 E Street, NW, Washington, DC. Individuals who plan to attend the public meeting and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Commission Secretary, at (202) 694-1040, at least 72 hours prior to the meeting date.

If you wish to comment on DRAFT ADVISORY OPINION 2012-34, 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 noon (Eastern Time) on (month, date, year).
- 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), 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: Kevin Deeley
Acting Associate General Counsel
(202) 694-1650

Other inquiries:

To obtain copies of documents related to Advisory Opinion 2012-34, 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: Kevin Deeley, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463

AGENDA DOCUMENT NO. 12-78

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT



FEDERAL ELECTION COMMISSION
Washington, DC 20463

2012 NOV -9 PM 4: 50

November 9, 2012

MEMORANDUM

AGENDA ITEM

TO: The Commission

FROM: Anthony Herman *AH*
General Counsel

Kevin Deeley *KD*
Acting Associate General Counsel

Amy Rothstein *AR*
Assistant General Counsel

Neven Stipanovic *NFS*
Attorney

Subject: Draft AO 2012-34 (Freedom PAC and Friends of Mike H)

For Meeting of 11-15-12

SUBMITTED LATE

Attached is a proposed draft of the subject advisory opinion. Additional Drafts may be forthcoming. We have been asked to have this draft placed on the Open Session agenda for November 15, 2012.

Attachment

1 ADVISORY OPINION 2012-34

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Laurence A. Levy, Esq.
Bracewell & Giuliani LLP
1251 Avenue of the Americas
49th Floor
New York, NY 10020-1104

DRAFT

9 Dear Mr. Levy:

10 We are responding to your advisory opinion request on behalf of Freedom PAC
11 and Friends of Mike H, concerning the application of the Federal Election Campaign Act
12 (the “Act”) and Commission regulations to a proposed contribution by Friends of Mike
13 H, the principal campaign committee of former Federal candidate Mike Haridopolos, to
14 Freedom PAC, an independent expenditure-only committee.

15 The Commission concludes that Friends of Mike H may use campaign funds
16 raised for Mr. Haridopolos’ primary election to make a contribution of \$10,000 or more
17 to Freedom PAC.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter received on
20 September 24, email received on October 2, 2012, and publicly available information on
21 the Commission’s website.

22 Freedom PAC is a noneconnected political committee that makes only independent
23 expenditures. It does not make contributions to Federal candidates or political
24 committees. Freedom PAC makes decisions about the raising and spending of its funds
25 “without the donor providing advice [or] guidance, or having any operational control.”

26 Friends of Mike H is the principal campaign committee of Mike Haridopolos.
27 Mike Haridopolos was a candidate in Florida’s 2012 Senate primary election but

1 withdrew his candidacy before the primary election, which was held on August 14, 2012.

2 He was not a candidate in the 2012 general election and does not hold any Federal office.

3 Friends of Mike H reported having more than \$1 million cash on hand as of June
4 30, 2012 and would like to contribute some of those funds to Freedom PAC.¹ Friends of
5 Mike H will contribute only funds received for Mr. Haridopolos's primary election
6 campaign. The requestors represent that Friends of Mike H will not direct, control, or in
7 any way be involved in the specific content, timing, or target audience of Freedom PAC's
8 communications.

9 ***Question Presented***

- 10 1. *May Freedom PAC accept contributions of \$10,000 or more in excess funds from*
11 *Friends of Mike H, after the candidate has withdrawn from the election and is no*
12 *longer seeking Federal office?*
13
14 2. *If the answer to Question 1 is no, may Freedom PAC accept a contribution of up*
15 *to \$5,000 from the aforementioned committee?*
16

17 ***Legal Analysis and Conclusions***

18
19 *Question 1: May Freedom PAC accept contributions of \$10,000 or more in excess funds*
20 *from Friends of Mike H, after the candidate has withdrawn from the election and is no*
21 *longer seeking Federal office?*
22

23 Yes, Freedom PAC may accept contributions of \$10,000 or more in excess funds
24 from Friends of Mike H.

25 The Act and Commission regulations identify six categories of permissible uses
26 of contributions accepted by a Federal candidate, including "for any other lawful
27 purpose." 2 U.S.C. 439a(a)(6); 11 CFR 113.2(e). A principal campaign committee's use
28 of its campaign funds to make contributions to other political committees is a lawful

¹ See Report of Receipts and Disbursements by Friends of Mike H, July 9, 2012,
<http://images.nictusa.com/pdf/424/12020490424/12020490424.pdf>.

