



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 20, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2007-28

Charles H. Bell, Jr., Esq.
Ashlee N. Titus, Esq.
Bell, McAndrews & Hiltachk, LLP
455 Capitol Mall
Suite 801
Sacramento, CA 95814

Dear Mr. Bell and Ms. Titus:

We are responding to your advisory opinion request on behalf of United States Representatives Kevin McCarthy and Devin Nunes, concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to whether Representatives McCarthy and Nunes may freely raise funds for one or more independently run ballot measure committees in connection with the qualification and passage of a redistricting ballot initiative for the June 3, 2008 California statewide primary election or the November 4, 2008 California statewide general election.

Background

The facts of this request are presented in your letter dated October 12, 2007, and in your e-mail dated October 25, 2007.

Representatives McCarthy and Nunes are United States Representatives from California. They are also candidates for re-election to the House of Representatives in 2008 and Federal officeholders under the Act and Commission regulations. *See* 2 U.S.C. 431(2) and (3); 11 CFR 100.3 and 100.4. Representatives McCarthy and Nunes will both appear on the June 3, 2008 primary ballot, and, should they win their party's nomination, would also appear on the November 4, 2008 general election ballot.

The People's Advocate Initiative Committee ("PAIC") is a registered State General Purpose committee described in Section 501(c)(4) of the Internal Revenue Code.¹ 26 U.S.C. 501(c)(4). On June 25, 2007, PAIC submitted a request asking the California Attorney General to qualify a ballot initiative regarding the redistricting of California State and Congressional districts. PAIC is attempting to qualify the ballot initiative for either the June 3, 2008 California statewide primary election or the November 4, 2008 California statewide general election. According to the advisory opinion request, PAIC may engage in get-out-the-vote activity in connection with the passage of the ballot initiative.

Representatives McCarthy and Nunes have supported redistricting ballot initiatives in the past and would like to support actively the qualification and adoption of the proposed redistricting ballot initiative. Specifically, Representatives McCarthy and Nunes would like to raise funds for PAIC, a ballot initiative committee not directly or indirectly established, financed, maintained, or controlled by them, formed to support the qualification and passage of the redistricting ballot initiative.² None of the funds raised by Representatives McCarthy and Nunes will be used for public communications referring to them. In addition, Representatives McCarthy and Nunes will not participate in, or coordinate with PAIC regarding, other public communications paid for by PAIC.

Questions Presented

- 1. May Representatives McCarthy and Nunes freely raise funds for PAIC or other committees that are neither directly nor indirectly established, financed, maintained, or controlled by, or acting on behalf of, persons covered by 2 U.S.C. 441i(a) or 441i(e), to support the qualification of a ballot initiative on the subject of redistricting for the June 3, 2008 California statewide primary election or the November 4, 2008 California statewide general election?*
- 2. May Representatives McCarthy and Nunes freely raise funds for PAIC or other committees that are neither directly nor indirectly established, financed, maintained, or controlled by, or acting on behalf of, persons covered by 2 U.S.C. 441i(a) or 441i(e), to campaign for the passage of a ballot initiative on the subject of redistricting that has qualified to be voted on at the June 3, 2008 California statewide primary election or the November 4, 2008 California statewide general election?*

¹ PAIC is not registered as a political committee under the Act.

² Representatives McCarthy and Nunes have stated that they currently do not intend to raise funds for other ballot initiative committees. Should they later decide to raise funds for additional ballot initiative committees, they have stated that their activities will be conducted in accordance with the terms of this advisory opinion.

Conclusion

Under the Act, as amended by the Bipartisan Campaign Reform Act of 2002 (“BCRA”), Public Law 107-155, 116 Stat. 81 (2002), Federal candidates and officeholders, agents of Federal candidates and officeholders, or entities directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, Federal candidates or officeholders, may not raise or spend funds in connection with an election for Federal office, including funds for any FEA, unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act. *See* 2 U.S.C. 441i(e)(1)(A); 11 CFR 300.61. Nor may Federal candidates and officeholders raise or spend funds in connection with an election other than an election for Federal office, unless the funds do not exceed the amounts permitted with respect to contributions to candidates and political committees under 2 U.S.C. 441a(a)(1), (2), and (3), and do not come from sources prohibited under the Act. *See* 2 U.S.C. 441i(e)(1)(B); 11 CFR 300.62.

The Commission concludes that Representatives McCarthy and Nunes may solicit up to \$20,000 during any calendar year from individuals on behalf of PAIC or other similar ballot initiative committees not directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, either officeholder. The Commission is unable to agree on a single rationale. Further explanation is provided in the Commissioners' concurring opinions.

The Commission expresses no opinion regarding the application of State law or the Internal Revenue Code to the proposed activities, because those questions are not within the Commission's jurisdiction.

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

Sincerely,

(signed)
Robert D. Lenhard
Chairman