

October 9, 2007

**AO DRAFT COMMENT PROCEDURES**

The Commission permits the submission of written public comments on draft advisory opinions when on the agenda for a Commission meeting.

DRAFT ADVISORY OPINION 2007-21 is available for public comments under this procedure. It was requested by Caroline P. Goodson, Esq., on behalf of Representative Rush Holt.

Draft Advisory Opinion 2007-21 is scheduled to be on the Commission's agenda for its public meeting of Thursday, October 11, 2007.

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 12:00pm noon (Eastern Time) on October 10, 2007.

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 2007-21, contact the Public Records Office at (202) 694-1120 or (800) 424-9530 or visit the Commission's website at [www.fec.gov](http://www.fec.gov).

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

**MAILING ADDRESSES**

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999 E Street, NW  
Washington, DC 20463

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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

2007 OCT -9 P 3:37

October 9, 2007

**AGENDA ITEM**  
For Meeting of: 10-11-07

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*  
General Counsel

Rosemary C. Smith *RCSC for RC*  
Associate General Counsel

Ron Katwan *RK*  
Assistant General Counsel

Esa L. Sferra *ELS*  
Attorney

Subject: Draft AO 2007-21

**SUBMITTED LATE**

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 11, 2007.

Attachment

1   ADVISORY OPINION 2007-21

2   Caroline P. Goodson, Esq.  
3   Perkins Coie LLP  
4   607 Fourteenth Street, NW  
5   Washington, DC 20005

**DRAFT**

6   Dear Ms. Goodson:

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

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

17   ***Background***

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

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

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<sup>1</sup> [www.njcleanelections.com](http://www.njcleanelections.com)

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

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

17 As the honorary chairman of the State candidates' 2007 general election  
18 campaigns, Representative Holt would "lend his name and political support to these  
19 publicly funded state candidates." Specifically, he would allow his name to appear (1) on  
20 the State candidates' campaigns' respective letterhead and (2) in other communications to  
21 the public that express his support for their candidacies. The 12th congressional district,

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

<sup>3</sup> 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.

1 which Representative Holt represents, encompasses New Jersey's 14th legislative district.  
2 However, the State candidates and their campaigns will not promote or support  
3 Representative Holt or attack or oppose any of his opponents in their communications.

4 ***Question Presented***

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

7 ***Legal Analysis and Conclusions***

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

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

21 First, Federal candidates and officeholders may not solicit, receive, direct,  
22 transfer, spend, or disburse funds in connection with an election other than an election for  
23 Federal office, unless the funds do not exceed the amounts permitted with respect to

1 contributions to candidates and political committees under 2 U.S.C. 441a(a)(1), (2), and  
2 (3), and do not come from sources prohibited under the Act. *See* 2 U.S.C. 441i(e)(1)(B);  
3 11 CFR 300.62. Commission regulations also require that any funds Federal candidates  
4 and officeholders raise or spend in connection with a non-Federal election be in amounts  
5 and from sources that are consistent with State law. 11 CFR 300.62.

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

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<sup>4</sup> 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.

<sup>5</sup> *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.

1           Second, State and local candidates and officeholders, and their agents, may not  
2 spend any funds for a public communication<sup>6</sup> that clearly identifies a Federal candidate  
3 and promotes or supports that Federal candidate or attacks or opposes the Federal  
4 candidate's opponents,<sup>7</sup> unless the funds are subject to the limitations, prohibitions, and  
5 reporting requirements of the Act. *See* 2 U.S.C. 441i(f)(1) and 431(20)(A)(iii); 11 CFR  
6 300.71. You represent that the State candidates and their campaigns will not promote or  
7 support Representative Holt or attack or oppose his opponents in their 2007 general  
8 election communications. The Commission has previously determined that "[u]nder the  
9 plain language of the FECA, the mere identification of an individual who is a Federal  
10 candidate does not automatically promote, support, attack or oppose that candidate." AO  
11 2003-25 (Weinzapfel) (concluding that a proposed advertisement in which a Federal  
12 candidate endorsed a local candidate did not promote, support, attack, or oppose the  
13 Federal candidate making the endorsement). The State candidates' campaign  
14 communications would not promote or support Representative Holt or attack or oppose  
15 his opponents merely by including Representative Holt's name, along with the title  
16 "Honorary Chairman," on the letterhead or in the communications expressing his support  
17 for the State candidates.

18           Third, the Commission notes that because you represent that Representative  
19 Holt's involvement with the State candidates' campaign communications will be limited  
20 to expressing his support for the State candidates, and the communications at issue will

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<sup>6</sup> "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.

<sup>7</sup> 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).



1 not promote or support Representative Holt or attack or oppose his opponents, any such  
2 public communications would fall within the safe harbor for endorsements by Federal  
3 candidates under the Commission regulations for coordinated communications. *See* 11  
4 CFR 109.21(g)(1).

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

7 This response constitutes an advisory opinion concerning the application of the  
8 Act and Commission regulations to the specific transaction or activity set forth in your  
9 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any  
10 of the facts or assumptions presented and such facts or assumptions are material to a  
11 conclusion presented in this advisory opinion, then the requester may not rely on that  
12 conclusion as support for its proposed activity. The cited advisory opinion is available on  
13 the Commission's website at <http://saos.nictusa.com/saos/scarchao>.

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Sincerely,

Robert D. Lenhard  
Chairman