



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
CHIEF COMMUNICATIONS OFFICER
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE

FROM: COMMISSION SECRETARY *Murkl*

DATE: July 27, 2009

SUBJECT: COMMENT ON DRAFT AO 2009-15
Bill White for Texas

Transmitted herewith is a timely submitted comment from Raymond Buckley, President, Association of State Democratic Chairs, regarding the above-captioned matter.

Proposed Advisory Opinion 2009-15 is on the agenda for Tuesday, July 28, 2009.

Attachment

**Association of
State Democratic
Chairs**



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COMMISSION
SECRETARIAT

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Raymond Buckley
President

July 27, 2009

Ms. Mary Dove
Secretary
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Comments on Drafts of Advisory Opinion 2009-15

Dear Ms. Dove:

On behalf of the Association of State Democratic Chairs, I write to comment on Advisory Opinion Request 2009-15, requested by Bill White for Texas. We urge the Commission to adopt Draft A and reject Draft B.

The requestor seeks to raise funds for a special election that may be held if the incumbent Senator leaves office before the end of her term, as some expect her to do. The request should be uncontroversial. As Draft A points out, the Commission has often allowed candidates to raise funds for elections in which they may not ultimately run.

But Draft B would hold that the requestor "may not accept any contributions for a special election that has not yet been scheduled . . ." Draft B at 6. It says that a blackout on 2010 fundraising is needed, to prevent evasion of the 2012 contribution limits. *Id.* at 8. With no basis in the statute or regulations, it contrives a distinction between those contingencies that result from the election process (as with an election that might trigger a runoff), and those that result from other types of events (as with a senator who might resign, or a governor who might call a special election).

Draft B would be the wrong outcome. First, it does not adequately consider how special elections occur under state law. Sometimes, the formal action needed to call a special election does not occur until very late in the process – indeed, too late for the candidates to have a sufficient opportunity to amass funds.

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Draft B would also create odd and untenable results. In New York's 23rd District, for example – where the incumbent now seeks confirmation to serve as Secretary of the Army, where no vacancy has yet occurred, and where no special election has yet been called – Draft B would allow noncandidate committees to spend tens of thousands of dollars attacking the potential candidates, while barring the individuals themselves from raising funds for the special election. See, e.g., Josh Kraushaar, NRCC already up with ads in McHugh's district, *Politico*, July 21, 2009, available at http://www.politico.com/blogs/scorecard/0709/NRCC_already_up_with_ads_in_McHughs_district.html.

Finally, the Commission can still enforce the 2012 contribution limits without placing a blackout on 2010 fundraising. If no 2010 election were to occur, and the candidate were then to try and convert the 2010 funds to the 2012 election, there would be multiple checks on that activity: the Reports Analysis Division and the enforcement process, just to name two. While the Commission might find it easier to impose a "blackout" period on special election fundraising, mere administrative convenience cannot trump the candidate's right to raise the funds, or the donor's right to give them.

The candidate's right – and the donor's – should be significant to the Commission's decision. The Supreme Court has repeatedly held that candidates have a right to raise funds, and donors to give them, and that government restrictions on these rights can be tolerated only when closely drawn to prevent corruption or its appearance. *Randall v. Sorrell*, 548 U.S. 230, 247 (2006); *Buckley v. Valeo*, 424 U.S. 1, 25 (1976). Through Draft B, the Commission is being asked to find, for the first time ever, that a candidate may not raise funds in anticipation of a potential special election, and that a donor may not give funds. This outcome is unnecessary, and the Commission should avoid it.

We appreciate the opportunity to comment on this matter.

Sincerely,



Raymond Buckley
President
Association of State Democratic Chairs