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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 16-45-A**  
**AGENDA ITEM**  
**For meeting of September 29, 2016**

September 20, 2016

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS*  
Deputy General Counsel-Law

Adav Noti *AN*  
Associate General Counsel

Neven F. Stipanovic *NFS by AN*  
Acting Assistant General Counsel

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Attorney

Subject: AO 2016-10 (Parker) Draft A

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 12:00 pm (Eastern Time) on September 28, 2016.

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 2016-10

2

3 Caroline Goodson Parker

4 1776 Emily Lane

5 Bowen Island, BC V0N 1G2

6

7

8 Dear Ms. Parker:

**DRAFT A**

9           We are responding to your advisory opinion request concerning the application of the  
10 Federal Election Campaign Act, 52 U.S.C. §§ 30101-30146 (“the Act”), and Commission  
11 regulations to your proposal to solicit contributions or donations to state and local party  
12 committees. The Commission concludes that as a United States citizen living abroad, you may  
13 solicit contributions or donations to state and local party committees, but that you may not  
14 knowingly do so from a foreign national. The Commission also concludes that you are not  
15 required to notify those whom you solicit about the prohibition on soliciting foreign nationals.  
16 Finally, the Commission concludes that you may inform a state or local party committee that you  
17 are soliciting contributions or donations to that committee.

18 ***Background***

19           The facts presented in this advisory opinion are based on your letter received on August  
20 26, 2016.

21           You are a U.S. citizen living in Canada. You plan to solicit friends and family by email  
22 or text message for contributions or donations to state and local party committees. You would  
23 also encourage these individuals to solicit contributions or donations from their friends and  
24 family. You include an example of a communication you plan to send:

25           Sprinklers needed to help the grassroots grow! Donate to [link to a state/local party’s  
26 donation page], or Google your own favorite state or local party in a swing state and  
27 sprinkle your dollars where they’ll fund the most important get-out-the-vote effort ever.  
28 Pass this on!

29

1 Advisory Opinion Request at AOR002. You state that you might also encourage friends to  
2 include their own message or video in their solicitations. *Id.*

3 Some of the individuals you wish to solicit reside outside the U.S. but told you several  
4 years ago that they were U.S. citizens. *Id.* You state that these individuals have their own  
5 networks of friends and family “who might be interested to know more about supporting state  
6 and local parties’ grassroots activities in swing states.” *Id.* You also state that you would like to  
7 solicit friends who are Canadian citizens but have lived in the U.S. for over five years. *Id.*

8 ***Questions Presented***

9 *1) As a U.S. citizen residing abroad, may you solicit contributions or donations to state and local*  
10 *party committees?*

11 *2) Are you required to take any steps to ascertain the citizenship status of individuals that you*  
12 *plan to solicit, including U.S. citizens residing abroad and individuals who moved to the U.S.*  
13 *from Canada more than five years ago? Is the answer to this question different if you restrict*  
14 *your email and text message solicitations to friends and family who live in the U.S. and who have*  
15 *not, to your knowledge, lived abroad?*

16 *3) Are you required to warn individuals whom you solicit that they are prohibited from soliciting*  
17 *foreign nationals? Does this answer change if you restrict your email and text message*  
18 *solicitations to friends and family who live in the U.S. and who have not, to your knowledge,*  
19 *lived abroad?*

20 *4) May you inform state and local party committees about your efforts to solicit contributions or*  
21 *donations to those committees?*

1 ***Legal Analysis and Conclusions***

2 1) *As a U.S. citizen residing abroad, may you solicit contributions or donations to state and local*  
3 *party committees?*

4 Yes, as a U.S. citizen residing abroad, you may solicit contributions and donations from  
5 other U.S. citizens to state and local party committees.

6 The Act and Commission regulations prohibit any foreign national from making a  
7 contribution or donation to a committee of a political party. 52 U.S.C. § 30121(a)(1)(B); 11  
8 C.F.R. § 110.20(c). Commission regulations also prohibit any person from knowingly soliciting  
9 such a contribution or donation. 11 C.F.R. § 110.20(g); *see* 52 U.S.C. § 30121(a)(2). These  
10 provisions do not prohibit U.S. citizens from making contributions or donations or from  
11 soliciting such funds from other U.S. citizens, regardless of residence. *See, e.g.,* 52 U.S.C.  
12 § 30121(b) (providing that “foreign national” does not include “any individual who is a citizen of  
13 the United States”); 11 C.F.R. § 110.20(a)(3)(iii) (same).<sup>1</sup> Indeed, the legislative history of the  
14 Act indicates that Congress intended to ensure U.S. citizens living abroad could participate in  
15 U.S. elections. *See* 93 Cong. Rec. S4715 (daily ed. March 28, 1974) (statement of Sen. Bentsen)  
16 (responding to question about whether U.S. citizens living abroad could make contributions or  
17 donations to candidates, stating that “[i]n no way is [such an individual] precluded from that”).  
18 Accordingly, the Commission has consistently noted that the foreign national prohibition does  
19 not apply to U.S. citizens living abroad. *See, e.g.,* Factual and Legal Analysis at 14, MURs  
20 6078/6090/6108/6139/6142/6214 (Obama for America) (finding no reason to believe violation of  
21 foreign national prohibition occurred where political committee engaged in reasonable inquiry to

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<sup>1</sup> In addition to U.S. citizens, the foreign national prohibition also does not apply to non-citizens who are lawfully admitted to permanent residence in the U.S., or to U.S. nationals. 52 U.S.C. § 30121(b).

