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October 12, 2007

Thomasenia P. Duncan
General Counsel
Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

AOR 2007-28

2007 OCT 16 P 1:45

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

RE: Advisory Opinion Request

Dear Ms. Duncan:

On behalf of The Honorable Kevin McCarthy (CA-22) and The Honorable Devin Nunes (CA-21) ("Requestors"), we request an advisory opinion from the Federal Election Commission pursuant to 2 USC § 437f, on the following questions:

- (1) May the Requestors freely raise funds for committees, that are neither established, financed, maintained or controlled by persons covered by 2 USC §§ 441i(a) or 441i(e), formed solely 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 5, 2008 California Statewide General election?
- (2) May the Requestors freely raise funds for committees, that are neither established, financed, maintained or controlled by persons covered by 2 USC §§ 441i(a) or 441i(e), formed solely 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 5, 2008 California Statewide General election?

Thursday, January 24, 2008 is the last day a measure can qualify to be voted on at the June 3, 2008 California Statewide Primary election. (California Elections Code § 9013.) The ministerial process of examining petition signatures typically demands 38 working days. (See California Elections Code § 9030.) Consequently, proponents desiring to qualify a ballot measure for the June 3, 2008 California Statewide Primary election must submit petitions no later than Wednesday, November 28, 2007. Therefore, Requestors respectfully request that the Commission consider this request on an expedited basis.

I. FACTS

Requestors are Members of the United States House of Representatives, and both are *candidates* as that term is defined in 2 USC § 431(2). Requestors will be appearing on the June 3, 2008 California Statewide Primary election as candidates for re-election to the seats they currently hold. Several ballot initiatives are currently circulating to obtain signatures to qualify to be voted on at the June 3, 2008 California Statewide Primary election, though no ballot initiatives have qualified at this time.

Requestors have an active history of supporting and opposing ballot initiatives in California. In November 2005, Requestors supported a redistricting ballot initiative proposed to voters. At the time, Congressman Nunes was a member of the House of Representatives, and Congressman McCarthy was a member of the California State Assembly.

Requestors desire to actively support the *qualification and adoption* of a new redistricting measure, the Citizens Fair Redistricting Initiative. A copy of this initiative, California Secretary of State # (07-0025), is attached hereto. Requestors have not, in the past in their federal candidate capacities, established, financed, maintained, or controlled an initiative committee, and do not now desire to establish, finance, maintain or control a committee supporting such efforts. Nor have Requestors established, financed, maintained, or controlled the Peoples' Advocate Initiative Committee, whose President, Ted Costa, is the proponent of this initiative.

Instead, Requestors only request an advisory opinion on the question of whether or not they may solicit and direct funds freely for an independent ballot initiative committee engaged in qualifying and campaigning for the passage of the redistricting proposal. This independent ballot initiative committee is not a *committee* pursuant to the Federal Election Campaign Act, but is a committee established pursuant to California's Political Reform Act (see Government Code §§ 81000 et seq.) This committee will not have any connection to any national, state, district or local committee of a political party. Any funds raised by Requestors would not be used for any public communications that would refer to them.

II. LEGAL DISCUSSION

A. *Fundraising in connection with elections.*

The Federal Election Campaign Act ("the Act") regulates fundraising activities by Federal candidates and officeholders *in connection with elections*. (2 USC § 441i(e)(1).) Section 441i(e)(1)(A) regulates fundraising *in connection with an election for Federal office*, and section 441i(e)(1)(B) regulates fundraising *in connection with any election other than an election for Federal office*. This advisory opinion request does not seem to implicate subdivision A as the Requestors seek only to raise funds to support the qualification and campaign for a statewide ballot initiative.

The issue is whether the qualification and/or campaign for a statewide ballot initiative constitutes *any election other than an election for Federal office*. If the qualification and/or

campaign for a statewide ballot initiative is *any election other than for Federal office*, then the Act's contribution limits and source prohibitions apply to fundraising by Requestors for the ballot initiative efforts. If the qualification and/or campaign for a statewide ballot initiative is not *any election other than for Federal office*, then the Act's contribution limits and source prohibitions do not apply to fundraising by Requestors for the ballot initiative efforts.

The Act does not define the term *in connection with an election for Federal office*. FEC regulations state that, "Election means the process by which individuals, whether opposed or unopposed, seek nomination for election, or election, to Federal office." (11 CFR § 100.2(a).) Recent Advisory Opinions issued by the FEC provide significant clarity on the Commission's view of the meaning of this phrase, particularly in the context of ballot initiatives.

1. Advisory Opinion 2003-12

Congressman Jeff Flake requested the advice of the Commission in connection with his proposed activities on behalf of a state ballot initiative committee established and controlled by him and his agents. In issuing its advice, the Commission made two significant distinctions in determining whether or not the contribution limits and source prohibitions of the Act applied to Congressman Flake and the ballot initiative committee.

First, "The Commission [found] that all activities of a ballot measure committee 'established, financed, maintained or controlled' by a Federal candidate...are 'in connection with any election other than an election for Federal office...'" (AO 2003-12.) Congressman Flake proposed to "direct and participate in the governance of [the committee], as well as to formulate strategy and tactics for the ballot referendum." (AO 2003-12.) This included serving as the public face of the committee in both its fundraising and campaigning efforts and communications with the public. Note that Requestors will not "establish, finance, maintain or control" the ballot initiative committee for which they desire to raise funds, nor do they intend to appear in any public advertising on behalf of the committee or in any way participate in developing strategy or tactics for the ballot initiative campaign.