1 purpose. *See* 2 U.S.C. 441a(a)(1)(C); 11 CFR 110.1(d); *see also, e.g.*, Advisory Opinions
2 2012-06 (RickPerry.org) (funding the activities of a converted nonconnected committee
3 with remaining primary election funds); 1988-41 (Stratton) (transfer of campaign funds
4 from a principal campaign committee to other political committees).

5 Contributions accepted by a candidate may not, however, be converted to the
6 “personal use” of any person. 2 U.S.C. 439a(b)(1); 11 CFR 113.1(g). Conversion to
7 personal use occurs when funds in a campaign account of a present or former candidate
8 are used “to fulfill a commitment, obligation or expense of any person that would exist
9 irrespective of the candidate’s campaign or duties as a Federal officeholder.” 11 CFR
10 113.1(g); *see also* 2 U.S.C. 439a(b)(2).

11 Friends of Mike H plans to use campaign funds for a lawful purpose – that is, to
12 make a contribution to Freedom PAC, a registered independent expenditure-only
13 committee. Based on the facts of the request, there is no indication that the proposed
14 contribution would result in the conversion of campaign funds to personal use or any
15 other unlawful purpose. Accordingly, Friends of Mike H may use campaign funds
16 accepted for Mr. Haridopolos’ primary election to make a contribution to Freedom PAC.²

17 Contributions to nonconnected political committees are limited under the Act to
18 \$5,000 per year. 2 U.S.C. 441a(a)(1). Courts have held, however, that the Act’s amount
19 limitations are generally unconstitutional as applied to contributions that will be used to
20 finance independent activity. *See, e.g., SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C.
21 Cir. 2010) (*en banc*) (striking down limitations on contributions from individuals to

² Another option available to Friends of Mike H is to convert to nonconnected committee status. After the conversion, the new nonconnected could then contribute any remaining primary election funds to another nonconnected committee. *See, e.g., Advisory Opinions 2012-06 (RickPerry.org) and 1994-31 (Gallo).*

1 groups that make only independent expenditures because “the government can have no
2 anti-corruption interest in limiting contributions to independent expenditure-only
3 organizations”); *EMILY’s List v. FEC*, 581 F.3d 1, 11 (D.C. Cir. 2009) (holding that
4 political committees and other non-profit groups may finance certain independent
5 political activity with funds outside the amount limitations and certain source
6 prohibitions of the Act because “those expenditures are not considered corrupting”);
7 *Carey v. FEC*, 791 F.Supp. 2d 121,131 (D.D.C. 2011) (confirming that a political
8 committee that makes contributions may also, using a segregated account, raise and
9 spend unlimited funds to finance independent expenditures); Advisory Opinion 2010-11
10 (Commonsense Ten) (concluding that political committees may make unlimited
11 contributions to independent expenditure-only committees).

12 Freedom PAC is a nonconnected, independent expenditure-only political
13 committee. Accordingly, the contribution from Friends of Mike H to Freedom PAC may
14 be in an amount of \$10,000 or more.

15 *Question 2: If the answer to Question 1 is no, may Freedom PAC accept a contribution of*
16 *up to \$5,000 from the aforementioned committee?*

17
18 Because the Commission answered Question 1 in the affirmative, Question 2 is
19 moot.

20 This response constitutes an advisory opinion concerning the application of the
21 Act and Commission regulations to the specific transaction or activity set forth in your
22 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
23 of the facts or assumptions presented, and such facts or assumptions are material to a
24 conclusion presented in this advisory opinion, then the requestors may not rely on that

1 conclusion as support for its proposed activity. Any person involved in any specific
2 transaction or activity which is indistinguishable in all its material aspects from the
3 transaction or activity with respect to which this advisory opinion is rendered may rely on
4 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or
5 conclusions in this advisory opinion may be affected by subsequent developments in the
6 law including, but not limited to, statutes, regulations, advisory opinions, and case law.
7 The cited advisory opinions are available on the Commission's Web site at,
8 www.fec.gov, or directly from the Commission's Advisory Opinion searchable database
9 at <http://www.fec.gov/searchao>.

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On behalf of the Commission,

Caroline C. Hunter
Chair