

TOM DAVIS
11th DISTRICT, VIRGINIA
COMMITTEE ON GOVERNMENT REFORM
CHIEFMAN
COMMITTEE ON ENERGY AND COMMERCE
(ON LEAVE)

Congress of the United States
House of Representatives
Washington, DC 20515-4611

2348 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-1402
DISTRICT OFFICE:
4115 ANNANDALE ROAD
SUITE 103
ANNANDALE, VA 22003
(703) 916-9870
13948 MINNEVELLE ROAD
WOODBRIDGE, VA 22182
(703) 590-4599
www.house.gov/tomdavis

April 19, 2004

AOR 2004-14

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
APR 19 19 3 27

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

Dear Commissioners:

Pursuant to 2 U.S.C. 437(f), this Advisory Opinion Request seeks clarification, about whether I, as a federal candidate and officeholder, may appear in a public service announcement (PSA) promoting The Cadillac Invitational Golf Tournament, to benefit the National Kidney Foundation. The event will be held on April 26, 2004.

I waive the obligation the FEC has to expedite this advisory opinion request within 20 days, pursuant to 2 U.S.C. 43f(a)(2) and 11 C.F.R. 112.4(b), and ask for a reply within 60 days.

Even if the Commission is unable to formulate a formal response within the scope of this year's event, I would greatly appreciate an advisory opinion since I intend to record the PSA's annually for this event.

Background

The Cadillac Invitational Golf Tournaments, held around the country to benefit the National Kidney Foundation, have grown to become the nation's premier amateur golf event for charity.

Every year, and for the past three years, The National Kidney Foundation requests that I do two short PSA's, one 30 and one 60 second spot. The PSA's will be aired in Northern Virginia by Cox Communications and possibly Comcast. The event is strictly a charitable fundraising event to benefit the National Kidney Foundation and it is not a campaign event. The PSA's do not contain express advocacy of my re-election and I am not referred to as a candidate.

Facts

I am an unopposed federal candidate in the June 8, 2004 Republican Primary for Virginia's Eleventh Congressional District. "Tom Davis for Congress" is the name of my principal campaign committee.

Currently, I am the Congressional Representative of Virginia's Eleventh District and a candidate for re-election in the November 2, 2004 general election.

Neither I, The National Kidney Foundation, nor anyone else will be paying for the airtime of the PSA's. The various sponsors of the event will, as is customary, be identified at the charitable event through promotional materials and/or in the program for the event.

The PSA's are not specifically directed to voters in my Congressional District but the broadcast area will include my Congressional District.

Other than possessing scripts from the previous year's event, I will not be materially involved in decisions regarding:

- 1) the content of the communication;
- 2) the intended audience for the communication;
- 3) the means or mode of the communication;
- 4) the specific media outlet used for the communication;
- 5) the timing or frequency of the communication; or
- 6) the size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.

Question

Please state whether any further reporting obligations or contribution reimbursement responsibility would result from my participation in the PSA's.

Thank you for an expeditious response to this advisory opinion request. I look forward to hearing from you. Should you desire additional information please do not hesitate to contact Christopher Lopez in my office at (202) 225-1492.

With warm regards, I remain,

Sincerely,



Tom Davis
Member of Congress



FEDERAL ELECTION COMMISSION

Washington, DC 20463

April 21, 2004

**Hon. Tom Davis
U.S. House of Representatives
2348 Rayburn House Office Building
Washington, DC 20515**

Dear Rep. Davis;

This refers to your letter dated April 19, 2004, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to your appearance in two public service announcements ("PSAs") to benefit the National Kidney Foundation by promoting its Cadillac Invitation Golf Tournaments.

You state that the Cadillac Invitation Golf Tournaments will take place across the country on April 26, 2004, to benefit the National Kidney Foundation. You explain that, at the request of the Kidney Foundation, you have recorded two short PSAs promoting this event each year for the past three years, and you indicate that you intend to do so again this year and in the future. You state that you are seeking re-election for Virginia's Eleventh Congressional District in the November 2, 2004 general election, and you are running unopposed in the upcoming Republican Primary on June 8, 2004. You add that the PSAs will be aired without charge and will be broadcast via Cox Communications (and possibly Comcast) to an area that will include your Congressional District, but will not be specifically directed to voters in your District. You further assert that the PSAs do not contain express advocacy regarding your election, you will not be referred to as a candidate, and you will not be materially involved in any of the decisions listed in 11 CFR 109.21(d)(2)(i)-(vi).

You ask whether you may appear in the two PSAs, and you also request advice regarding any reporting or reimbursement responsibilities that you may incur as a result of appearing in the PSAs.

The Act authorizes the Commission to issue an advisory opinion request in response to a "complete written request" from any person about a specific transaction or activity by the requesting person. 2 U.S.C. 437f(a). The request must concern a specific transaction or activity that "the requesting person plans to undertake or is presently

undertaking and intends to undertake in the future." 11 CFR 112.1(b). Such a request "shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made." 11 CFR 112.1(c). Inquiries presenting only a hypothetical situation, a general question of interpretation, or the activities of third parties do not qualify as advisory opinion requests. 11 CFR 112.1(b). The Office of General Counsel shall determine if a request is incomplete or otherwise not qualified as an advisory opinion request. *See* 11 CFR 112.1(d).