Second, the Commission made a distinction between pre-ballot qualification activities and post-ballot qualification activities:

[T]he Commission conclude[d] that the activities of a ballot measure committee that is not 'established, financed, maintained or controlled' by a Federal candidate, officeholder, or agent of either, are not 'in connection with any election other than an election for Federal office' prior to the committee qualifying an initiative or ballot measure for the ballot, but are 'in connection with any election other than an election for Federal office' after the committee qualifies an initiative or ballot measure for the ballot... There is a clear delineation between pre-ballot qualification activities, such as petition and signature gathering,

which do not occur within close proximity to an election, and post-ballot qualification activities, that occur in closer proximity to election and potentially involve greater amounts of Federal election activity. However, once a ballot measure committee qualifies an initiative or referendum for the ballot, its subsequent activities will be deemed to be 'in connection with any election other than an election for Federal office' under 2 USC 441i(e)(1). (AO 2003-12.)

In the Flake Advisory Opinion, the ballot initiative committee indicated explicitly to the Commission that it intended to engage in Federal election activities, including communications clearly identifying Federal candidates. The committee planned to conduct voter registration, voter identification, get-out-the-vote and public communications including electioneering communications. Here, because Requestors have not been, are not now and will not be involved in the activities of the committee other than fundraising, Requestors cannot comment on the planned activities of the committee as the qualification process and campaign unfold. In the event that the committee supporting the qualification and campaign for the redistricting proposal does engage in Federal election activities, Requestors will not be participating in the committee's activities.

2. Advisory Opinion 2005-10

Congressmen Howard Berman and John Doolittle requested the advice of the Commission in connection with their ability to raise funds outside of the contributions limits and source prohibitions of the Act in connection with statewide ballot initiatives voted on in November 2005, an election at which no federal candidates were being considered. Neither Congressman was to *establish, finance, maintain or control* any committee supporting or opposing any ballot initiative. The Commission concluded that under the facts presented, "the restrictions on Federal candidates and officeholders in 2 USC 441i(e)(1)(A) and (B) do not apply to the fundraising activities..." (AO 2005-10.) Two concurring opinions were also issued by the Commission in response to the Advisory Opinion Request.

Commissioners Toner and Mason emphasized primarily the issue of whether or not an election on a ballot initiative is *in connection with an election other than an election for federal office* under the Act. They concluded that the statutory limitations of section 441i(e)(1)(A) and (B) that "prohibit Federal officeholders and candidates from soliciting, receiving, directing, transferring, or spending funds outside the prohibitions and limitations of the Act" only apply "in connection with an election for Federal office or in connection with any election other than an election for federal office. **Both statutory provisions are expressly limited to elections for office. The plain meaning of the statute is that the soft-money ban applies to federal and non-federal elections for public office, but does not apply to non-candidate political activity, such as ballot initiatives and referenda.**" (AO 2005-10, Concurring Opinion of Commissioners Toner

and Mason, **emphasis added.**) Commissioners Toner and Mason further explained, "In light of the Supreme Court's admonition that the danger of corruption, or the appearance of corruption, is not present in ballot initiatives and referenda, applying Section 441i(e) to such activities serves no justifiable policy rationale and would serve only to federalize purely state and local activity." (AO 2005-10, Concurring Opinion of Commissioners Toner and Mason.)

Commissioners Weintraub and McDonald filed a separate concurring opinion, but similarly emphasized the issue of whether or not an election on a ballot initiative constituted an *election* under the Act. They noted significantly that, "BCRA did not direct any change to the Commission regulation defining an 'election' as the process by which individuals seek office." (AO 2005-10, Concurring Statement of Commissioners Weintraub and McDonald.)

Additionally, Commissioners Weintraub and McDonald focused on the issue of whether or not a federal candidate *establishes, finances, maintains or controls* a ballot initiative committee, and found this to be the determining variable as to whether or not the Act applies to fundraising for such a committee. In discussing the Advisory Opinion issued to Congressman Flake, Weintraub and McDonald stated,

"We believe that the better analysis, and one more reflective of the real issues presented by Rep. Flake, would have rested on a conclusion that where a federal candidate establishes, maintains, finances or controls a ballot measure committee, on an issue with which that candidate is closely identified, and the committee raises and spends soft money to influence voting on a day on which that candidate himself is on the ballot, then the candidate and the committee's activities are 'in connection with an election for *Federal office,*' that is, the candidate's own election..."

Representative Flake's proposal to use the money he raised to air ads that would prominently feature him during the height of his reelection race underscores the common sense of the rationale that we are advocating. Such a rationale would have been consistent with Commission precedent establishing that **while ballot measure activities are not generally regulated under the Federal Election Campaign Act ("FECA"), a ballot measure committee can be subject to that law when it is inextricably linked to a candidate who is running on the same ballot.**" (AO 2005-10, Concurring Statement of Weintraub and McDonald, **emphasis added.**)

Neither Requestor is *inextricably linked* to the issue of redistricting nor any committee supporting the qualification effort currently underway. Further, no funds that may be raised by Requestors will be used to air ads featuring either one of them.

Applying the rationale articulated by these four Commissioners, the Act's contribution limits and source prohibitions should not apply to Requestors' fundraising efforts on behalf of any committee supporting the qualification of, and campaign for, the redistricting measure that is attempting to be placed on the June 3, 2008 ballot.

B. Fundraising for 501(c) organizations by Federal Candidates

Section 441i(e)(4) of the Act states as follows:

Notwithstanding any other provision of this subsection, an individual described in paragraph (1) may make a general solicitation of funds on behalf of any organization that is described in section 501(c) of Title 26 and exempt from taxation under section 501(a) of such title (or has submitted an application for determination of tax exempt status under such section) (other than an entity whose principal purpose is to conduct activities described in clauses (i) and (ii) of section 431(20)(A) of this title) where such solicitation does not specify how the funds will or should be spent.

Section 431(20)(A) of the Act defines *federal election activity* in the following terms:

The term "Federal election activity" means--

- (i) Voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election;
- (ii) Voter identification, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot);
- (iii) A public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate); or
- (iv) Services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual's compensated time during that month on activities in connection with a Federal election.