1 ensure that funds from foreign banks or foreign addresses were not from foreign nationals), First  
2 Gen. Counsel's Rpt. at 8-9, MUR 6687 (Obama for America) (recommending same). Therefore,  
3 because you are a U.S. citizen, the Act and Commission regulations do not prohibit you from  
4 soliciting contributions and donations to state and local party committees.

5 *2) Are you required to take any steps to ascertain the citizenship status of individuals that you*  
6 *plan to solicit, including U.S. citizens residing abroad and individuals who moved to the U.S.*  
7 *from Canada more than five years ago? Is the answer to this question different if you restrict*  
8 *your email and text message solicitations to friends and family who live in the U.S. and who have*  
9 *not, to your knowledge, lived abroad?*

10 Yes, you would be required to ascertain the citizenship status of some of the individuals  
11 whom you plan to solicit to avoid knowingly soliciting foreign nationals, while soliciting only  
12 U.S. residents would generally limit your obligation to inquire into those individuals'  
13 nationalities.

14 As noted above, Commission regulations prohibit any person from knowingly soliciting a  
15 contribution or donation from a foreign national. 11 C.F.R. § 110.20(g); *see also* 52 U.S.C.  
16 § 30121(a)(2). For the purpose of this prohibition, the regulation defines "knowingly" as (i)  
17 having actual knowledge the person solicited is a foreign national, (ii) being aware of facts that  
18 would lead a reasonable person to conclude that there is a substantial probability that the person  
19 solicited is a foreign national, or (iii) being aware of facts that would lead a reasonable person to  
20 inquire whether the person solicited is a foreign national but failing to make such an inquiry. 11  
21 C.F.R. § 110.20(a)(4). The regulation includes a non-exhaustive list of "pertinent facts" that  
22 would lead a reasonable person to inquire further as to the citizenship status of a solicited person,  
23 including that the potential donor provides a foreign address or resides abroad. 11 C.F.R.

1 § 110.20(a)(5). Commission regulations also provide a safe harbor, whereby a person is deemed  
2 to have conducted a reasonable inquiry if she seeks and obtains copies of current and valid U.S.  
3 “passport papers” for the solicited person, as long as the person conducting the inquiry does not  
4 have actual knowledge that the solicited person is a foreign national. 11 C.F.R. § 110.20(a)(7).

5 Pursuant to these regulations, your responsibility to inquire into the citizenship status of a  
6 person whom you solicit depends upon whether you are aware of facts that would lead a  
7 reasonable person to believe — or to inquire into whether — the solicited individual is a foreign  
8 national. Thus, regarding your plan to solicit friends living abroad, the regulations indicate that  
9 these individuals’ foreign residences would generally obligate you to conduct further inquiry to  
10 ascertain whether they are currently foreign nationals. 11 C.F.R. § 110.20(a)(5)(ii), (iv). Your  
11 prior knowledge that some of these individuals were U.S. citizens a number of years ago does  
12 not necessarily relieve you of your obligation to inquire into whether their citizenship has  
13 changed during the intervening time, given that they no longer reside in the U.S. Should you  
14 choose to do so, you may rely on the safe harbor provision, provided that you do not have actual  
15 knowledge that the individual is a foreign national.

16 You also indicate that you wish to solicit Canadian friends who have moved to the U.S.  
17 and have lived there for over five years. Because you have actual knowledge that these  
18 individuals were foreign nationals, you may not solicit them for contributions or donations unless  
19 you are able to determine that there is no substantial probability that the individuals remain  
20 foreign nationals. *See* 11 C.F.R. § 110.20(a)(4)(iii).

21 Finally, you ask in the alternative whether you would need to further inquire about the  
22 citizenship status of solicited individuals if you solicit only friends or family who live in the U.S.  
23 and who have not, to your knowledge, lived abroad. As described above, the Commission’s

1 regulation includes a non-exhaustive list of facts that would lead a reasonable person to inquire  
2 further as to the citizenship status of a potential contributor to avoid “knowingly” soliciting a  
3 foreign national. 11 C.F.R. § 110.20(a)(4)(iii), (5). One of these enumerated facts is that the  
4 potential contributor or donor lives abroad. 11 C.F.R. § 110.20(a)(5)(iv). Limiting your  
5 solicitations to friends and family who live in the U.S. and who have not, to your knowledge,  
6 lived abroad, therefore would not obligate you to conduct further inquiry about citizenship status  
7 due to the residence of the individuals whom you solicit. However, if you are aware of other  
8 facts that would indicate a substantial probability that a solicited person is a foreign national, you  
9 must still make a reasonable inquiry into that person’s citizenship status.

