



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 12, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2007-21

Caroline P. Goodson, Esq.
Perkins Coie LLP
607 Fourteenth Street, NW
Washington, DC 20005

Dear Ms. Goodson:

We are responding to your advisory opinion request on behalf of United States Representative Rush Holt concerning the application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to Representative Holt’s proposed service as the honorary chairman of the 2007 general election campaigns of three publicly funded State candidates.

The Commission concludes that Representative Holt may serve as the honorary chairman of the 2007 general election campaigns of publicly funded State candidates because his proposed activities as honorary chairman would not violate the Act’s provisions that restrict Federal candidates and officeholders’ activities in connection with non-Federal elections.

Background

The facts presented in this advisory opinion are based on your letter received on September 17, 2007, and publicly available information about the New Jersey Fair and Clean Elections Pilot Project (“NJ FCEPP”).¹

Representative Holt is the United States Representative from the 12th congressional district in New Jersey, and is a candidate for re-election to the United States House of Representatives in 2008. Representative Holt would like to serve as “honorary chairman” of the general election campaigns of a slate of State candidates in

¹ www.njcleanelections.com

New Jersey's 14th legislative district: Linda R. Greenstein for General Assembly, Wayne DeAngelo for General Assembly, and Seema Singh for State Senate (collectively "State candidates"). All three State candidates are participating in NJ FCEPP, have qualified for public funding in the 2007 general election, and are listed on the NJ FCEPP website as "Certified Clean Elections Candidates."

The NJ FCEPP is an experimental program for public financing of General Assembly and State Senate candidates in the 2007 New Jersey general election in three selected legislative districts, including the 14th legislative district. Under NJ FCEPP, a candidate must qualify to receive public funds by (1) raising no fewer than 400 "qualifying contributions"² and no more than 800 such contributions during the qualifying period from April 23, 2007, through September 30, 2007; and (2) not receiving any other private funding except qualifying contributions and "seed money."³ Candidates seeking qualification to receive public funds must suspend all access to funds raised prior to seeking qualification. However, candidates may use funds previously raised and reported for seed money if those funds are attributable to contributions of \$500 or less from individuals registered to vote in New Jersey.

As the honorary chairman of the State candidates' 2007 general election campaigns, Representative Holt would "lend his name and political support to these publicly funded state candidates." Specifically, he would allow his name to appear (1) on the State candidates' campaigns' respective letterhead and (2) in other communications to the public that express his support for their candidacies. The 12th congressional district, which Representative Holt represents, encompasses New Jersey's 14th legislative district. However, the State candidates and their campaigns will not promote or support Representative Holt or attack or oppose any of his opponents in their communications.

Question Presented

May Representative Holt serve as the honorary chairman of the 2007 general election campaigns of publicly funded State candidates?

Legal Analysis and Conclusions

Yes, Representative Holt may serve as the honorary chairman of the 2007 general election campaigns of the State candidates because his proposed activities as honorary chairman would not violate the Act's restrictions on Federal candidates and officeholders raising or spending funds in connection with a non-Federal election. Additionally, the use of Representative Holt's name and title of Honorary Chairman in the State candidates' public communications would be for the limited purpose of expressing his support for their candidacies. Accordingly, the proposed communications would not be

² Qualifying contributions are \$10 contributions from individuals registered to vote and residing in the district the candidate seeks to represent.

³ Seed money is money candidates are permitted to raise from individuals registered to vote in New Jersey to finance the collection of qualifying contributions only. A seed money contribution may not exceed \$500. Candidates may raise no more than a total of \$10,000 in seed money.

Federal election activity and would not be coordinated communications under the Act and Commission regulations.

The Act does not prohibit Federal candidates from expressing support for non-Federal candidates or taking honorary positions in their campaigns, unless doing so would otherwise violate specific provisions of the Act that restrict Federal candidates and officeholders' activities in connection with non-Federal elections.

