



FEDERAL ELECTION COMMISSION
Washington, DC 20463

**Concurring Opinion in Advisory Opinion 2007-28
of
Vice Chairman David M. Mason and Commissioner Hans A. von Spakovsky**

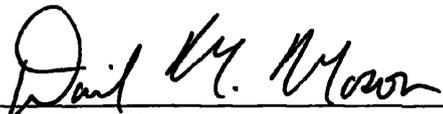
On December 14, 2007, the Commission was unable to agree on a single rationale in response to the Advisory Opinion Request of Representatives McCarthy and Nunes. All five Commissioners agreed that the proposed activity was permissible, with consensus extending to solicitations made to individuals up to \$20,000. Our colleagues derive the \$20,000 limit from 2 U.S.C. § 441i(e)(4)(B). We, however, would not apply this restriction to the situation at hand because the soft money restrictions of section 441i(e) are not implicated at all.

We conclude that Representatives McCarthy and Nunes may freely raise funds, without limitation, for the People's Advocate Initiative Committee ("PAIC") or other ballot initiative committees not established, financed, maintained, or controlled by either officeholder for the purpose of supporting the qualification and passage of a redistricting ballot initiative because that activity is not "in connection with an election" for purposes of 2 U.S.C. § 441i(e).

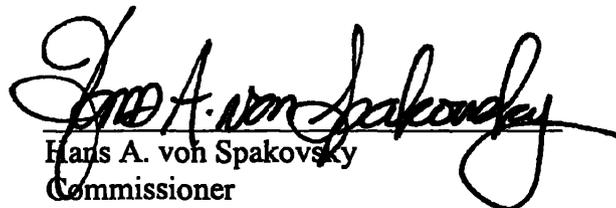
Under the Federal Election Campaign Act, as amended by the Bipartisan Campaign Reform Act of 2002, Federal candidates and officeholders are prohibited from soliciting, receiving, directing, or transferring funds beyond the limitations and prohibitions of the Act, but only "in connection with an election for Federal office" or "in connection with any election other than an election for Federal office." See 2 U.S.C. § 441i(e)(1)(A) and (B). "Both statutory provisions are expressly limited to elections for office. The plain meaning of the statute is that the soft-money ban applies to federal and non-federal elections for public office, but does not apply to non-candidate political activity, such as ballot initiatives and referenda." Concurring Opinion in Advisory Opinion 2005-10 (Berman/Doolittle) of Vice Chairman Michael E. Toner and Commissioner David M. Mason. See also Dissenting Opinion in Advisory Opinion 2003-12 (Flake) of Commissioner David M. Mason.

Representatives McCarthy and Nunes therefore may raise funds, without limit, for PAIC or other redistricting ballot initiative committees that are not established, financed, maintained, or controlled by either officeholder for the purpose of qualifying and securing passage of the ballot initiative.

December 18, 2007



David M. Mason
Vice Chairman



Hans A. von Spakovsky
Commissioner