

September 3, 2004

AO DRAFT COMMENT PROCEDURES

The Commission permits the submission of written public comments on draft advisory opinions when proposed by the Office of General Counsel and scheduled for a future Commission agenda.

Today, DRAFT ADVISORY OPINION 2004-33 is available for public comments under this procedure. It was requested by counsel, Jan Witold Baran and Lee E. Goodman, on behalf of the Ripon Society and Representative Sue Kelly.

Proposed Advisory Opinion 2004-33 is scheduled to be on the Commission's agenda for its public meeting of Thursday, September 9, 2004.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00 noon (Eastern Time) on September 8, 2004.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.

4) All timely received comments will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Records Office.

CONTACTS

Press inquiries: Robert Biersack (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2004-33, contact the Public Records Office at (202) 694-1120 or (800) 424-9530.

For questions about comment submission procedures, contact Rosemary C. Smith, Associate General Counsel, at (202) 694-1650.

MAILING ADDRESSES

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SEP -3 P 12:53

September 3, 2004

AGENDA ITEM

For Meeting of: 9-9-04

MEMORANDUM

SUBMITTED LATE

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

JAP for JAP

FROM: Lawrence H. Norton
General Counsel

LHN

Rosemary C. Smith
Associate General Counsel

RES (by Res)

Brad C. Deutsch
Assistant General Counsel

BMD

Richard Ewell
Attorney

RTE

Ron Katwan
Attorney

RK

Subject: Draft AO 2004-33

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for September 9, 2004.

Attachment

1 **ADVISORY OPINION 2004-33**

2

3 **Jan Witold Baran, Esq.**

4 **Lee E. Goodman, Esq.**

5 **Wiley Rein & Fielding, LLP**

6 **1776 K Street, NW**

7 **Washington, DC 20006**

8

9 **Dear Messrs. Baran and Goodman:**

DRAFT

10 **This responds to your letter dated August 16, 2004, as supplemented by your**
11 **letter dated August 24, 2004, on behalf of The Ripon Society ("Ripon") and**
12 **Representative Sue Kelly, concerning the application of the Federal Election Campaign**
13 **Act of 1971, as amended (the "Act"), and Commission regulations to proposed cable**
14 **television advertisements featuring Representative Kelly and paid for by Ripon.**

15 ***Background***

16 **Ripon is an incorporated non-profit social welfare organization founded in 1962**
17 **and exempt from Federal taxes under section 501(c)(4) of the Internal Revenue Code.**
18 **Representative Kelly represents the 19th Congressional District of New York and is a**
19 **candidate in the New York Republican primary election scheduled for September 14,**
20 **2004. If Representative Kelly wins the primary election, she will be the Republican**
21 **candidate in the general election, which is scheduled for November 2, 2004.**
22 **Representative Kelly and a number of other Members of Congress serve on Ripon's**
23 **Advisory Board, which you describe as an honorary board consisting of Members of**
24 **Congress who participate in Ripon's policy forums, research, development, and**
25 **advocacy. However, you state that Representative Kelly and the other Members of**
26 **Congress on the Advisory Board "do not engage in active governance or similar control**
27 **over Ripon activities."**

1 You indicate that Ripon intends to fund the production and dissemination of a
2 cable television advertisement featuring Representative Kelly. You have provided the
3 script of the audio portion and a summary of the video portion of the advertisement,
4 entitled "A Little Safer Now," which are included in Attachment A to this advisory
5 opinion. You note that Representative Kelly will appear in and narrate the advertisement,
6 but you state that the video portion of the advertisement, including the "supporting
7 headlines" and background images presented on screen, will not include any images of,
8 or references to, any other candidates for Federal office. You state that Ripon intends to
9 disseminate the advertisement via cable television both within the 19th Congressional
10 District and nationwide through the November 2, 2004 general election. You assert that
11 the advertisement is "intended to promote a policy Ripon deems relevant to the current
12 public debate regarding homeland security and post-9/11 security reforms." You also
13 indicate that Ripon intends to coordinate its plans to disseminate the advertisement with
14 Representative Kelly, other Federal candidates, and one or more Federal political
15 committees of the Republican Party.