In AO 2003-12, the Commission explained that, "A 'general solicitation' [to a 501(c) organization] by a Federal candidate or officeholder may be made without regard to the Act's

amount limitations or source prohibitions.” In AO 2005-10, Commissioners Weintraub and McDonald further explained:

“In USC 441i(e)(4), BCRA expressly permits a federal candidate or officeholder to raise unlimited funds for a 501(c) organization as long as its principal purpose is not to carry out voter registration and GOTV activities for a federal election and the solicitation does not specify how the funds are to be spent. [¶] This is one of the ironies of the current request and the heat it has generated. Most ballot measure committees are organized under section 501(c)(4) of the tax code. Thus, BCRA explicitly authorizes most of the activity in which the requestors seek to engage.” (AO 2005-10, Concurring Statement of Commissioners Weintraub and McDonald.)

Because the committees to which Requestors desire to solicit funds will not be *established, financed, maintained or controlled* by Requestors, they cannot affirm that such committees will not engage in *any* federal election activity. However, their research into the expenditures by the section 501(c)(4)'s non-federal California state ballot measure committee shows that this committee has not paid for, or otherwise engaged in, any voter registration in connection with its previous ballot qualification activities. Moreover, although Requestors have not discussed with the ballot initiative committee organized under 501(c)(4) of the tax code whether it has as its *principal purpose* to engage in federal election activities, it is possible to determine that this is not its principal purpose, because the committee has identified that it is “primarily formed” for the purpose of qualifying ballot measures. This information is set forth on the committee’s publicly filed California State Campaign Statement of Organization (copy attached). The obvious *principal purpose* of a ballot initiative committee is to qualify and campaign for the successful adoption of a ballot initiative.

Requestors believe the ballot initiative committee is not likely to engage in federal election activity.

1. Voter Registration activity:

With respect to voter registration activity within 120 days of a federal election, while it is typical for paid petition circulators who assist a ballot initiative committee to simultaneously register new voters as they gather signatures on its petitions, it is also typical that such vendors submit these voter registrations to third-party groups such as political parties or other non-profit organizations that engage in voter registration activity, for payment. Ballot initiative committees typically contract with such vendors only to provide petition circulation and signature gathering purposes.

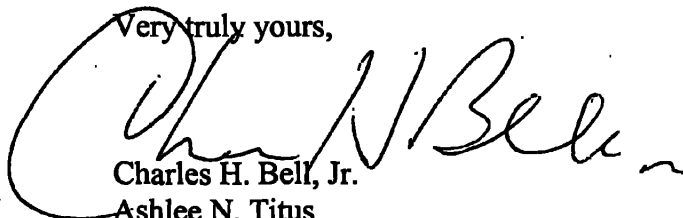
2. Get-out-the-vote activity:

Further, while ballot initiative committees usually engage in get-out-the-vote efforts, these are solely to obtain votes for the ballot initiative and never to mobilize voters for candidates. These committees' engage in direct advertising on broadcast and cable cast media, placement of advertisements in vendor "slate mailer" mailings, and by payment for inclusion in political party slates. Due to the complexities involved with naming a clearly identified candidate for Federal office with respect to the latter – political party slates, such activity is conducted consistent with FEC Advisory Opinion 2006-19 and does not contain any reference to *promote, support, attack, or oppose* Federal candidates who may be on the ballot.

III. CONCLUSION

Requestors respectfully request an expedited advisory opinion that, in light of the above analysis, concludes that the Act's contributions limits and source prohibitions do not apply to fundraising by a Federal candidate for the qualification of, and campaign for, a statewide ballot initiative committee not *established, financed, maintained or controlled* by such Federal candidate.

Very truly yours,



Charles H. Bell, Jr.

Ashlee N. Titus

On behalf of Requestors

CHB:ANT:sd

Enclosure

**PEOPLE'S
ADVOCATE, INC.**

*Paul Gann, Founder
Your Voice In Government*



07-0025

June 25, 2007

RECEIVED

JUN 25 2007

**INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE**

Ms. Toni Melton
Initiative Secretary
Attorney General's Office
1300 I Street
Sacramento, CA 95814

Dear Ms. Melton:

Pursuant to California Elections Code Section 9002, I respectfully request that the Attorney General prepare a title and summary for the attached measure. The text of the measure, a check for \$200.00 and the address at which I am registered to vote are enclosed.

Also attached is the acknowledgement of the proponent required by Section 9608 of the California Elections Code.

If there is any further information I can provide, please do not hesitate to contact me.

Sincerely,

Edward 'Ted' Costa

Enclosures

**RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL**

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THE CITIZENS FAIR DISTRICTS ACT

Section 1. Title.

This Act shall be known and may be cited as the "Citizens Fair Districts Act."

Section 2. Findings and Purpose.

The people of the state of California hereby make the following findings and declare their purpose in enacting the Act is as follows:

(a) Our state and congressional elected law makers should be responsive to the voters of the State of California.

(b) When the Legislature draws its own districts, it draws maps that cut up neighborhoods, communities, cities and counties in order to create safe seats for incumbents or party favorites.

(c) When districts are drawn for politicians instead of voters, politicians can no longer be held accountable by their constituents.

(d) Legislators have publicly acknowledged that it is an inherent conflict of interest for them to draw their own districts. In 2001, incumbent self-interest and politics resulted in uncompetitive districts drawn behind closed doors and out of the public eye.

(e) Citizens who vote in the State of California, not politicians, are best suited to adopt a fair and nonpartisan redistricting plan.

(f) This Act will end the legislators' conflict of interest, take redistricting away from incumbent politicians and make politicians accountable to the voters again.

(g) This Act will end the practice of incumbent protection where incumbent politicians protect their legislative seats by drawing "safe" districts and will foster increased fair competition in primary and general elections.

