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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 15-10-B
AGENDA ITEM
For meeting of February 12, 2015
SUBMITTED LATE

February 10, 2015

MEMORANDUM

TO: The Commission

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

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Acting Associate General Counsel

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Assistant General Counsel

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Presidential Management Fellow

Subject: AO 2014-20 (Make Your Laws PAC) 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 9:00 am (Eastern Time) on February 12, 2015.

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 2014-20

2

3

4 Sai

DRAFT B

5 Make Your Laws PAC, Inc.

6 c/o Nick Staddon, Secretary

7 122 Pinecrest Road

8 Durham, NC 27705

9

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11 Dear Sai:

12

13 We are responding to the advisory opinion request that you submitted on behalf of Make

14 Your Laws PAC, Inc. concerning the application of the Federal Election Campaign Act, 52

15 U.S.C. §§ 30101-46 (formerly 2 U.S.C. §§ 431-57) (the “Act”), and Commission regulations to

16 volunteer services provided by foreign nationals. The Commission concludes that the requestor

17 may accept uncompensated services from foreign national volunteers as proposed.

18 ***Background***

19 The facts presented in this advisory opinion are based on the requestor’s advisory opinion

20 request (“AOR”) received on November 24, 2014.

21 The requestor is a nonconnected political committee. The requestor and two other

22 entities (collectively, the “MYL Group”) jointly own the rights to the code, design, graphics,

23 trademarks, and trade dress¹ (collectively, “intellectual property”) of the requestor’s website and

24 brand. Nearly all of the code is open source² and open-source licensed.³

¹ The requestor describes “trade dress” as including branding and logos. AOR at 2.

² The requestor describes “open source” to mean that the code is available online “for anyone to see.” AOR at 2 n.2.

³ According to the requestor, “[b]roadly speaking, this [open source license] means a copyright license that permits anyone to re-use software so long as they give credit and publish any derivative works under the same terms.” AOR at 2 n.3; *see also Open Source License*, OPEN SOURCE INITIATIVE, <http://opensource.org/licenses> (last visited Dec. 14, 2014).

1 “To date, all services in creating the [intellectual property] have been provided by unpaid
2 volunteers who are United States citizens.” AOR at 2. The requestor states that when such
3 services might result in the creation of intellectual property, the MYL Group asks volunteers to
4 sign an intellectual property assignment to transfer all rights and ownership in the intellectual
5 property to the MYL Group. The volunteers, however, receive a perpetual license from the
6 MYL Group to use their work as they see fit, unless the MYL Group determines that there would
7 be an impact on its trademark or trade dress.

8 The requestor would like to accept the same kind of volunteer services from foreign
9 nationals as the MYL Group currently receives from United States citizens, and under the same
10 terms. These services would be “primarily aimed at improving the MYL Group’s code,” among
11 other things. AOR at 4. Because this code is open source “and *constantly* available for
12 collaboration,” the requestor expects to receive these services on an “*ad hoc*, continuous basis.”
13 *Id.* (emphasis in original). The requestor asks the Commission to assume that all requirements
14 of 52 U.S.C. § 30101(8)(B) and (9)(B) (formerly 2 U.S.C. § 431(8)(B) and (9)(B)) are met:
15 “*E.g.* out of pocket costs such as printing, distribution, web hosting, etc. will be paid for by [the
16 requestor]; volunteers will not be ‘compensated’ by anyone . . . but may use their own equipment
17 (such as a laptop) in providing such services; [the requestor] will not act as an agent of any
18 foreign national nor permit any foreign national to participate in its operations, make decisions
19 regarding contributions or expenditures, etc. . . .” AOR at 3 n.6.

20 ***Question Presented***

21 *May the requestor accept the assignment of any intellectual property in unpaid volunteer*
22 *services performed by foreign nationals and provided in accordance with 52 U.S.C.*
23 *§ 30101(8)(B)(i) (formerly 2 U.S.C. § 431(8)(B)(i))?*

1 ***Legal Analysis and Conclusions***

2 Yes, the requestor may accept uncompensated services from foreign nationals as
3 proposed.

4 The Act prohibits any foreign national from making a contribution in connection with a
5 federal election.⁴ 52 U.S.C. § 30121(a)(1)(A) (formerly 2 U.S.C. § 441e(a)(1)(A)); *see also* 11
6 C.F.R. § 110.20(b). The Act also prohibits any person from “solicit[ing], accept[ing], or
7 receiv[ing]” such a contribution from a foreign national. 52 U.S.C. § 30121(a)(2) (formerly 2
8 U.S.C. § 441e(a)(2)); *see also* 11 C.F.R. § 110.20(g).