This Office notes that the golf tournament for which the PSAs would be filmed is less than a week away. However, in light of your question regarding the potential for reporting and reimbursement responsibilities, this Office understands that your request could pertain to ongoing activity. Given the aforementioned statutory and regulatory requirements for a complete advisory opinion request, this Office requests further detail regarding the intended activity described above. Specifically:

1. Please identify the person(s) or organization(s) responsible for the creation of the PSAs, other than the National Kidney Foundation, if any, and state whether the person or organization:
 - a) Is a tax exempt organization described in 26 U.S.C. 501(c);
 - b) Engages in activities in connection with an election, including voter registration, voter identification, get-out-the-vote activity and generic campaign activity. *See* 11 CFR 300.65.
2. Please provide a storyboard, or the full text of the script, for each PSA for which you request an advisory opinion. Please state whether the PSAs will contain or reference any campaign material prepared by you, your campaign, or agents of your campaign.
3. Please state whether you, any member of your campaign staff, or any other person acting on your behalf has discussed your campaign plans, projects, activities, or needs with the National Kidney Foundation or any person(s) or organization(s) responsible for the creation of the PSAs.

If you have any questions about the advisory opinion process or this letter, please contact Richard Ewell, an attorney in this Office, at 202-694-1650.

Sincerely,



Rosemary C. Smith
Associate General Counsel

TOM DAVIS
11TH DISTRICT, VIRGINIA
COMMITTEE ON GOVERNMENT REFORM
Chairman
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(ON LEAVE)

Congress of the United States
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2348 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-1482

DISTRICT OFFICE:
4115 ANNANDALE ROAD
SUITE 103
ANNANDALE, VA 22003
(703) 916-0670

13548 SHIRLANDS ROAD
WOODBRIDGE, VA 22192
(703) 688-4599
www.house.gov/tomdavis

April 21, 2004

Federal Election Commission
Office of the General Counsel
999 E Street NW
Washington, D.C. 20463

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COMMISSION
OFFICE OF GENERAL
COUNSEL

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Dear Commissioners:

In reply to your letter dated April 21, 2004 I have included the further detail you have requested regarding the public service announcements (PSA's) I plan to appear in promoting The Cadillac Invitational Golf Tournament, to benefit the National Kidney Foundation.

- 1) The National Kidney Foundation is responsible for the creation of the PSA's, although my office would pay for the taping in the United States House of Representative recording studio.
 - a. The National Kidney foundation is a tax exempt organization described in 26 U.S.C. 501 (c).
 - b. The National Kidney Foundation does not engage in activities in connection with an election, including voter registration, voter identification, get-out-the-vote activity and generic campaign activity
- 2) Although I do not have scripts for this year's event, historically the substantive nature of the scripts has been very consistent. There will be no signs, banners, activists, or any related activities in the background of the PSA's advocating my reelection. I have included both of last year's scripts below.
 - a. 30 PSA featuring Congressman Tom Davis
 - i. HI, I'M CONGRESSMAN TOM DAVIS INVITING YOU TO JOIN ME ON APRIL TWENTY-SIXTH FOR THE FOURTH ANNUAL CADILLAC INVITATIONAL VIRGINIA GOLF CLASSIC BENEFITING THE NATIONAL KIDNEY

FOUNDATION. COMPETE FOR GREAT PRIZES AND SUPPORT A WORTHY CAUSE. AND, THE WINNING FOURSOME WILL WIN A TRIP TO PEBBLE BEACH TO PLAY IN THE NATIONAL FINALS! FOR MORE INFORMATION, CALL TWO-ZERO-TWO, TWO-FOUR-FOUR, SEVEN-NINE HUNDRED, OR VISIT W-W-W-DOT-KIDNEY-W-D-C-DOT-ORG.

b. 60 PSA featuring Congressman Tom Davis

- i. HI, I'M CONGRESSMAN TOM DAVIS. DID YOU KNOW THAT THE WASHINGTON, DC METROPOLITAN AREA HAS THE HIGHEST PREVALENCE OF KIDNEY DISEASE IN THE NATION? NEARLY FIVE THOUSAND AREA RESIDENTS ARE ON DIALYSIS AND MORE THAN SEVENTEEN HUNDRED AWAIT A LIFE-SAVING KIDNEY TRANSPLANT. BUT THERE'S SOMETHING YOU CAN DO TO HELP. JOIN ME AND WUSA9 SPORTSANCHOR FRANK HERZOG FOR THE FOURTH ANNUAL CADILLAC INVITATIONAL VIRGINIA GOLF CLASSIC, BENEFITTING THE NATIONAL KIDNEY FOUNDATION. THE TOURNAMENT WILL TAKE PLACE ON MONDAY, APRIL TWENTY-SIXTH, AT LOWES ISLAND CLUB IN POTOMAC FALLS, VIRGINIA. TO FIND OUT MORE, CALL TWO-ZERO-TWO, TWO-FOUR-FOUR, SEVEN-NINE HUNDRED, OR VISIT W-W-W-DOT-KIDNEY-W-D-C-DOT-ORG. COME OUT AND SUPPORT THE NATIONAL KIDNEY FOUNDATION IN ITS COMMITMENT TO MAKING LIVES BETTER FOR WASHINGTON-AREA KIDNEY PATIENTS

- 3) Neither I, nor any member of my campaign staff, or any person acting on my behalf has discussed my campaign plans, projects, activities, or needs with the National Kidney Foundation.

Thank you for your continued efforts on formulating an advisory opinion. I look forward to hearing from you. If you have any further questions please contact Christopher Lopez in my office at (202) 225-1492.

Sincerely,



Tom Davis
Member of Congress