16 ***Legal Analysis and Conclusions***

17 Your request asks a number of questions concerning two separate areas of law.
18
19 (1) May Ripon, as a corporation prohibited by the Act from funding certain
20 communications, pay to disseminate "A Little Safer Now" in the manner you
21 describe? For the reasons explained below, the Commission concludes that Ripon
22 is prohibited from using its general treasury funds to pay to televise the proposed
23 advertisement in the 19th Congressional District through the November 2, 2004
24 general election, but may, during that time period, pay to televise the

1 communication outside the 19th Congressional District so long as it does not
2 coordinate its plans with any officials of the Republican Party.

3 (2) Is Ripon an entity that is "directly or indirectly established, financed,
4 maintained, or controlled by, or acting on behalf of," one or more Federal
5 candidates or individuals holding Federal office and therefore subject to funding
6 prohibitions regarding certain public communications? For the reasons discussed
7 below, the Commission concludes that Ripon is not such an entity.

8 *1A. Does "A Little Safer Now" expressly advocate the election or defeat of a clearly*
9 *identified candidate?*

10 The Act prohibits corporations, including corporations organized under 26 U.S.C.
11 501(c)(4), from making expenditures in connection with any election for Federal office.
12 2 U.S.C. 441b(a). The Commission regulations implementing this prohibition
13 specifically provide that corporations may not make expenditures in connection with a
14 Federal election "for communications to those outside the restricted class that *expressly*
15 *advocate* the election or defeat of one or more clearly identified candidate(s) or the
16 candidates of a clearly identified political party." 11 CFR 114.2(b)(2)(ii) (*emphasis*
17 *added*).

18 The proposed advertisement does not contain any of the illustrative phrases from
19 11 CFR 100.22(a) or similar phrases, or "individual words, which in context can have no
20 other reasonable meaning than to urge the election" of Representative Kelly. *Id.* Also,
21 "[w]hen taken as a whole and with limited reference to external events," it cannot be said
22 that the advertisement "could only be interpreted by a reasonable person" as advocating
23 Representative Kelly's election. 11 CFR 100.22(b). Thus, because the advertisement

1 does not contain express advocacy, Ripon may pay to produce and televise it as long as it
2 complies with the restrictions on electioneering communications and coordinated
3 communications described below.

4 ***1B. Does "A Little Safer Now" constitute an electioneering communication?***

5 Yes, Ripon's proposed advertisement would be an electioneering communication
6 if publicly distributed within the 19th Congressional District of New York. Ripon's
7 proposed advertisement, however, would not be an electioneering communication if it is
8 only publicly distributed outside the 19th Congressional District of New York.

9 Corporations are also prohibited from making or financing "electioneering
10 communications." 2 U.S.C. 441b(b)(2) and 11 CFR 114.2(b)(2)(iii); *see also* 11 CFR
11 114.14(a). With certain exceptions, an "electioneering communication" is any broadcast,
12 cable or satellite communication that (1) refers to a clearly identified candidate for
13 Federal office; (2) is publicly distributed for a fee within 60 days of a Federal candidate's
14 general election or within 30 days of a primary election; and (3) is targeted to the relevant
15 electorate. *See* 2 U.S.C. 434(f)(3) and 11 CFR 100.29; *see also* Advisory Opinions 2004-
16 15 and 2003-12. "Refers to a clearly identified candidate" means that the candidate's
17 name, nickname, photograph, or drawing appears, or the identity of the candidate is
18 otherwise apparent through an unambiguous reference. 11 CFR 100.29(b)(2). "Publicly
19 distributed" means "aired, broadcast, cablecast or otherwise disseminated for a fee
20 through the facilities of a television station, radio station, cable television system, or
21 satellite system." 11 CFR 100.29(b)(3)(i). In the case of a candidate for Representative
22 in Congress, "targeted to the relevant electorate" means the communication can be

1 received by 50,000 or more persons in the district the candidate seeks to represent.