10 *3) Are you required to warn individuals whom you solicit that they are prohibited from soliciting*  
11 *foreign nationals? Does this answer change if you restrict your email and text message*  
12 *solicitations to friends and family who live in the U.S. and who have not, to your knowledge,*  
13 *lived abroad?*

14 No, you are not required to warn the individuals whom you solicit, regardless of where  
15 they live, that they are prohibited from soliciting foreign nationals.

16 In addition to prohibiting any person from knowingly soliciting a foreign national for  
17 contributions or donations to a party committee, Commission regulations also prohibit  
18 knowingly providing substantial assistance in the solicitation of a foreign national. 11 C.F.R.  
19 § 110.20(h)(1). Substantial assistance “means active involvement in the solicitation, making,  
20 receipt or acceptance of a foreign national contribution or donation with an intent to facilitate  
21 successful completion of the transaction.” Contribution Limitations and Prohibitions, 67 Fed.  
22 Reg. 69, 928, 69,945 (Nov. 19, 2002).

1           Merely including in your solicitation the phrase “Pass it on!” or a similar exhortation for  
2 the individuals whom you solicit to conduct their own solicitations does not constitute “active  
3 involvement” in their solicitation. *See id.* at 69,946 n.9 (citing *IIT, An Int’l Inv. Trust v.*  
4 *Cornfeld*, 619 F.2d 909, 922 (2d Cir. 1980) (internal citation omitted), for proposition that to  
5 satisfy “substantial assistance” standard courts have historically required “accessor[ies] to an  
6 activity” to “participate in it” or take “action to make it succeed”); *cf.* Factual and Legal Analysis  
7 at 5-6, MUR 6528 (Michael Grimm for Congress, *et al.*) (finding reason to believe that  
8 respondent violated regulation where respondent provided foreign national’s name to  
9 intermediary; requested that intermediary solicit foreign national for contribution; and informed  
10 foreign national that he could not contribute unless he used intermediary to conceal source of  
11 contribution). Thus, if you solicit only lawful potential contributors (as described above), and  
12 then those individuals, without any further action on your part, solicit others, your solicitation  
13 would not amount to knowingly providing substantial assistance in the solicitation of a foreign  
14 national. Accordingly, you are not required to include a warning about the prohibition on  
15 soliciting foreign nationals.

16 *4) May you inform state and local party committees about your efforts to solicit contributions to*  
17 *those committees?*

18           Yes, you may inform state and local party committees about your efforts to solicit  
19 donations for those committees.

20           The Act and Commission regulations do not prohibit a person from informing a political  
21 party committee about that person’s efforts to solicit contributions or donations to that party  
22 committee. Although certain communications that are coordinated with a party committee  
23 constitute in-kind contributions to the committee, 11 C.F.R. § 109.21(b), merely informing the



1 committee about the solicitations as proposed does not render the proposed solicitations  
2 coordinated communications.<sup>2</sup> *See* 11 C.F.R. § 109.21(a), (c), (d). Thus, as described in your  
3 request, informing state and local party committees about your solicitation efforts will not cause  
4 the solicitations to become in-kind contributions.<sup>3</sup>

5         This response constitutes an advisory opinion concerning the application of the Act and  
6 Commission regulations to the specific transaction or activity set forth in this advisory opinion  
7 request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of  
8 the facts or assumptions presented, and such facts or assumptions are material to a conclusion  
9 presented in this advisory opinion, then you may not rely on that conclusion as support for its  
10 proposed activity. Any person involved in any specific transaction or activity which is  
11 indistinguishable in all its material aspects from the transaction or activity with respect to which  
12 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.  
13 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be

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<sup>2</sup> The facts presented in your request do not indicate that you will be engaging in two-way communication with any party committees concerning your solicitations or asking those committees to take any action. Therefore, the Commission does not opine on the potential ramifications under the Act of any interactions between you and a party committee other than informing the committee of the solicitations as proposed.

<sup>3</sup> In addition, your solicitations by email would constitute uncompensated internet activity that is exempt from the regulatory definitions of “contribution” and “expenditure.” *See* 11 C.F.R. §§ 100.94, 100.155.

1 affected by subsequent developments in the law including, but not limited to, statutes,  
2 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available  
3 on the Commission's website.

4 On behalf of the Commission,

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Matthew S. Petersen  
Chairman