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WRITER'S DIRECT DIAL

(202) 457-5666

January 16, 1996

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Mr. Lawrence M. Noble  
General Counsel  
Federal Election Commission  
Office of the General Counsel  
999 E. Street, N.W.  
Washington, DC 20483

Re: Advisory Opinion Request Concerning An Incorporated Membership Organization's Use of Partisan Communications to Solicit Contributions to be Sent Directly to Federal Candidates or their Authorized Representatives

Dear Mr. Noble:

On behalf of the Association of Trial Lawyers of America ("ATLA"), I write to request an Advisory Opinion from the Federal Election Commission (the "FEC" or "Commission")<sup>1</sup> concerning under what conditions ATLA may send "partisan communications" to its members to solicit contributions to be sent directly to candidates' campaigns.

ATLA is an incorporated membership organization composed of individual trial attorneys, law professors, judges, military attorneys, government attorneys, and law students. The organization's mission is to:

Seek justice for all; preserve the constitutional right to trial by jury; prevent injury from occurring; champion the cause of those who deserve redress for injury to person or property; promote the public good through concerted efforts to secure safe products, a safe workplace, a clean environment, and quality health care; inspire excellence in advocacy through training and education; encourage cooperation among members; advance the common law and the finest traditions

<sup>1</sup> Pursuant to the authority granted the Commission and parties seeking advice under 2 U.S.C. 437f (1985) and 11 CFR § 112 (1995).

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of jurisprudence; and uphold the honor and dignity of the legal profession and the highest standards of ethical conduct and integrity.

Article II, Bylaws, Association of Trial Lawyers of America.

ATLA is subject to Section 441b of the Federal Election Campaign Act of 1974 (codified as amended at 2 U.S.C. §§431-456 (1985)) (the "Act"), which prohibits corporate contributions and expenditures in connection with federal elections. In response to a request for an advisory opinion in 1977, the Commission concluded that ATLA is a "federation of trade associations" within the meaning of the FEC regulations implementing Section 441b of the Act. 11 C.F.R. § 114.8(g)(1); Advisory Opinion ("AO") 1977-44, *reprinted in* 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5280.

ATLA wishes to exercise its right to send "partisan communications" to its members.<sup>2</sup> 11 CFR § 114.3. It plans to establish a program whereby its members are encouraged to contribute money to the campaigns of federal candidates endorsed by ATLA. Members would have complete discretion to give a contribution to any endorsed candidate, or not to give any money at all.

In order to encourage ATLA members to contribute, ATLA proposes to establish honorific designations for members who contribute certain amounts to candidates chosen by the member from lists of candidates and party committees endorsed by ATLA. ATLA would establish categories for different levels of annual contributions, such as "Legislative Leader" for an annual contributions of \$25,000, "Legislative Associate" for \$10,000 in contributions, and "Legislative Supporter" for \$5,000 in contributions. All eligible members will be advised of the program and asked to participate. No penalty will accrue to any member who chooses not to participate.

After being informed of the program, ATLA would send lists of endorsed candidates to members. The number of such communications might vary between one or two in a non-election year to monthly during an election year. Such communications would also vary as to the number of endorsed candidates or party committees included. A given communication might include as many as fifty or more endorsed candidates or as few as one. Pledged members would retain complete discretion, however, as to whether to contribute to any particular candidate or

<sup>2</sup> For purposes of the program proposed in this request, communications will be sent only to members of ATLA meeting all requirements for "membership" under current law and regulations; i.e., communications will be sent only to those members who pay regular dues or have other significant financial attachment to the organization and who have the right to vote for members of the highest governing body of the organization or for someone with the right to cast such votes.

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committee. While it is intended that ATLA would send each list of recommended candidates and committees to approximately the same number of ATLA members, this might vary. For example, as a member reaches a designated category, or asks to be removed from the program, that member would no longer receive communications.

As a slightly different approach, ATLA might wish to seek advance commitments from members to attain a specific honorific designation in a given year. For example, ATLA might ask members to commit in advance to become a "Legislative Leader" for the upcoming year. While ATLA would expect members to fulfill such pledges, there would be no penalty or retribution for members who choose not to fulfill those commitments. ATLA would not ask for specific commitments from members to give to any candidate in particular. The pledges sought would simply be to attain a given "status" by making the requisite amount of lawful contributions to candidates to be endorsed by ATLA in subsequent communications. These subsequent communications might remind members of their particular commitments as well as provide the names of endorsed candidates.

The communications would remind members of the contribution limits established under federal election law. ATLA would not provide envelopes or stamps or in any way facilitate the transmittal of contributions. The communications would state the names and addresses of the endorsed candidates, party committees, or their designated representatives and state clearly that contributions must be sent directly to these recipients and not to ATLA headquarters. If the member wishes to receive an honorific designation on the basis of his or her contributions, it would be the member's responsibility to inform ATLA that he or she made contributions. The members would inform ATLA either in writing or by telephone.

We seek confirmation that the above proposed program falls within the partisan communications provision in the regulations and therefore request the Commission's views on the following specific questions:

1. May ATLA send communications to its members inviting them to attain certain honorific designations by contributing certain amounts of money to candidates endorsed by ATLA, as described above?
2. May ATLA follow up the initial partisan communication requesting a general commitment to contribute to federal elections with subsequent communications informing the members of candidates endorsed by ATLA, as described above?

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3. **May ATLA obtain advance commitments from its members to contribute a specified amount to the campaigns of candidates endorsed by ATLA, as described above?**
4. **May the communications recommend the size of contributions that members should send to particular candidates?**
5. **May ATLA suggest when members should mail their contributions, such as urging contributions "by the end of the month"?**
6. **May ATLA request that its members who contribute to candidates endorsed by the organization notify ATLA by sending in a card or by calling ATLA headquarters?**
7. **May ATLA request that the campaigns, or authorized representatives of the campaigns receiving contributions, notify ATLA of any such contributions by ATLA members to help ATLA confirm which members reached certain honorific designations?**
8. **May ATLA communicate with candidates or their campaigns for the purpose of determining the correct or preferred address to include in the communications with members as to where their contributions should be sent?**
9. **In some cases, a candidate's designated campaign representative, such as a state or regional finance chairman, might also be a member of ATLA. If that person is so expressly authorized by the candidate, and holds such a significant position in the candidate's campaign, and if the campaign so requests, is there any reason why the candidate may not designate that person's personal address as the appropriate address to which members would be advised to send their campaign contributions? This inquiry assumes that the authorized representative volunteers or works in a compensated role for the campaign and is not acting on behalf of the organization.**
10. **As discussed above, may ATLA follow up the initial partisan communication urging members to commit to contributing to federal elections with communications encouraging unpledged members to participate and reminding pledged members of their commitment to contribute to the ATLA-endorsed candidates of their choice? Must these subsequent communications be in writing or may ATLA communicate with its members by telephone?**

**PATTON, BOGGS & BLOW, L.L.P.**

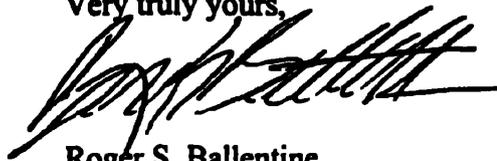
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**Thank you for your attention to this request, and please let me know if there is any further information you require.**

**Very truly yours,**

A handwritten signature in black ink, appearing to read "Roger S. Ballentine", written in a cursive style.

**Roger S. Ballentine**

**PATTON BOGGS, L.L.P.**

**202-457-6000**

**RSB/jlr**