(h) This Act establishes an independent Citizens Redistricting Commission drawn randomly from the voter rolls of each Assembly District in California and would empower ordinary citizens to ensure fairness in the redistricting process and establish a fair redistricting plan.

(i) This Act requires compliance with the Voting Rights Act.

(j) This Act requires that counties, cities and communities of interest should not be split to protect incumbents.

Section 3. Amendment of Article XXI of the California Constitution

Article XXI of the California Constitution is amended to read as follows:

Article 21 ~~XXI~~. ~~Reapportionment~~ Redistricting of Senate, Assembly, Congressional and Board of Equalization Districts.

~~SECTION 1. In the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, the Legislature shall adjust the boundary~~

~~lines of the Senatorial, Assembly, Congressional, and Board of Equalization districts in conformance with the following standards:~~

~~(a) Each member of the Senate, Assembly, Congress, and the Board of Equalization shall be elected from a single member district.~~

~~(b) The population of all districts of a particular type shall be reasonably equal.~~

~~(c) Every district shall be contiguous.~~

~~(d) Districts of each type shall be numbered consecutively commencing at the northern boundary of the State and ending at the southern boundary.~~

~~(e) The geographic integrity of any city, county, or city and county, or of any geographical region shall be respected to the extent possible without violating the requirements of any other subdivision of this section.~~

SECTION 1. Citizens Redistricting Commission

(a) Each member of the Senate, Assembly, Congress, and the State Board of Equalization shall be elected from a single member district. The territory of each Senate district established pursuant to this section shall be comprised of two Assembly districts. Each State Board of Equalization district shall be comprised of ten Senate districts.

(b) By October 15 of each year ending in the number zero, the Citizens Redistricting Commission shall be established to provide for the redistricting of Senate, Assembly, congressional, and State Board of Equalization districts. As used in this Article, "commission" shall mean the Citizens Redistricting Commission.

(c) The Citizens Redistricting Commission shall consist of 11 members and all of the following shall apply:

(1) The Citizens Redistricting Commission shall have partisan balance. The commission shall include four members representing the largest political party in California based on party registration, four members representing the second largest political party in California based on party registration, and three members who are not registered with either of the two largest political parties in this state.

(2) The Citizens Redistricting Commission shall be reasonably representative of the diversity of the state, including but not limited to racial, ethnic, geographic and gender diversity.

(3) Each commission member shall be a registered California voter.

(4) Each commission member shall commit to applying this article in an honest, independent, and impartial fashion and to upholding public confidence in the integrity of the redistricting process.

(d) (1) Within the ten years immediately preceding the date of the notification by the Secretary of State that a commission member has been selected to serve on the commission, neither a commission member, nor a member of his or her family, may have done any of the following:

(A) Been elected to or been a candidate for any elective public office or been appointed by an elected official to a paid public position.

(B) Served as an officer of a political party.

(C) Served as an elected or appointed member of a political party central committee.

(D) Been a registered federal, state or local lobbyist, or an employee of or a consultant to a registered lobbyist.

(E) Been an officer, paid staff or paid consultant of a candidate or party campaign committee.

(F) Been a staff member for or a consultant or under contract to the Legislature, Congress or the Board of Equalization.

(G) Had a financial interest or family relationship with the Governor, a member of the Legislature, a member of Congress, or a member of the State Board of Equalization.

(H) As used in this subdivision, a member of a person's family is one with whom the person has a bona fide relationship established through blood or legal relation, including an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, or first cousin, or the spouse of any such person. As used in this subdivision, a person with a financial interest is as defined by the Political Reform Act or its successor.

(2) A member of the commission shall be ineligible, during his or her term of office, and for three years thereafter, to hold elective public office in this state, to be appointed by an elected official to a paid public position, to register as a lobbyist or to be staff, counsel, a consultant or a contractor to the Governor, a member of the Legislature, a member of Congress, or a member of the State Board of Equalization.

SECTION 2. Citizens Redistricting Commission Selection Process

(a) The Secretary of State shall work to ensure that each stage of the selection process promotes the purpose of achieving a Citizens Redistricting Commission that is reasonably representative of the state's diversity, including but not limited to, racial, ethnic, geographic and gender diversity. In order to establish the Citizens Redistricting Commission, the Secretary of State shall comply with the following provisions:

(1) Based on the California voter registration roll in existence as of March 1 of each year ending in zero, the Secretary of State shall assemble a pool of invited nominees.

(2) The Secretary of State shall select 2,000 registered voters from each Assembly District in the state for a total nominee pool of 160,000, drawn at random from registered voters in each Assembly District in the state who meet any one of the following: (1) voted in the preceding two statewide general elections in the years ending in six and eight; (2) became eligible to register after the deadline for registering to vote in the statewide general election in the year ending in six and voted in the statewide general election in the year ending in eight; (3) became eligible to register to vote after the deadline for registering to vote in the statewide general election in the year ending in eight and are registered to vote at the time of selection. The voters selected in this manner shall hereinafter be called the "invited nominee pool."

(3) The Secretary of State shall prepare an invitation and nominee form that shall be mailed to all nominees. In preparing the invitation and nominee form, the Secretary of State shall determine the type of information that will be of the greatest assistance in evaluating a nominee's ability to serve on the commission. The invitation

and nominee form prepared by the Secretary of State shall include the terms and conditions of serving on the commission and shall include a notice to all nominees that they are prohibited from any ex parte communications concerning their possible nomination to the commission except for communications with the nominee's family members or employer. The invitation shall also inform the nominees that seminars will be conducted by the Secretary of State in Sacramento and Los Angeles on dates to be selected by the Secretary of State that a nominee must attend in order to be considered for appointment to the commission.

