



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 28, 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2009-19

Mr. David Keating
Executive Director
Club for Growth
2001 L Street, NW
Suite 600
Washington, DC 20036

Dear Mr. Keating:

We are responding to your advisory opinion request on behalf of Club for Growth and Club for Growth PAC, concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the use of contributor information contained in reports filed with the Commission.

The Commission concludes that Club for Growth and Club for Growth PAC may use contributor information contained in reports filed with the Commission to notify contributors to Senator Arlen Specter's 2010 Senate re-election campaign that Senator Specter has switched his party affiliation, and has publicly offered to refund contributions upon request.

Background

The facts presented in this advisory opinion are based on your letter received on June 25, 2009, your comment received on August 20, 2009, and conversations with Commission attorneys.

Club for Growth ("Club") is an incorporated nonprofit membership organization exempt from taxation under section 501(c)(4) of the Internal Revenue Code. Club for

Growth PAC ("Club PAC") is the separate segregated fund of the Club and is a multicandidate committee under Commission regulations.

Senator Arlen Specter represents the Commonwealth of Pennsylvania. Citizens for Arlen Specter ("Specter Committee") is his authorized campaign committee. On April 28, 2009, Senator Specter announced that he had decided to switch his party affiliation and to run as a Democrat for the 2010 Senate election. *See* Press Release, Citizens for Arlen Specter, Statement by Arlen Specter (April 28, 2009) (attached to advisory opinion request). In his press release, Senator Specter stated that he would return campaign contributions made during the 2010 election cycle upon request.

The Club and Club PAC wish to communicate with individual contributors to the Specter Committee to inform them of Senator Specter's decision to run as a Democrat in the 2010 election. The Club and Club PAC propose to compile a list of contributors from information contained in campaign finance reports that the Specter Committee has filed with the Commission. The communications would notify contributors about Senator Specter's policy of providing refunds upon request to those who contributed to his campaign while he was running as a Republican. The communications would not contain any express advocacy or mention any other candidate.

Either the Club or Club PAC would send a one-time letter to contributors to the Specter Committee, or alternatively, for those contributors with published phone numbers, the Club or Club PAC may make a one-time telephone call. The letter would inform contributors to the Specter Committee of Senator Specter's decision to switch to the Democratic Party and his policy of refunding contributions upon request. A preprinted form letter requesting a contribution refund and envelope addressed directly to the Specter Committee would be enclosed with the letter. Neither the Club nor Club PAC would know who sends this form letter to the Specter Committee. If the Club or Club PAC makes a phone call to a contributor, the phone call would inform the contributor of Senator Specter's decision to switch parties and his refund policy. The contributor would be asked if he or she would like to have the Club or Club PAC either send the contributor information on how to request the refund, or provide this information during the telephone call. Both the letter and the telephone call would inform contributors that the Specter Committee is not required by statute or regulations to refund these contributions.

The communications would not contain any solicitation of any kind for the Club, Club PAC, any candidate, or any other entity. No follow up mailings or telephone calls would be made unless, during the initial telephone call, the contributor requests further information from the Club or Club PAC on how to request a refund. The communications would be made independently of any candidate or political party.

The Club and Club PAC would not use the list for any purpose other than the communication proposed in the advisory opinion request, and would not retain the list for any other purpose. The Club and Club PAC would not put any of the contact information obtained from the Specter Committee's Commission filings into either the Club or the

Club PAC's general membership database. The Club and Club PAC would not make the list of contributors to the Specter Committee available to any other entity.

Question Presented

May the Club or Club PAC use information obtained from campaign finance reports filed with the Commission to communicate with contributors to the Specter Committee informing them of Senator Specter's decision to switch parties and his refund policy?

Legal Analysis and Conclusion

Yes, the Club and Club PAC may use contributor information contained in reports filed with the Commission for the purpose of making a communication informing contributors to the Specter Committee of Senator Specter's decision to run as a Democrat and his policy of refunding contributions upon request.

Under the Act and Commission regulations, political committees are required to file reports with the Commission identifying the names and mailing addresses of contributors. 2 U.S.C. 434(b)(2)(A) and (b)(3)(A); 11 CFR 104.8(a). The Act provides that the Commission shall make reports and statements filed with it available to the public for inspection and copying within 48 hours after receipt. 2 U.S.C. 438(a)(4). Any information copied from such reports or statements, however, "may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes," other than using the name and address of a political committee to solicit contributions from that political committee. *Id.*; see also 11 CFR 104.15(a). Under Commission regulations, "soliciting contributions" includes soliciting any type of contribution or donation, such as political or charitable contributions. 11 CFR 104.15(b).