2 2 U.S.C. 434(f)(3)(C); 11 CFR 100.29(b)(5)(i).

3 You state that Representative Kelly will appear and speak on camera. Thus, as
4 you acknowledge, she will be clearly identified in the proposed advertisement. Ripon
5 proposes to televise the advertisement within the 19th Congressional District of New
6 York in a manner that would allow it to be received by 50,000 or more people within the
7 district in which Representative Kelly is running for office. Moreover, Ripon plans to
8 pay to disseminate the advertisement via cable television within 30 days of the September
9 14, 2004 New York primary election and within 60 days of the November 2, 2004
10 general election.

11 None of the six exemptions from the definition of "electioneering
12 communication" appears to apply to the proposed advertisement. *See* 2 U.S.C.
13 434(f)(3)(B)(i) through (iv), and 11 CFR 100.29(c)(1) through (6). First, the proposed
14 advertisement would not be disseminated through means other than broadcast, cable or
15 satellite communication. Second, it would not constitute a reportable expenditure or
16 independent expenditure. Third, it would not constitute a candidate debate or forum or
17 promotion of such an event. Fourth, it would not be a communication by local or State
18 candidates. Fifth, this communication would not be made by an entity organized under
19 26 U.S.C. 501(c)(3). Finally, the advertisement would not appear in a news story,
20 commentary, or editorial distributed through the facilities of any broadcast, cable, or
21 satellite television or radio station.

22 The Commission therefore concludes that the proposed advertisement constitutes
23 an electioneering communication when disseminated in the manner you describe within

1 the 19th Congressional District of New York.¹ Accordingly, because Ripon is a
2 corporation, it may not use general treasury funds to televise the proposed advertisement
3 featuring Representative Kelly in the 19th Congressional District of New York before the
4 September 14, 2004 New York primary election or, if Representative Kelly wins the
5 primary election, before the November 2, 2004 general election.²

6 Although you indicate that the proposed advertisement does not contain
7 references to any clearly identified candidates other than Representative Kelly, it does
8 contain a reference to "Republicans in Congress." The Commission determines that,
9 unlike the examples listed in section 100.29(b)(2) (i.e. "the President," "your
10 Congressman," "the Republican candidate for Senate in the State of Georgia," or "the
11 incumbent"), "Republicans in Congress" does not constitute an unambiguous reference to
12 any specific Federal candidate.³ Accordingly, the proposed advertisement would not
13 constitute an electioneering communication outside New York's 19th Congressional
14 District even if it were televised within 30 days of a primary election or within 60 days of
15 the November 2, 2004 general election.

¹ The electioneering communication source restrictions do not apply to any corporation that is a qualified nonprofit corporation ("QNC") under 11 CFR 114.10. See 2 U.S.C. 441b(c)(2) and 11 CFR 114.2(b)(2). However, 11 CFR 114.10(c)(4)(ii) provides that entities that "directly or indirectly accept any donations of anything of value from business corporations..." do not qualify as QNCs. For purposes of this request, the Commission assumes that Ripon is not a QNC because you indicate that Ripon "receives contributions from corporations" and your request does not claim QNC status for Ripon.

² August 15, 2004 is the thirtieth day prior to the primary on September 14, 2004, and September 14 falls within 60 days of the New York general election on November 2, 2004.

³ See also Advisory Opinion 1985-14 (determining that advertisements using the tagline "the Republicans in Congress" were not subject to the Act's limitations on expenditures for political advertisements under a standard that required such advertisements to depict "a clearly identified candidate" in order to come within the Act's limitations).