(4) No later than April 1 of each year ending in zero, the Secretary of State shall notify each of the 160,000 voters comprising the total invited nominee pool that he or she has been randomly selected as a candidate to serve on the Citizens' Redistricting Commission. The Secretary of State shall not disclose the names of the voters or any information pertaining to the nominees and shall keep such information strictly confidential. If the nominee wishes to accept the nomination to the commission, the nominee shall complete the nominee form provided for in paragraph (3), executed under penalty of perjury, regarding the nominee's willingness to serve and the nominee's satisfaction of the qualifications as set forth in the Act, and such other information to help evaluate a nominee's ability to serve on the commission as the Secretary of State may require. The Secretary of State shall further direct the nominee to mail the executed nominee form to the Secretary of State so that it is postmarked by April 20 of that year. Each nominee shall execute a statement in writing acknowledging the potential conflict of interest of a member seeking future elected public office or seeking future appointment to paid political office or direct employment by officeholders listed in Section 1(d)(2), and shall pledge, or decline to pledge, in writing, to not seek or accept any such election or appointment or employment during the term of office of the commission and for three years thereafter. Nominee forms not received by the Secretary of State by April 30 of each year ending in zero shall not be considered.

(5) From the nominee forms that are received pursuant to paragraph (4), the Secretary of State shall randomly draw the names to establish a pool of 10 nominees from each Assembly District which shall hereinafter be called the "initial nominee pool." In the event that not enough nominee forms are received from any Assembly District to meet the requirement of this subdivision, the Secretary of State shall take whatever steps the Secretary of State deems necessary to randomly establish a pool of 10 nominees from each Assembly District. If the Secretary of State determines that the entire initial nominee pool is not reasonably representative of the diversity of the state, including but not limited to racial, ethnic, geographic and gender diversity, the Secretary of State shall repeat the entire drawing. The nominees who remain in the invited nominee pool shall be notified by the Secretary of State that they are being placed in a reserve pool. The Secretary of State may draw by random method from the reserve pool if necessary to ensure an adequate number of nominees at any stage of the selection process. The Secretary of State shall immediately notify all nominees of their nomination to the Commission. The Secretary of State shall not disclose the names of the nominees or any other information pertaining to the nominees and shall keep such information confidential.

(6) No later than June 1 of each year ending in zero, the Secretary of State shall make available copies of the nominee forms from the nominees to the President pro

Tempore of the Senate, the minority floor leader of the Senate, the Speaker of the Assembly and the minority floor leader of the Assembly. In order that the identity of the initial nominees is not disclosed to the legislative leaders, the copies of the nominee forms provided to the legislative leaders shall not disclose the names or party affiliations of the nominees or any other information as deemed necessary by the Secretary of State to protect the identity of the initial nominees. No later than July 1 of a year ending in zero, the legislative leaders shall screen and review the nominee forms submitted by the nominees and each legislative leader may select up to 20 percent of the initial nominees to be removed from the initial nominee pool. Notwithstanding the provisions of this subdivision, a nominee shall only be removed if at least one legislative leader from each of two different parties selects the same nominee to be removed from the initial nominee pool.

(7) No later than July 15 of each year ending in zero, from the remaining pool of initial nominees after the screening by the legislative leaders pursuant to paragraph (6), the Secretary of State shall conduct a random drawing by lot of the nominees and establish a pool of nominees that shall consist of 240 nominees, with three subpools: 80 nominees registered with the largest political party in California, 80 nominees registered with the second largest political party in California, and 80 nominees who are not registered with either of the two largest political parties in this State. This pool shall hereinafter be called the "screened nominee pool."

(8) The Secretary of State shall immediately notify all nominees in the screened nominee pool that in order to continue to be considered for selection as a member of the commission, a nominee must participate in a training seminar. The Secretary of State shall conduct the seminar(s) in such a manner as to allow the greatest dissemination of information and access reasonably possible to nominees. The seminar(s) shall be held no later than August 15 of each year ending in zero. The seminars shall provide information to nominees in the screened nominee pool as to responsibilities of members of the commission, procedures to be followed by the commission in establishing districts, the time commitment required to fulfill the duties of a member of the commission and any other information the Secretary of State deems relevant. Within 3 days of the conclusion of the seminar that the nominee has attended, any nominee in the screened nominee pool who does not wish to serve on the commission shall notify the Secretary of State.

(9) Within 3 days of the last day that any nominee in the screened nominee pool may notify the Secretary of State that the nominee does not want to serve on the commission, the Secretary of State shall conduct a random drawing by lot of the remaining nominees and establish a pool of nominees that shall consist of 120 nominees, with three subpools: 40 nominees registered with the largest political party in California, 40 nominees registered with the second largest party in California, and 40 nominees who are not registered with either of the two largest political parties in California. The Secretary of State shall make available copies of the nominee forms of the 120 nominees to the President pro Tempore of the Senate, the minority floor leader of the Senate, the Speaker of the Assembly and the minority floor leader of the Assembly. No later than September 15 of each year ending in zero, the President pro Tempore of the Senate, the minority floor leader of the Senate, the Speaker of the Assembly and the minority floor leader of the Assembly may each strike up to four nominees from each subpool for a total

of 12 possible strikes per legislative leader. The legislative leaders shall make every effort to strike in such a way that does not result in a pool of nominees that is not representative of this State's racial, ethnic, gender, geographic and cultural diversity. After all legislative leaders have exercised their strikes, the remaining pool of nominees shall hereinafter be called the "candidate pool."

(10) No later than October 1 of each year ending in zero, the Secretary of State shall establish and implement a public and auditable process of randomly drawing from the candidate pool four names of persons who are registered with each of the two largest political parties in California, and three names from the pool of persons who are not registered with either of the two largest political parties in California to comprise the Citizens Redistricting Commission. The Secretary of State shall also randomly draw from the candidate pool an additional four names of persons who are registered with each of the two largest political parties in California and three names from the pool of people who are not registered with either of the two largest political parties in California to serve as alternates to the commission.