Thus, in addition to requiring the disclosure of contributor information, Congress provided limitations to ensure that such information was not misused. Congress was concerned that the Act's reporting requirements "open up the citizens who are generous and public spirited enough to support our political activities to all kinds of harassment" 117 Cong. Rec. 30057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon). Specifically, Senator Bellmon, sponsor of the prohibition on the use of individual contributors' names and addresses, stated that the purpose of the prohibition was to "protect the privacy of the generally very public-spirited citizens who may make a contribution to a political campaign or a political party." *Id.* In his remarks on the Senate floor, however, Senator Bellmon acknowledged the limitations of the prohibition. See *id.* at 30058 (the prohibition "is intended to protect, at least to some degree, the men and women who make contributions to candidates or political parties from being victimized" by having their names sold to list brokers). Indeed, in his response to a question from Senator Nelson, Senator Bellmon confirmed that the "only purpose" of the prohibition is to "prohibit the lists [of contributor names and addresses] from being used for commercial purposes." 117 Cong. Rec. 30058 (daily ed. Aug. 5, 1971) (statements of Sen. Nelson and Sen. Bellmon).

The Commission has applied this solicitation and commercial use prohibition in several advisory opinions. In Advisory Opinion 1981-05 (Findley), the Commission concluded that a candidate could use information obtained from disclosure reports to mail letters to contributors to his opponent's campaign to correct allegedly defamatory charges made by his opponent. In Advisory Opinion 1984-02 (Gramm), a non-connected political committee calling itself "Americans for Phil Gramm in '84" solicited contributions without the permission of Phil Gramm or his authorized campaign committee. The Commission concluded that Representative Gramm and his authorized campaign committee could use contributor information contained in Americans for Phil Gramm in '84's disclosure reports to inform contributors that the non-connected committee was not Phil Gramm's authorized committee.

In both of these advisory opinions, the Commission noted that the purpose of the prohibition is to prevent contributor information from being used for commercial purposes or for making solicitations. The prohibition does not "foreclose the use of this information for other, albeit political, purposes, such as correcting contributor misperceptions." Advisory Opinion 1984-02 (Gramm).

This application of 2 U.S.C. 438(a)(4) is also consistent with the courts' treatment of the statute and regulatory provision. *See, e.g., FEC v. Int'l Funding Inst., Inc.*, 969 F.2d 1110 (D.C. Cir. 1992) (holding that the commercial use prohibition is constitutional because political committees have a property interest in their contributor lists); *FEC v. Political Contributions Data, Inc.*, 943 F.2d 190 (2nd Cir. 1991) (finding that the sale of contributor lists that did not include addresses or phone numbers and that explicitly stated that the lists could not be used for the purpose of solicitation or any commercial use did not violate the prohibition at 2 U.S.C. 438(a)(4)).

In this situation, the Club and Club PAC will not solicit contributions for any reason, and will not use the contributor information for any commercial purpose. Instead, the Club and Club PAC will use contributor information obtained from the Specter Committee's disclosure reports only for the limited purpose of notifying contributors that Senator Specter has switched parties and of his refund policy.¹ The communication will be made only once to each donor and will not require any further contact between the Club or Club PAC and the contributors to the Specter Committee.² Furthermore, the Club and Club PAC will safeguard the contributor information obtained from the reports by keeping it separate from their general membership database, to avoid using the

¹ The communication will inform contributors that the Specter Committee is not required by statute or regulations to refund these contributions.

² In your comment on behalf of Club for Growth, you state that "We have no interest in making repeated communications and have stated we would not do so." Comment of David Keating, Executive Director, Club for Growth on Draft AO 2009-19 at 3 (August 20, 2009). In Advisory Opinion 2003-24, the Commission concluded that the National Center for Tobacco-Free Kids ("NCTFK") could not use contributor information obtained from disclosure reports to send contributors direct mail communications about the health effects of smoking or for other efforts to control tobacco use. In reaching this conclusion, the Commission stated that the requestor's broad "open-ended interaction" presented the "possibility of repetitive and intrusive communications to contributors." Advisory Opinion 2003-24 (NCTFK). Such a concern is not raised by your request.

contributor information for any purpose not presented in the request. Additionally, the requestors will not make the contributor information available to any other entity for any use. Therefore, the Commission concludes that this limited use of contributor information obtained from the Specter Committee's disclosure reports does not violate the solicitation and commercial use prohibition at 2 U.S.C. 438(a)(4).

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. All cited advisory opinions are available on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

On behalf of the Commission,

(signed)
Steven T. Walther
Chairman