First, Federal candidates and officeholders may not solicit, receive, direct, transfer, spend, or disburse funds in connection with an election other than an election for Federal office, unless the funds do not exceed the amounts permitted with respect to contributions to candidates and political committees under 2 U.S.C. 441a(a)(1), (2), and (3), and do not come from sources prohibited under the Act. *See* 2 U.S.C. 441i(e)(1)(B); 11 CFR 300.62. Commission regulations also require that any funds Federal candidates and officeholders raise or spend in connection with a non-Federal election be in amounts and from sources that are consistent with State law. 11 CFR 300.62.

All three State candidates have qualified to receive a grant of public funds to finance their general election campaigns under NJ FCEPP. As publicly funded candidates under NJ FCEPP, the State candidates may not receive any private funds for use in the general election other than the qualifying contributions already raised to qualify for public funding. Thus, because the State candidates' campaigns will not engage in any further fundraising, none of the communications in which Representative Holt's name will appear would be solicitations.⁴ Therefore, Representative Holt would not solicit any funds as a result of permitting his name to appear on campaign letterhead or in other communications to the public.⁵ Additionally, you represent that Representative Holt's role as honorary chairman will be limited to promoting the State candidates. Accordingly, he would not be involved in any decisions regarding the spending or disbursement of the State candidates' campaign funds.

Second, State and local candidates and officeholders, and their agents, may not spend any funds for a public communication⁶ that clearly identifies a Federal candidate and promotes or supports that Federal candidate or attacks or opposes the Federal

⁴ You do not ask about, and therefore the Commission does not address, the situation in which one or more of the State candidates decide to engage in additional fundraising for the 2007 general election.

⁵ *See* Advisory Opinions 2003-03 (Cantor) and 2003-36 (Republican Governors Association). In Advisory Opinion 2003-03, "[t]he Commission could not agree on whether the use of a covered person's name in a position not specifically related to fund raising, such as 'honorary chairperson,' on a solicitation not signed by the covered person, is prohibited under the Act." The Commission notes that the communications at issue in this matter are not solicitations, and therefore the concerns present in Advisory Opinion 2003-03 are not applicable here.

⁶ "Public communication" means a communication by means of broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. 2 U.S.C. 431(22); *see also* 11 CFR 100.26.

candidate's opponents,⁷ unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act. *See* 2 U.S.C. 441i(f)(1) and 431(20)(A)(iii); 11 CFR 300.71. You represent that the State candidates and their campaigns will not promote or support Representative Holt or attack or oppose his opponents in their 2007 general election communications. The Commission has previously determined that "[u]nder the plain language of the FECA, the mere identification of an individual who is a Federal candidate does not automatically promote, support, attack or oppose that candidate." AO 2003-25 (Weinzapfel) (concluding that a proposed advertisement in which a Federal candidate endorsed a local candidate did not promote, support, attack, or oppose the Federal candidate making the endorsement). The State candidates' campaign communications would not promote or support Representative Holt or attack or oppose his opponents merely by including Representative Holt's name, along with the title "Honorary Chairman," on the letterhead or in the communications expressing his support for the State candidates.

Third, the Commission notes that because you represent that Representative Holt's involvement with the State candidates' campaign communications will be limited to expressing his support for the State candidates, and the communications at issue will not promote or support Representative Holt or attack or oppose his opponents, any such public communications would fall within the safe harbor for endorsements by Federal candidates under the Commission regulations for coordinated communications. *See* 11 CFR 109.21(g)(1).

The Commission expresses no opinion regarding whether the activities you propose are permissible under New Jersey law.

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 requester may not rely on that conclusion as support for its proposed activity. The cited advisory opinion is available on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

Sincerely,

(signed)
Robert D. Lenhard
Chairman

⁷ A public communication that clearly identifies a Federal candidate and promotes or supports that Federal candidate or attack or opposes the Federal candidate's opponent is one type of "Federal election activity." *See* 2 U.S.C. 431(20)(A)(iii); 11 CFR 100.24(b)(3).