1 **1C. Does “A Little Safer Now” constitute a “coordinated communication” with**
2 **respect to (1) Representative Kelly, (2) any other Federal candidate, or (3) any**
3 **political committee of the Republican Party?**

4 For the reasons stated below, the Commission does not make any determination
5 as to whether “A Little Safer Now” would qualify as a coordinated communication with
6 respect to Representative Kelly. The Commission concludes that the communication
7 would not be a coordinated communication with respect to any other Federal candidate,
8 but would be a coordinated communication to the extent that any of the conduct standards
9 in 11 CFR 109.21(d) would be satisfied through the involvement of officials of the
10 Republican Party. A corporation is prohibited from making contributions to Federal
11 candidates or political party committees, and therefore Ripon may not pay for the
12 proposed communication if it is coordinated with any political committee of the
13 Republican Party.

14 **a) Coordinated communication test**

15 The Act has long defined as an in-kind contribution an expenditure made by any
16 person “in cooperation, consultation, or concert, with, or at the request or suggestion of, a
17 candidate, his authorized political committees, or their agents.”

18 2 U.S.C. 441a(a)(7)(B)(i). In the Bipartisan Campaign Reform Act of 2002, Pub. Law
19 No. 107-155, sec. 214(a), 116 Stat. 81, 94 (Mar. 27, 2002) (“BCRA”), Congress
20 expanded this definition to include expenditures made by any person “in cooperation,
21 consultation, or concert, with, or at the request or suggestion of” a political party
22 committee or its agents. See 2 U.S.C. 441a(a)(7)(B)(ii). The Commission’s “coordinated
23 communication” regulation at 11 CFR 109.21 implements both statutory provisions

1 through a single three-pronged test. A payment for a communication satisfying each of
2 the three prongs is made for the purpose of influencing a Federal election, and is an in-
3 kind contribution to the candidate, authorized committee or political party committee
4 with whom, or with which, it is coordinated. 11 CFR 109.21(b)(1). Thus, a corporation
5 is prohibited from using its general treasury funds to pay for a coordinated
6 communication.

7 *(i) Coordinated Communication - Payment source*

8 The first prong of the definition of a "coordinated communication" specifies that a
9 communication is coordinated with a candidate or an authorized committee when the
10 communication is paid for by "a person other than that candidate [or] authorized
11 committee." 11 CFR 109.21(a)(1).

12 *(ii) Coordinated Communication - Content*

13 The second prong of the definition of "coordinated communication" provides four
14 content standards. 11 CFR 109.21(c)(1) through (4). A communication will satisfy this
15 content prong if the communication: (1) is an electioneering communication as defined
16 in 11 CFR 100.29; (2) disseminates, distributes, or republishes, in whole or in part,
17 campaign materials prepared by a Federal candidate, the candidate's authorized
18 committee, or their agents; (3) expressly advocates the election or defeat of a clearly
19 identified candidate for Federal office; or (4) is a public communication, as defined in
20 11 CFR 100.26,⁴ that refers to a political party or a clearly identified candidate for
21 Federal office, is publicly distributed or disseminated within one hundred and twenty
22 days of an election for Federal office, and is directed to voters within the jurisdiction of

⁴ A "public communication" includes, among other communications, "any broadcast, cable or satellite communication." 11 CFR 100.26.

1 the clearly identified candidate or to voters in a jurisdiction in which one or more
2 candidates of the political party appear on the ballot. 11 CFR 109.21(c)(1) through (4).

3 (iii) *Coordinated Communication - Conduct*

4 The third prong of the "coordinated communication" test is a "conduct standard"
5 focusing on the interactions between the person paying for the communication and the
6 candidate, an authorized committee, a political party committee, or agents of the
7 foregoing. 11 CFR 109.21(a)(3). These conduct standards are set forth in 11 CFR
8 109.21(d)(1) through (5).

