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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 13-46-A
AGENDA ITEM
For meeting of November 14, 2013
SUBMITTED LATE

November 12, 2013

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by AN*
Deputy General Counsel

Adav Noti *AN*
Acting Associate General Counsel

Amy L. Rothstein *ALR by AN*
Assistant General Counsel

Joanna Waldstreicher
Attorney *JW*

Subject: Draft AO 2013-13 (Freshman Hold 'em JFC) – Draft B

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 5:00 pm (Eastern Time) on November 13, 2013.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2013-13

2

3 Dan Backer, Esq.

4 DB Capitol Strategies PLLC

5 717 King Street

6 Suite 300

7 Alexandria, VA 22314

8

9 Mr. Paul D. Kamenar

10 Coolidge Reagan Foundation

11 1629 K Street, N.W.

12 Suite 300

13 Washington, D.C. 20006

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15 Dear Messrs. Backer and Kamenar:

16 We are responding to your advisory opinion request on behalf of Freshman
17 Hold'em, Stutzman for Congress, Gardner for Congress 2012, Tom Reed for Congress,
18 Denham for Congress, Benishek for Congress, Inc., Rodney for Congress, Duffy for
19 Congress, Chris Gibson for Congress, Friends of Joe Heck, Friends of Dave Joyce, Pat
20 Meehan for Congress, Scott Rigell for Congress, Rothfus for Congress, Jon Runyan for
21 Congress, Inc., VoteTipton.com, Valadao for Congress, and Walorski for Congress, Inc.
22 Joint Fundraising Committee (the "Committee"). The Committee asks whether it may
23 use only "Freshman Hold'em JFC" and the URL of the Committee's website to identify
24 the Committee in its disclaimers on emails, webpages, and printed materials. The
25 Commission concludes that the Committee may do so, because the disclaimers would
26 provide readers with adequate notice of the person paying for the communications.

27 ***Background***

28 The facts presented in this advisory opinion are based on your letter received on
29 August 22, 2013, and your emails dated August 29 and September 3, 2013.

DRAFT B

1 The Committee is registered with the Commission as a joint fundraising
2 committee.¹ The Committee maintains a website, www.FreshmanHoldem.com, on which
3 it posts its joint fundraising notice, including the names of its participating candidates.
4 The Committee’s participants change from election cycle to election cycle based on the
5 outcomes of elections. Currently, the Committee has 18 participating candidates; in the
6 last election cycle, it had 30 participating candidates.

7 The Committee represents that it is commonly known as “Freshman Hold’em
8 JFC,” and that it is referred to as such in the URL for its website, on its webpages, emails,
9 nametags, and invitations to Committee events, and by the media. The Committee plans
10 to send out emails and printed materials — including nametags, donor cards, playing
11 cards, and invitations — and to create webpages for events and other Committee
12 business. The Committee asserts that its full name cannot be conveniently printed or
13 practicably displayed in these communications because the amount of text necessary for a
14 disclaimer using its full name would distract the reader’s attention from the substance of
15 the communication.

16 ***Question Presented***

17 *May the Committee use only “Freshman Hold’em JFC,” and its URL,*
18 *www.FreshmanHoldem.com, to identify itself in its disclaimers on emails, webpages, and*
19 *printed materials?*

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¹ The Committee’s most recent Statement of Organization, dated March 15, 2013, is available at <http://images.nictusa.com/pdf/618/13961151618/13961151618.pdf>.

1 ***Legal Analysis and Conclusion***

2 Yes, the Committee may use only “Freshman Hold’em” and its URL to identify
3 itself in its disclaimers on emails, webpages, and printed materials.

4 The Federal Election Campaign Act, as amended (the “Act”), and Commission
5 regulations permit candidates and political committees to engage in joint fundraising by
6 establishing a separate political committee to serve as their joint fundraising
7 representative. 2 U.S.C. § 432(e)(3); 11 C.F.R. § 102.17(a). In raising funds for its
8 participating candidates and political committees, the joint fundraising representative
9 “shall collect contributions, pay fundraising costs from gross proceeds and from funds
10 advanced by the participants, and disburse net proceeds to each participant,” as well as
11 comply with applicable recordkeeping and reporting requirements 11 C.F.R.
12 § 102.17(b)(1), (c)(4), (c)(8).

13 The Act and Commission regulations require all political committees — including
14 joint fundraising committees — to identify themselves in their (1) “public
15 communications,” 11 C.F.R. § 100.26;² *see also* 2 U.S.C. § 431(22); (2) electronic mail
16 of more than 500 substantially similar communications; and (3) websites available to the
17 general public. *See* 2 U.S.C. § 441d(a)(1); 11 C.F.R. § 110.11(a). If a public
18 communication, mass email, or website is paid for by an authorized committee of a
19 candidate, the disclaimer must “clearly state that the communication has been paid for by

² A “public communication” is “a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising,” but not “communications over the Internet, other than those placed for a fee on another person’s Web site.” 11 C.F.R. § 100.26. The requestor states that including its full name in disclaimers on nametags and playing cards is burdensome. But because the definition of “public communication” generally would not include nametags and playing cards, *see id.*, these items likely would not need disclaimers.

1 the authorized political committee” in order to provide the reader with “adequate notice
2 of the identity of the person or political committee that paid for and, where required,
3 authorized the communication.” 11 C.F.R. § 110.11(b), (c).

4 The Commission concludes that the Committee’s proposal to identify itself only
5 as Freshman Hold’em JFC and www.FreshmanHoldem.com on its printed
6 communications, website, and mass emails would “give the reader . . . adequate notice of
7 the identity of the person or political committee that paid for . . . the communication.”
8 11 C.F.R. § 110.11(c)(1). That identification provides “adequate notice” in two ways.
9 First, the name “Freshman Hold’em JFC” gives the reader sufficient information to locate
10 the Committee’s filings on the Commission’s website. Those filings list all of the
11 Committee’s participating candidates. Use of the Committee’s shortened name in its
12 disclaimers will thus enable a reader to determine that the Committee and its participants
13 are the entities paying for and authorizing the communication in question.

14 Second, the Committee provides its full name, including the names of all
15 participating candidates, on its joint fundraising notice, which appears on the
16 Committee’s website at www.FreshmanHoldem.com. The inclusion of the Committee’s
17 URL in its disclaimers will thus enable a reader to go to the Committee’s website to
18 identify the participating candidates. This is particularly useful for disclaimers appearing
19 on electronic communications such as emails and webpages: A reader could click on the
20 URL to go directly to a webpage listing all candidates participating in the Committee,
21 just as a reader could turn the page of a multipage document to find the disclaimer. *See*
22 11 C.F.R. § 110.11(c)(2)(iv) (providing that disclaimer need not appear on front or cover
23 page of communication so long as it appears within communication). Indeed, given that

1 the Committee is a joint fundraising committee, many of its printed communications are
2 likely to be solicitations, and all joint fundraising solicitations must include the joint
3 fundraising notice. 11 C.F.R. § 102.17(c)(2)(i)(A).

4 Accordingly, the Committee may identify itself only by its shortened name,
5 “Freshman Hold’em,” along with its URL www.FreshmanHoldem.com, in its required
6 disclaimers on printed communications, emails, and webpages.

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

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On behalf of the Commission,

Ellen L. Weintraub
Chair