(11) In the event that the random drawing provided for in paragraph 10 results in two or more commission members from a single county, the Secretary of State shall utilize a random process so that a county's representation does not exceed that county's proportion of the population of the state.

(12) The names of the eleven people drawn for the commission and the names of the eleven people drawn to serve as alternates to the commission shall be presented to the President pro Tempore of the Senate, the minority floor leader of the Senate, the Speaker of the Assembly, and the minority floor leader of the Assembly who shall have 5 days to object to the composition of the commission for lack of representation of the diversity of the state. If objections are raised by three of the foregoing legislative leaders, the Secretary of State will return all names to the candidate pool for another round of random drawing which shall be completed no later than October 15 of each year ending in zero.

(13) At the conclusion of the steps required by paragraph (12), the Secretary of State shall inform the eleven people whose names were drawn to serve on the commission and the eleven people whose names were drawn to serve as alternates to the commission of their selection.

(b) The commission shall convene for its first meeting no later than November 1 of each year ending in zero at a location to be determined by the Secretary of State. The 11 members of the commission shall select by the voting process described in this Act one of their members to serve as the chair and one to serve as vice chair. The chair and vice chair shall not be of the same party and shall be elected by a two-thirds vote of the commission.

(c) The term of office of each member of the commission expires upon the appointment of the first member of the succeeding commission.

(d) No later than January 1 of each year ending in one, the commission shall hire an Executive Director pursuant to the provisions of Section 4(a). No later than March 1 of each year ending in one, the executive director shall hire staff and establish a fully equipped office.

(e) Notwithstanding any other provision of law, no employer shall discharge, threaten to discharge, intimidate, coerce or retaliate against any employee by reason of such employee's attendance or scheduled attendance at the seminars to be held pursuant to paragraph (8) of subdivision (a) or any meeting of the commission.

(f) Any person who changes party affiliation after being notified by the Secretary of State that he or she is an invited nominee for the commission shall not be eligible to serve on the commission.

SECTION 3. Commission Vacancy, Removal, Resignation

(a) After having been served written notice and provided with an opportunity for a response, a member of the commission may be removed by the Governor, with the concurrence of two-thirds of the Senate and two-thirds of the Assembly, for substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office.

(b) The Secretary of State shall fill any vacancy in the commission, whether created by removal or resignation, by randomly selecting one of the alternates drawn from the same subpool as the vacating member in a manner consistent with the requirements of Section 2(a)(11).

SECTION 4. Rules for Operation of the Commission; Open and Public Hearings and Records

(a) The commission shall hire an Executive Director who must be approved by a two-thirds vote of the commission of which two votes for approval must come from members of the commission from the largest political party in California, two votes for approval must come from members of the second largest political party in California and two votes for approval must come from members of the commission who are not registered with either of the two largest political parties in California. The Executive Director shall, with the approval of the commission, hire commission staff, legal counsel and consultants as appropriate. The commission shall establish criteria for the hiring and removal of these individuals, communication protocols, and a code of conduct. The commission shall apply the conflicts of interest listed in subdivision (d) of Section 1 to the hiring of staff. Notwithstanding the provisions of this subdivision, the commission or its successor may waive the staff conflict of interest requirements by a two-thirds vote of the commission in the same manner as required to hire an Executive Director pursuant to this subdivision.

(b) Seven members of the commission shall constitute a quorum.

(c) Six or more affirmative votes shall be required for any official action. The final plan must be approved by at least six affirmative votes which shall include at least two votes of members registered from each of the two largest parties in California and two votes from members who are not registered with either of the two largest political parties in California.

(d) The commission shall provide not less than 14 days' public notice for each meeting. Notwithstanding this subdivision, the commission may conduct a special meeting with 5 days notice during the period after August 15 of each year ending in one. The commission shall otherwise comply with the Bagley-Keene Open Meeting Act or its successor.

(e) The records of the commission pertaining to redistricting, and all data considered by the commission, are public records, open to inspection by members of the public upon request.

(f) Any written or verbal communication with any commission member outside of a public hearing, other than by staff or by legal counsel, is prohibited as to any matter which is before the commission. This subdivision does not prohibit any communication between

commission members that is otherwise permitted by the Bagley-Keene Open Meeting Act or its successor.

(g) Any action of the commission that requires the approval of two-thirds of the members of the commission shall require the affirmative vote of eight members of the commission.

SECTION 5. Redistricting Process

(a) The commission shall establish Senate, Assembly, State Board of Equalization, and congressional districts based on a mapping process in accordance with the following criteria, prioritized according to the following order:

(1) Districts shall comply with the United States Constitution. Congressional districts shall each have equal population with other Congressional districts to the extent required by law. Senate, Assembly, and State Board of Equalization districts shall have equal population with other districts for the same office, except where deviation is required to comply with the federal Voting Rights Act and allowable by law.

(2) Districts shall comply with the federal Voting Rights Act.

(3) Districts shall be geographically contiguous.

(4) A redistricting plan shall comply with the following criteria in the following order of importance.

(A) First create districts that contain the largest number of whole counties possible and then create districts that contain the smallest number of county fragments possible.

(B) To the extent that counties must be divided or fragmented, the commission shall consider communities of interest and city boundaries in drawing the district lines in the following manner:

First create districts that contain the largest total number of whole cities and communities of interest possible and then create districts that contain the smallest total number of city fragments and the smallest total number of communities of interest fragments possible

(5) No census block shall be fragmented unless required to satisfy the preceding requirements of paragraph (1) or (2) of this subdivision.

(6) To the extent this requirement is not in conflict with the requirements of the preceding paragraphs of this subdivision, districts shall be drawn to encourage geographical compactness where practicable such that nearby areas of population shall not be bypassed for more distant population.