9 b) Coordination with Representative Kelly

10 With respect to Representative Kelly, the Commission does not reach the issue of
11 whether Ripon, as a corporation, would be prohibited from paying for the advertisement
12 as a coordinated communication because the Commission has already determined that the
13 electioneering communications provisions bar Ripon from paying to televise "A Little
14 Safer Now" in the 19th Congressional District of New York between August 15, 2004 and
15 November 2, 2004. See discussion above.

16 c) Coordination with Federal candidates other than Representative Kelly

17 The Commission concludes that "A Little Safer Now" would not satisfy any of
18 the four content standards in 11 CFR 109.21(c) with respect to any other Federal
19 candidate, and therefore would not constitute a coordinated communication with respect
20 to any other Federal candidate. The communication does not expressly advocate the
21 election or defeat of any clearly identified candidate for Federal office, and it does not
22 constitute an electioneering communication with respect to any candidate other than
23 Representative Kelly. See 11 CFR 109.21(c)(1) and (3). You confirmed by telephone

1 that "A Little Safer Now" would not contain any campaign material prepared by any
2 Federal candidate or authorized committee or agent of either. Therefore it would not
3 satisfy the third content standard. *See* 11 CFR 109.21(c)(2). Finally, because the
4 communication would not refer to any clearly identified candidate for Federal office
5 other than Representative Kelly, the communication would not satisfy the fourth content
6 standard in 11 CFR 109.21(c) with respect to any other candidate. *See* 11 CFR
7 109.21(c)(4).

8 d) Coordination with the Republican Party

9 Your request indicates that Ripon may satisfy all three prongs of the test for
10 coordination with one or more political committees of the Republican Party. Ripon's
11 payment for "A Little Safer Now" satisfies the "payment source" prong in 11 CFR
12 109.21(a). Furthermore, you indicate that Ripon may discuss its distribution of "A Little
13 Safer Now" with agents of the Republican Party in a manner that would satisfy the
14 conduct prong in 11 CFR 109.21(d). Accordingly, you ask whether the communication's
15 reference to "Republicans in Congress" constitutes a reference to a political party that
16 would, in combination with the other requirements of the content standard in 11 CFR
17 109.21(c)(4), satisfy the content prong. The Commission concludes that it would.

18 Congress amended the Act in BCRA by stating for the first time that an
19 expenditure made by any person in coordination with a political party committee or its
20 agents is a contribution to that party committee. *See* 2 U.S.C. 441a(a)(7)(B)(ii). One
21 way in which the Commission implemented this statutory provision in the context of
22 coordinated communications was to include in the fourth content standard of 11 CFR

1 109.21(c) both communications that refer to a clearly identified candidate *and*
2 communications that refer to a political party.

3 While the fourth content standard of 11 CFR 109.21(c) requires that Federal
4 candidates be "clearly identified," it does not contain a similar requirement for political
5 parties. 11 CFR 109.21(c)(4)(i). That portion of the content standard is satisfied if a
6 communication merely "refers to a political party." *Id.* As you note, "political party" is
7 defined in 11 CFR 100.15 as an organization that nominates or selects a candidate for
8 election to any Federal office. The Republican Party, like the Democratic Party, meets
9 that definition. The use of "Democratic" or "Democrats," or "Republican,"
10 "Republicans" or "GOP" or other terms that are variations of the formal name of a
11 political party, is inherently a reference to a political party, whether or not it also serves
12 other purposes.⁵ Thus, any use of these terms satisfies the portion of the fourth content
13 standard set forth in 109.21(c)(4)(i). In contrast, your contention that "Republicans in
14 Congress" refers not to a political party but merely to a class of Representatives who
15 "happen to be Republican" would invite circumvention of the Act. Accordingly, the
16 Commission concludes that "Republicans in Congress" is a reference to the Republican
17 Party and therefore satisfies the portion of the fourth content standard set forth in
18 109.21(c)(4)(i).