9 The Act and Commission regulations also provide that the term “contribution” does not
10 include “the value of services provided without compensation by any individual who volunteers
11 on behalf of a candidate or political committee.” 52 U.S.C. § 30101(8)(B)(i) (formerly 2 U.S.C.
12 § 431(8)(B)(i)); *see also* 11 C.F.R. § 100.74. Applying this “volunteer services exception” in the
13 context of foreign nationals, the Commission has concluded that a foreign national entertainer
14 who performed without compensation at a candidate’s fundraiser did not provide a contribution
15 to that candidate. *See* Factual & Legal Analysis at 6, MUR 5987, 5995, and 6015 (Hillary
16 Clinton For President) (Feb. 30, 2009), <http://eqs.fec.gov/eqsdocsMUR/29044230266.pdf>.
17 Similarly, in Advisory Opinion 2004-26 (Weller), the Commission found that a foreign national
18 would not provide a contribution to a candidate by participating without compensation in certain
19 of the candidate’s campaign-related activities, including the solicitation of contributions,

⁴ A “foreign national” is “an individual who is not a citizen of the United States or a national of the United States . . . and who is not lawfully admitted for permanent residence.” 52 U.S.C. § 30121(b)(2) (formerly 2 U.S.C. § 441e(b)(2)); *see also* 11 C.F.R. § 110.20(a)(3)(ii). In addition to barring foreign nationals from making contributions, section 30121 also prohibits foreign nationals from making any “donation of money or other thing of value . . . in connection with a . . . State[] or local election.” 52 U.S.C. § 30121(a)(1)(A). Because the requestor is a federal committee, and because the request does not appear to contemplate any state or local election activity, this opinion does not address the application of section 30121 to volunteer services provided by foreign nationals in connection with nonfederal elections.

1 attendance at political events, and meeting with the candidate and his campaign committee.
2 Because the services would not be contributions, they would not be subject to the prohibition on
3 contributions from foreign nationals. Advisory Opinion 2004-26 (Weller) at 2; *see also*
4 Advisory Opinion 2007-22 (Hurysz) at 3 (“[T]he value of volunteer services provided to your
5 campaign by Canadian nationals would not constitute a prohibited in-kind contribution to your
6 campaign.”); Advisory Opinion 1987-25 (Otaola) at 1 (concluding that foreign national’s “work
7 as a volunteer without compensation would not . . . result in a contribution to a candidate because
8 the value of uncompensated volunteer services is specifically exempted from the definition of
9 contribution under the Act”).

10 For the same reasons, to the extent that a foreign national volunteers his or her
11 uncompensated personal services to the requestor to help design the requestor’s website code,
12 logos, “trademarks,” and “trade dress,” the value of those services would not constitute an
13 unlawful foreign national contribution because they are exempt from the definition of
14 “contribution” under the volunteer services exemption.

15 The fact that the requestor may obtain rights to intellectual property resulting from the
16 foreign nationals’ volunteer services does not change the result. As discussed above, the
17 Commission has consistently interpreted the Act and Commission regulations as permitting
18 foreign nationals to provide volunteer services to political committees. *See* Advisory Opinion
19 2004-26 (Weller) at 2 (finding that foreign nationals’ uncompensated participation in campaign-
20 related activities are not contributions); Advisory Opinion 2007-22 (Hurysz) at 3 (same);
21 Advisory Opinion 1987-25 (Otaola) at 2 (“[A]ny individual, including a foreign national, may
22 volunteer his or her uncompensated services to a candidate without making a contribution to that

1 candidate.”); Factual & Legal Analysis at 2-6, MUR 5987, 5995, and 6015 (Hillary Clinton For
2 President).

3 Here, the volunteer services requestor proposes to accept from foreign nationals are
4 intended to, and will very likely result in, the creation of website code, logos, and other items.
5 The requestor states that, if it may not obtain the intellectual property rights in such items, it will
6 not be able to use those items, or even accept the foreign nationals’ volunteer services. AOR at
7 4. Such a result here is contrary to the Commission’s prior interpretations of the Act and
8 Commission regulations, which have permitted foreign nationals to provide volunteer services,
9 consistent with the Act’s volunteer services exception. Because the requestor here proposes to
10 receive only benefits resulting directly and exclusively from the provision of volunteer services
11 by foreign nationals, the Commission concludes that the proposal would not result in a
12 prohibited contribution.

13 In reaching this conclusion, the Commission supersedes Advisory Opinion 1981-51
14 (Metzenbaum).⁵ A statute must be interpreted “as a symmetrical and coherent regulatory
15 scheme.” *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (U.S.
16 2000) (internal citations and quotations omitted). In Metzenbaum, however, the Commission did
17 not construe the Act’s foreign national contribution ban and volunteer services exception in
18 conjunction with each other. To the extent that MURs 5987, 5996, and 6015 (Hillary Clinton
19 For President) sought to distinguish Advisory Opinion 1981-51 by making a distinction between
20 the provision of volunteer services by a foreign national and the creation and donation of a
21 tangible good, the Commission is also not adopting that reasoning.

⁵ The Commission previously considered superseding Metzenbaum in Advisory Opinion 1987-25 (Otaola), and two Commissioners supported such a decision. Advisory Opinion 1987-25 (Otaola) at 2.