(b) A community of interest shall be defined as a group of residents who share similar interests including but not limited to neighborhood, social, cultural, ethnic, geographic or economic interests. The commission shall establish a process and timetable for determining which communities of interest may be considered by the commission in compliance with the provisions of subparagraph (B) of paragraph (4) of subdivision (a). By a two-thirds vote of the commission, the commission may change the order of importance of the criteria contained in paragraph (4) of subdivision (a).

(c) The places of residence of incumbents or candidates may not be considered in the creation of a map. Districts shall not be drawn for the purpose of favoring any incumbent. Districts shall not be drawn for the purpose of favoring partisan interests. Except as required by

federal law, including but not limited to the Federal Voting Rights Act party registration data and partisan candidate election results shall not be used in the preparation of any redistricting plan.

(d) Before drawing maps pursuant to this section, the commission shall adopt definitions of the terms and standards to be utilized in drawing the maps.

(e) The commission shall issue with its final plan a report regarding compliance with the requirements of subdivision (a) that explains the basis on which the commission made its decisions. If the commission changes the order of importance of the criteria specified in paragraph (4) of subdivision (a), the commission shall explain the change.

(f) In order to establish and implement an open and noticed hearing process for public input and deliberation, the commission shall establish and publish a schedule of hearings and locations for this process as soon as reasonably possible after its first meeting. The hearing process shall include hearings to receive public input before the commission draws any maps and hearings following the drawing and display of commission maps. The commission shall display the map(s) created in a timely manner to the public for comment in a manner designed to achieve the widest public dissemination reasonably possible. The commission shall work to ensure that such hearings and display periods provide opportunity for meaningful public input including elected and appointed officials at every stage of the redistricting process undertaken by the commission. The commission shall take submissions of plans and comments, and conduct hearings as follows:

(1) Any member of the public may offer a complete or partial proposed plan, written comment, or public hearing testimony.

(2) The commission shall adopt guidelines for submission of redistricting plans and written comments, and procedures and rules to facilitate the orderly taking of testimony at public hearings. The procedures and rules shall make ample provision for full and fair public consideration and debate regarding draft and proposed final redistricting plans and written public comments.

(3) The commission shall hold hearings in various regions of California designed to allow the widest public participation reasonably possible.

(4) The commission shall make available commission records, plan submissions, redistricting data, and mapmaking tools in a manner designed to achieve the widest public dissemination reasonably possible.

(g) The approval of the final boundaries shall be made according to the voting process described in Section 4(c). The commission shall display any map(s) it will vote on to the public for a minimum of 14 days in a manner designed to achieve the widest public dissemination reasonably possible. Upon approval, the commission shall certify those districts to the Secretary of State no later than September 15 of each year ending in one.

SECTION 6. Commission Funding: Legal Challenges

(a) In 2009, and in each year ending in nine thereafter, the Governor shall include in the Governor's Budget submitted to the Legislature pursuant to Section 12 of Article IV an amount of funding sufficient to meet the estimated expenses of the subsequent redistricting process occurring pursuant to this article, and shall make adequate office space available for the operation of the commission. The Legislature shall make the necessary appropriation from the Legislature's total aggregate expenditures as referred to in Article 4, Section 7.5 in the annual budget bill. The Legislative Analyst shall determine the amount of the appropriation which shall

be no more than ninety percent (90%) of the amount expended by the Legislature in creating the redistricting plans in 2001, adjusted by the California Consumer Price Index.

(b) The commission, with fiscal oversight from the Department of Finance or its successor, shall have procurement and contracting authority and may hire staff and consultants, exempt from the civil service, for the purposes of this article, including legal representation.

(c) The commission has standing in legal actions regarding a redistricting plan and establishing whether funds or other resources provided for the operation of the commission are adequate. The commission has sole authority to determine whether the Attorney General or legal counsel hired or selected by the commission shall represent the people of California in the legal defense of a redistricting plan.

(d) (1) The California Supreme Court has original and exclusive jurisdiction in all proceedings in which a redistricting plan adopted by the commission is challenged.

(2) To challenge a redistricting plan, any affected elector may file a petition for a writ of mandate or writ of prohibition, within 45 days after the commission has certified the plan to the Secretary of State, to bar the Secretary of State from implementing the plan on the grounds that the filed plan violates this Constitution, the United States Constitution, or any federal statute.

(3) The court shall act expeditiously on the petition. If the court determines that a redistricting plan adopted by the commission violates this Constitution, the United States Constitution, or any federal statute, the court shall fashion the relief that it deems appropriate.

(4) Any redistricting plan adopted by the commission shall be subject to referendum as provided for in Article 2, Section 9.

(e) Except for judicial decrees, the provisions of this Article are the exclusive means of adjusting the boundary lines of the districts specified therein.

SECTION 7. Compensation for Members of Citizens Redistricting Commission

(a) Members of the commission shall receive a per diem payment of \$300 for each day the member is engaged in commission business. The per diem payment shall be adjusted in each year ending in zero by the California Consumer Price Index. Members of the commission shall be eligible for reimbursement of personal expenses incurred in connection with the duties performed for the commission pursuant to law, and a member's residence is deemed to be the member's post of duty for purposes of reimbursement of expenses. All nominees in the screened nominee pool shall be eligible for reimbursement of personal expenses incurred in connection with attending a seminar pursuant to Section 2(a)(8).

(b) The commission may not meet or incur expenses after the redistricting plan becomes final pursuant to Section 5(g), except with respect to any pending litigation or government approval concerning the plan, to revise districts if required by court order, or if the number of Senate, Assembly, congressional, or State Board of Equalization districts is changed.

(c) For purposes of this article, "day" means a calendar day, except that if the final day of a period within which an act is to be performed is a Saturday, Sunday, or holiday, the period is extended to the next day that is not a Saturday, Sunday, or holiday.

Section 4. Conflicting Ballot Measures.