19 The proposed advertisement would also satisfy the remaining elements of the
20 fourth content standard in 11 CFR 109.21(c)(4). Ripon's "A Little Safer Now" qualifies
21 as a public communication under 11 CFR 100.26 because it would be disseminated via
22 cable television, and your request indicates that you intend to televise the communication

⁵ In some cases the terms may also be used as an unambiguous reference to a specific Federal candidate, such as "the Democratic Presidential nominee" or "the Republican candidate for Senate in the State of Georgia." See 11 CFR 100.17 and 100.29(b)(2).

1 prior to the November 2, 2004 general election, which is within the applicable 120-day
2 window. See 11 CFR 109.21(c)(4)(ii). Finally, Ripon would direct its communication to
3 voters in a jurisdiction in which one or more Republican candidates appear on the ballot
4 because it is a Presidential election year and at least one Republican candidate will appear
5 on the ballot in every district in the upcoming November 2, 2004 election. See 11 CFR
6 109.21(c)(4)(iii). Therefore, the proposed advertisement would satisfy 11 CFR
7 109.21(c)(4) and Ripon must not pay for the communication if Ripon's interactions with
8 any political committee of the Republican Party satisfy any of the conduct standards in 11
9 CFR 109.21(d).

10 However, you also ask whether the result would be different if Ripon were to
11 remove the words "Republicans in" from the advertisement. The Commission
12 determines that if Ripon were to remove the term "Republicans in" and make no other
13 changes, the dissemination of the proposed advertisement outside the 19th Congressional
14 District of New York would not refer to a political party and thus would not satisfy any
15 of the four standards in the content prong of the coordinated communication test at 11
16 CFR 109.21(c) with respect to a political party committee. Nevertheless, as discussed
17 above, Ripon would still be prohibited under the electioneering communication
18 restrictions from using its general treasury funds to televise the communication within the
19 19th Congressional District of New York from August 15, 2004 to November 2, 2004.
20 Accordingly, the Commission need not address whether the advertisement without
21 "Republicans in" would satisfy the content prong of the coordinated communication test
22 within Representative Kelly's district.

1 **2. *Is Ripon directly or indirectly established, financed, maintained, or controlled***
2 ***by a candidate for Federal office or an individual holding Federal office?***

3 **The Commission concludes that Ripon is not directly or indirectly established,**
4 **financed, maintained, or controlled by a candidate or Federal officeholder. As explained**
5 **below, the issue is relevant to your questions as to whether “A Little Safer Now” is a**
6 **communication that promotes or supports, or attacks or opposes, any candidate for**
7 **Federal office, or promotes or opposes a political party.**

8 **As amended by BCRA, the Act prohibits entities directly or indirectly established,**
9 **financed, maintained, or controlled by, or acting on behalf of, one or more Federal**
10 **candidates or individuals holding Federal office⁶ from raising or spending funds in**
11 **connection with either Federal or non-Federal elections, unless the amounts consist of**
12 **funds that are subject to the limitations and prohibitions of the Act. 2 U.S.C.**
13 **441i(e)(1)(A) and (B); 11 CFR 300.61 and 300.62. For example, such entities must use**
14 **Federally permissible funds to pay for “Federal election activity” under 11 CFR 100.24,**
15 **which includes any communication that promotes or supports, or attacks or opposes, a**
16 **candidate for Federal office or promotes or opposes a political party. See 2 U.S.C.**
17 **431(20)(A)(iii) and (21); 11 CFR 300.61, 11 CFR 100.24(b)(3), and 11 CFR 100.25.**
18 **Thus, corporations that are directly or indirectly established, financed, maintained, or**
19 **controlled by a candidate or Federal officeholder are not permitted to use their general**
20 **treasury funds to pay for such communications.**

21 **To determine whether an entity is directly or indirectly established, financed,**
22 **maintained, or controlled by a candidate or Federal officeholder, the Commission**

⁶ Under 2 U.S.C. 431(3), “Federal office” means “the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.” See also 11 CFR 100.4.

