



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 22, 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2010-11

Marc E. Elias, Esq.
Ezra Reese, Esq.
Perkins Coie LLP
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2003

Dear Messrs. Elias and Reese:

We are responding to your advisory opinion request on behalf of Commonsense Ten (the "Committee"), a registered nonconnected political committee, concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to its proposed plan to solicit and accept unlimited contributions from individuals, political committees, corporations, and labor organizations to fund its independent expenditures.

Based on the representations in the request and the analysis below, the Commission concludes the Committee's planned course of action complies with the Act.

Background

The facts presented in this advisory opinion are based on your letter received on June 11, 2010 and emails received on June 15, 2010.

The Committee organized itself as a nonconnected committee and is located in Washington, D.C. It registered with the Commission on June 11, 2010, and will file regularly scheduled disclosure reports with the Commission as a nonconnected committee.

The Committee intends to make only independent expenditures.¹ It will not make any monetary or in-kind contributions to any other political committee or organization. The Committee is not affiliated with any other political committee or organization that makes contributions within the meaning of the Act.

The Committee intends to solicit and accept unlimited contributions from individuals, political committees, corporations, and labor organizations. The Committee intends to deposit these contributions into its Federal account, commingled with existing contributions that were solicited and accepted by the Committee in accordance with the Act's source prohibitions and amount limitations. The Committee intends to screen for and refuse contributions from foreign nationals, Federal contractors, national banks, or corporations organized by act of Congress. The Committee will report contributions received on its regularly scheduled reports to the Commission and will also report its independent expenditures.

Question Presented

Does the Committee's planned course of action, which involves soliciting and accepting unlimited contributions from individuals, political committees, corporations, and labor organizations for the purpose of making independent expenditures, as well as registering and reporting with the Commission as a nonconnected political committee, comply with the Act?

Legal Analysis and Conclusions

Yes, based on the representations in the request and consistent with the analysis below, the Committee's planned course of action, which involves soliciting and accepting unlimited contributions from individuals, political committees, corporations, and labor organizations for the purpose of making independent expenditures, as well as registering and reporting with the Commission as a nonconnected political committee, complies with the Act.

The Committee intends to make only independent expenditures. It will not make any monetary or in-kind contributions (including coordinated communications) to any other political committee or organization.²

The U.S. Court of Appeals for the District of Columbia Circuit recently held that "the contribution limits of 2 U.S.C. 441a(a)(1)(C) and 441a(a)(3) are unconstitutional as

¹ Under the Act, an "independent expenditure" is an expenditure by a person that expressly advocates the election or defeat of a clearly identified candidate and that is not made in concert or cooperation with or at the request or suggestion of the candidate, the candidate's authorized political committee, a political party committee or the agents of any of the foregoing. See 2 U.S.C. 431(17).

² In this context, the Commission notes that a payment for a coordinated communication is an in-kind contribution to the candidate, authorized committee, or political party with whom the communication is coordinated. See 11 CFR 109.21(b).

applied to individuals' contributions to SpeechNow," an independent expenditure-only group. See *SpeechNow.org v. FEC*, 599 F.3d 686, 689 (D.C. Cir. 2010) (*en banc*) ("*SpeechNow*"); see also *EMILY's List v. FEC*, 581 F. 3d 1, 10 (D.C. Cir. 2009) ("... individual citizens may spend money without limit (apart from the limit on their own contributions to candidates or parties) in support of the election of particular candidates"). In addition, the court held that the "reporting requirements of 2 U.S.C. 432, 433, and 434(a) and the organizational requirements of 2 U.S.C. 431(4) and 431(8) can constitutionally be applied to SpeechNow." See *id.*

Moreover, the United States Supreme Court held in *Citizens United* that corporations may make unlimited independent expenditures using corporate treasury funds. See *Citizens United v. FEC*, 130 S. Ct. 876, 913 (2010). The court in *SpeechNow* relied extensively on the Supreme Court's decision in *Citizens United*. See *SpeechNow*, 599 F.3d at 692-96. Following *Citizens United* and *SpeechNow*, corporations, labor organizations,³ and political committees may make unlimited independent expenditures from their own funds, and individuals may pool unlimited funds in an independent expenditure-only political committee. It necessarily follows that corporations, labor organizations and political committees also may make unlimited contributions to organizations such as the Committee that make only independent expenditures. Given the holdings in *Citizens United* and *SpeechNow*, that "independent expenditures do not lead to, or create the appearance of, *quid pro quo* corruption," *Citizens United*, 130 S.Ct. at 910, the Commission concludes that there is no basis to limit the amount of contributions to the Committee from individuals, political committees, corporations and labor organizations.

Accordingly, the Commission concludes that the Committee may solicit and accept unlimited contributions from individuals, political committees, corporations, and labor organizations.⁴ The Committee has registered with the Commission as a political committee, and it will report the contributions it accepts and the independent expenditures it makes. The Commission concludes that this course of action complies with sections 432, 433, and 434 of the Act and accompanying Commission regulations.

³ Although *Citizens United* did not directly address whether labor organizations also have a First Amendment right to use their general treasury funds for independent expenditures and electioneering communications, the Act and Commission regulations generally treat labor organizations in the same way as corporations. The Court's decision suggests no basis for treating labor organization communications differently than corporate communications under the First Amendment.

⁴ The Commission notes that this advisory opinion implicates issues that will be the subject of forthcoming rulemakings in light of the *Citizens United*, *EMILY's List*, and *SpeechNow* decisions. The results of these rulemakings may require the Commission to update its registration and reporting forms to facilitate public disclosure. In the meantime, the Committee may include a letter with its Form 1 Statement of Organization clarifying that it intends to accept unlimited contributions for the purpose of making independent expenditures. See Attachment A. Electronic filers may include such a letter as a Form 99.

The Commission expresses no opinion regarding the possible applicability of any Federal or State tax laws or other laws to the matters presented in your request, as those issues are outside its jurisdiction.

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 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.

On behalf of the Commission,

(signed)
Matthew S. Petersen
Chairman

ATTACHMENT A

[COMMITTEE NAME]

[DATE]

Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Form 1, Statement of Organization—Unlimited Contributions

To Whom It May Concern:

This committee intends to make independent expenditures and, consistent with the U.S. Court of Appeals for the District of Columbia Circuit decision in *SpeechNow v. FEC*, it therefore intends to raise funds in unlimited amounts. This committee will not use those funds to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees.

Respectfully submitted,

Treasurer