(a) In the event that this measure and another measure or measures relating to the redistricting of Senate, Assembly, Congressional, or Board of Equalization districts is approved by a majority of voters at the same election, and this measure receives a greater number of affirmative votes than any such other measure or measures, this measure shall control in its entirety and said other measure or measures shall be rendered void and without any legal effect. If this measure is approved but does not receive a greater number of affirmative votes than said other measure or measures, this measure shall take effect to the extent permitted by law.

(b) If this measure is approved by voters but is superseded by law by any other conflicting ballot measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force of law.

Section 5. Severability.

If any provision of this Act, or part thereof, including but not limited to Section 6(d)(4) of Article XXI of the California Constitution, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

2/26/07 Final
Revised 6/25/07



Adam Schwartz /FEC/US
10/23/2007 03:32 PM

To Cbell@bmhlaw.com
cc Ron Katwan/FEC/US@FEC
bcc

Subject Reps. McCarthy and Nunes Advisory Opinion Request

Mr. Bell,

As we discussed on the telephone earlier today, below are the questions we asked regarding the Advisory Opinion Request on behalf of Representatives McCarthy and Nunes.

- 1) Do the Requestors intend to raise funds for only the People's Advocate Initiative Committee? Or for other ballot initiative committees as well?
- 2) If the Requestors intend to raise funds for other organizations established for the purpose of qualifying for and campaigning for the redistricting proposal, please identify the relationship between the Requestors and the organizations?
- 3) Is the People's Advocate Initiative Committee a 501(c) organization?
- 4) If the Requestors intend to raise funds for other organizations established for the purpose of qualifying for and campaigning for the redistricting proposal, please identify whether these organizations are 501(c) organizations?
- 5) Would the requestors' request for funds specify how donations would be used?
- 6) In the AOR, you state that "[a]ny funds raised by Requestors would not be used for any public communication that would refer to them." Would other funds raised by the ballot initiative committee be used for public communications that refer to the Requestors?

We look forward to your responses.

Adam Schwartz
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"Charles H. Bell"
<cbell@bmhlaw.com>
10/25/2007 12:49 PM

To <aschwartz@fec.gov>
cc
bcc
Subject McCarthy/Nunes AOR

History: This message has been forwarded.

Mr. Schwartz:

Please find attached our letter response to the questions you had posed. Please feel free to contact me if you have any further questions.

We are also faxing a copy and overnight mailing the original of the letter.

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102507 FEC AOR follow up ltr.pdf

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October 25, 2007

BY FACSIMILE AND ELECTRONIC MAIL

**Adam Schwartz
Office of the General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463**

RE: Reps. McCarthy and Nunes Advisory Opinion Request

Dear Mr. Schwartz:

We are in receipt of your follow-up questions regarding the Advisory Opinion Request on behalf of Representatives McCarthy and Nunes. Below please refer to our responses to each question you posed.

- (1) Do the Requestors intend to raise funds only for the People's Advocate Initiative Committee or for other ballot initiative committees as well?**

Response: At this time, Requestors only intend to raise funds for the People's Advocate Initiative Committee. If Requestors later decided to raise funds for any other ballot initiative committee, their activities would be conducted in accordance with the terms of the FEC's advisory opinion issued in response to this request.

- (2) If the Requestors intend to raise funds for other organizations established for the purpose of qualifying for and campaigning for the redistricting proposal, please identify the relationship between the Requestors and the organizations?**

Response: Requestors do not intend to raise funds for any other organizations established for the purpose of qualifying and campaigning for the redistricting proposal. However, if Requestors were to raise funds for any other organizations, Requestors will not establish, finance, maintain, or control such organizations.

(3) Is the People's Advocate Initiative Committee a 501(c) organization?

Response: The People's Advocate Initiative Committee is exempt from income tax pursuant to Internal Revenue Code section 501(c)(4).

(4) If the Requestors intend to raise funds for other organizations established for the purpose of qualifying for and campaigning for the redistricting proposal, please identify whether these organizations are 501(c) organizations?

Response: Requestors do not intend to raise funds for other organizations established for the purpose of qualifying and campaigning for the redistricting proposal. However, in our experience, all organizations established for the purpose of qualifying and campaigning for ballot initiatives are exempt from income tax pursuant to Internal Revenue Code 501(c).

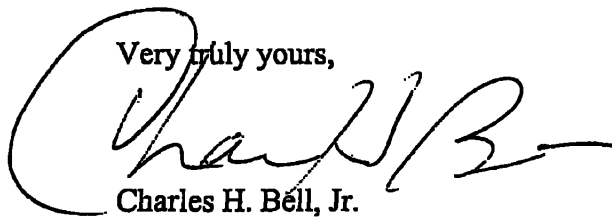
(5) Would the requestors' request for funds specify how donations would be used?

Response: Requestors do not intend to specify how donations to People's Advocate Initiative Committee will be used by that organization. Notably, Requestors did not establish, nor do they finance, maintain or control People's Advocate Initiative Committee. If the FEC's Advisory Opinion requires that Requestors condition or limit the use of the funds they solicit, they are prepared to comply with the FEC's recommendations.

(6) In the AOR, you state that "[a]ny funds raised by Requestors would not be used for any public communication that would refer to them." Would other funds raised by the ballot initiative committee be used for public communications that refer to the Requestors?

Response: Requestors did not establish, nor do they finance, maintain, or control People's Advocate Initiative Committee. Consequently, they have no control over the use of other funds (funds not solicited by Requestors) received by the Committee. Requestors will not be participating in, or coordinating with, People's Advocate Initiative Committee regarding any public communications paid for by the Committee.

Please do not hesitate to contact us if you require any additional information to complete the FEC's response to the Advisory Opinion Request submitted by Representatives McCarthy and Nunes.

Very truly yours,

Charles H. Bell, Jr.

CHB:ANT:sd