1 examines the ten factors set out at 11 CFR 300.2(c)(2)(i) through (x) in the context of the
2 overall relationship between the entity and the candidate or Federal officeholder. 11 CFR
3 300.2(c)(2); *see also* Advisory Opinion 2003-12.

4 You state that Members of Congress serving on Ripon's Advisory Board "do not
5 engage in active governance or similar control over Ripon's activities, but instead serve
6 merely in an *honorary* capacity to advise Ripon from time to time on policy
7 development" (emphasis in original) and assist Ripon through participation in
8 conferences and communications. *See* 11 CFR 300.2(c)(2)(ii). You specify that no
9 candidate or Federal officeholder has authority over employment matters or Ripon's
10 employees. *See* 11 CFR 300.2(c)(2)(iii). Ripon does not share past or current
11 overlapping membership, employees or officers with any authorized committee of a
12 Federal candidate. *See* 11 CFR 300.2(c)(2)(iv) through (vi). In addition, you state that
13 Federal candidates do not, directly or indirectly, provide funds or goods on an ongoing
14 basis to Ripon, nor is Ripon aware of any current Member of Congress who played a role
15 in founding Ripon. *See* 11 CFR 300.2(c)(2)(vii) through (ix). Finally, you indicate that
16 there is no similar pattern of receipts or disbursements between Ripon and any campaign
17 committee of a Federal candidate on its Advisory Board. *See* 11 CFR 300.2(c)(2)(x).

18 Based on your representations regarding the relationship between Ripon and
19 Federal candidates and Federal officeholders, the Commission concludes that Ripon is
20 not an entity that is directly or indirectly established, financed, maintained, or controlled
21 by a candidate or Federal officeholder and is therefore not subject to the provisions in 2
22 U.S.C. 441i(e) and 11 CFR 300.61, which govern certain activities of such entities.
23 Because Ripon is not subject to the restrictions in 2 U.S.C. 441i(e) and 11 CFR 300.61,

1 the Commission need not address the question of whether "A Little Safer Now" promotes
2 or supports, or attacks or opposes, any candidate for Federal office, or promotes or
3 opposes a political party.

4 The Commission expresses no opinion regarding Ripon's qualification for tax-
5 exempt status under 26 U.S.C. 501(c)(4) or any other ramifications of the proposed
6 activities under the Internal Revenue Code because those questions are outside the
7 Commission's jurisdiction.

8 This response constitutes an advisory opinion concerning the application of the
9 Act and Commission regulations to the specific transaction or activity set forth in your
10 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
11 of the facts or assumptions presented, and such facts or assumptions are material to a
12 conclusion presented in this advisory opinion, then the requestor may not rely on that
13 conclusion as support for its proposed activity.

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Sincerely,

Bradley A. Smith
Chairman

Enclosures (AOs 2004-15, 2003-12, and 1985-14)

ATTACHMENT A

1
2
3
4
5
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7
8

TELEVISION: 30 Seconds
CLIENT: Ripon Society
PRODUCER: Bill Greener III
TITLE: A Little Safer Now

<i>Video</i>	<i>Audio</i>
Scenes of terrorist activity throughout the world not limited to 9-11 (with support headlines).	Kelly: We all have to do everything possible to fight terrorism.
Sue Kelly to Camera with chyron i.d.	Republicans in Congress are working for bipartisan solutions to the challenges we face.
Man and woman at screen of computer in high-tech situation. Super: Locate The Terrorists Money.	We're creating new tools to detect and sever the financial lifelines that support terrorist cells.
Picture or video of terrorists being arrested, support headlines. Super: Stop The Terrorists Money.	Shutting down the bankrolls of an enemy that hides in the shadows will do a lot to help make our country safer.
Video reinforcing continuing nature of threat. Super: There's More To Be Done.	We need to do more, and we will.
Ripon Society Information, including website, phone number, etc. (Disclaimer)	The Ripon Society wanted you to have these facts. For more information, contact us.

9
10