



Wiley Rein & Fielding LLP

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FEC MAIL  
OPERATIONS CENTER

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1776 K STREET NW  
WASHINGTON, DC 20006  
PHONE 202.719.7000  
FAX 202.719.7049

Virginia Office  
7925 JONES BRANCH DRIVE  
SUITE 6200  
McLEAN, VA 22102  
PHONE 703.905.2800  
FAX 703.905.2820

www.wrf.com

July 7, 2004

Jan Witold Baran  
202.719.7330  
jbaran@wrf.com

**BY HAND DELIVERY**

Federal Election Commission  
Office of General Counsel  
999 E Street, NW  
Washington, DC 20463

AOR 2004-26

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
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Re: Request for Advisory Opinion

Dear Commissioners:

This office represents Congressman Jerry Weller, and his fiancée, Zury Rios Sosa. On behalf of our clients, we respectfully request an Advisory Opinion from the Federal Election Commission pursuant to 2 U.S.C. § 437f of the Federal Election Campaign Act of 1971, as amended.

**FACTS**

Congressman Weller is a Member of the United States House of Representatives. He maintains two affiliated campaign committees and is honorary chair of a non-connected multicandidate committee, REFORM PAC. All of the committees are registered with the Commission.<sup>1</sup> Ms. Rios Sosa is neither a citizen of the United States, nor lawfully admitted for permanent residence. On July 6, 2004, Congressman Weller and Ms. Rios Sosa became engaged to be married. Ms. Rios Sosa is serving her third term as a member of the Guatemalan legislature and does not intend to apply for United States citizenship or for admission for permanent residence. She intends to remain a citizen of Guatemala.

Congressman Weller would like his fiancée, Ms. Rios Sosa, to take part and accompany him in campaign and committee activities, and she would like to do the same. They recognize that Ms. Rios Sosa may neither make contributions to the committees, nor solicit other foreign nationals to do so. However, they are unsure of the degree to which Ms. Rios Sosa, a foreign national, may participate in domestic campaign and committee activities on a volunteer basis and seek guidance from the Commission.

<sup>1</sup> The candidate committees are Jerry Weller for Congress Inc. (C00364349) and Gerald C 'Jerry' Weller for Congress (C00285809). The non-connected multicandidate committee is registered with the FEC as REFORM PAC (C00315275).

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## LEGAL ANALYSIS

### A. Federal Law

Under federal law it is unlawful for a foreign national, “directly or indirectly,” to make, inter alia, “a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election” or to make “an expenditure, independent expenditure, or disbursement for an electioneering communication.” 2 U.S.C. § 441e(1). In addition, a person may not “solicit, accept, or receive a contribution or donation ... from a foreign national.” Id. § 441e(2).<sup>2</sup>

However, the term “contribution” does not include “the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee.” 2 U.S.C. § 431(8)(B)(i).

### B. Federal Regulations

FEC regulations promulgated pursuant to the foreign national prohibition embody a relatively straightforward interpretation of the statute. The one exception is the provision restricting “[p]articipation by foreign nationals in decisions involving election-related activities” which reads as follows:

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-

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<sup>2</sup> This statutory language incorporates some changes that were enacted as part of the Bipartisan Campaign Reform Act. The changes include the use of the term “indirectly” in the place of the phrase “through any other person,” and an extension of the prohibition to a “donation,” “expenditure,” “independent expenditure,” or a “disbursement for an electioneering communication” made by a foreign national. The FEC explained the effect of these changes in its Explanation and Justification of the Contribution Limitations and Prohibitions final rule. See 67 Fed. Reg. 69928 (Nov. 19, 2003). With regard to the use of the word “indirectly,” however, the FEC was only able to determine that Congress did not intend to regulate the political committees of domestic subsidiaries of foreign corporations. Id. at 69944. The FEC went on to explain that the statute employed the term “donation” to clarify that the prohibition not only applies to contributions made in connection with federal elections, but to those in connection with non-federal elections as well. Id. In addition, the FEC stated that the inclusion of the terms “expenditure,” “independent expenditure,” and “disbursement for an electioneering communication” are part of the general statutory scheme that treats contributions and expenditures in a parallel manner. Id. at 69944-45.

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making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements in connection with elections for any Federal, State, or local office or decisions concerning the administration of a political committee.

11 C.F.R. § 110.20(i).<sup>3</sup> This provision was originally added to the regulations by final rule on November 24, 1989. See 54 Fed. Reg. 48580 (Nov. 24, 1989) (originally codified at 11 C.F.R. § 110.4(a)(3)). The accompanying Explanation and Justification suggests that the regulation was a codification of FEC Advisory Opinions 1980-100 and 1982-10, and that "the Commission has consistently assumed that the statutory prohibition governing foreign nationals extends to these areas." Id. at 48581.

Nonetheless, the regulatory definition of "contribution" exempts the "value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee." 11 C.F.R. § 100.74. Though not as specifically enunciated, the exceptions to the definition of "expenditure" also contemplate a similar exception for volunteer activities. See, e.g., 11 C.F.R. §§ 100.135, 100.136.

### C. Advisory Opinions

Advisory Opinions 1980-100 and 1982-10 permitted a domestic subsidiary of a foreign corporation to establish a political committee provided that foreign nationals did not exercise any decision-making authority with regard to the committee's contributions and expenditures. Since these decisions were codified in the above-described regulation, a host of Advisory Opinions have addressed and permitted this practice. See 67 Fed. Reg. at 69943 (Advisory Opinions cited therein).

<sup>3</sup> This language also includes some slight alterations as a result of the Contribution Limitations and Prohibitions final rule promulgated pursuant to the Bipartisan Campaign Reform Act. These changes "involve the addition of 'political organization' to the listing of decision-making entities and of 'donations' and 'disbursements' to the list of transactions about which decisions are made." 67 Fed. Reg. at 69946. The purpose of these changes was to clarify and "address fully the prohibition on the funding of State and local elections." Id.

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The FEC also issued Advisory Opinion 1987-25 in which it applied the volunteer exemption to allow a foreign national to engage in volunteer activities on behalf of a candidate for president. The Advisory Opinion reasoned that because volunteer political activity is exempt from the definition of "contribution," and the foreign national prohibition forbids contributions, a foreign national may engage in volunteer political activity.<sup>4</sup>

#### QUESTIONS PRESENTED

1. May Ms. Rios Sosa participate in any of Congressman Weller's committee activities, including decision-making, on a volunteer basis? Specifically,
  - a. May she attend committee events?
  - b. May she participate in committee events by speaking or by soliciting funds and support for Congressman Weller's committees?
  - c. May she participate in meetings with Congressman Weller and his committee personnel regarding committee events or political strategy?

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<sup>4</sup> The Commission also explained that it "considered the extent to which [its] conclusion conflicts with Advisory Opinion 1981-51, and by a vote of 2-4 declined to supersede or overrule Advisory Opinion 1981-51." Advisory Opinion 1981-51 stated that "a foreign national national artist would be prohibited by 2 U.S.C. § 441e from donating his uncompensated volunteer services to the Committee to create an original work of art for the Committee's use in fundraising."

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2. **May Ms. Rios Sosa accompany Congressmen Weller to the fundraising and campaign events of other political committees provided she has not made a personal contribution in order to attend?**

Respectfully submitted,



Jan Witold Baran