



MEMORANDUM

**TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL**

FROM: OFFICE OF THE COMMISSION SECRETARY 

DATE: April 29, 2010

**SUBJECT: Ex Parte Communication
Re: Advisory Opinion 2010-03**

Transmitted herewith is an Ex Parte Communication received from Commissioner Ellen L. Weintraub regarding the above-captioned matter.

Attachment



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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SECRETARIAT

2010 APR 29 A 8:54

Memorandum

To: Commission Secretary

From: Commissioner Ellen L. Weintraub

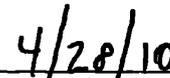
Date: April 28, 2010

Re: *Ex Parte* Communication
Advisory Opinion 2010-03

This afternoon I received a telephone call and an e-mail from Marc Elias with respect to Advisory Opinion 2010-03 and the two draft responses prepared by the Office of General Counsel. Mr. Elias has also submitted a written comment concerning Advisory Opinion 2010-03. The views that he expressed during the course of the telephone conversation were generally the same as those conveyed by his written comment.

Specifically, Mr. Elias expressed support for "Draft A" of the two draft responses prepared by the Office of General Counsel. He stated that "Draft B" was contrary to previous Advisory Opinions issued by the Commission, specifically Advisory Opinion 2003-15 (Majette). Mr. Elias emphasized that the National Democratic Redistricting Trust ("the Trust") was formed to raise funds in support of anticipated litigation relating to legislative redistricting, and that the Trust would not raise funds to influence the legislative redistricting process other than through litigation. Mr. Elias contended that the activities proposed by the Trust were not in connection with an election. Mr. Elias also briefly spoke about the potential impact of "Draft B" on ongoing litigation involving the Commission, the financing of redistricting related litigation in general, and other regulations within the Commission's jurisdiction. Mr. Elias stated that he hoped the Commission would be able to issue an Advisory Opinion in response to his request.


Ellen L. Weintraub, Commissioner


Date



Samuel Brown/FEC/US
04/28/2010 05:56 PM

To sbrown@fec.gov
cc
bcc
Subject Fw: Advisory Opinion 2010-3

"Elias, Marc (Perkins Coie)"
<meli@perkinscoie.com>

04/28/2010 10:35 AM

To Matt Petersen <mpetersen@fec.gov>, Cynthia Bauerly <cbauerly@fec.gov>, Donald McGahn <dmcgahn@fec.gov>, Ellen Weintraub <eweintraub@fec.gov>, Caroline Hunter <chunter@fec.gov>, Steven Walther <Swalther@fec.gov>
cc Thomasenia Duncan <Tduncan@fec.gov>
Su Advisory Opinion 2010-3
bje
ct

Commissioners--

Attached please find the comments submitted earlier today on behalf of the National Democratic Redistricting Trust in regard to AOR 2010-3. The circulation of multiple proposed drafts in response to advisory opinion requests is not unusual. But here they present a critical decision: whether the Commission will respect three decades of settled understanding on the rules governing independent redistricting funds; or whether, lacking any statutory command, it will disrupt that understanding through a poorly reasoned and ill-explained opinion. Draft A is supported by the law, the rules, and past Commission action. Draft B misunderstands the law, fails clearly to set forth its reasoning, and does not even fully answer the questions we asked.

Therefore, pursuant to 11 C.F.R. sec. 201.4, I will be contacting each of you today via telephone to discuss the facts and law underpinning this request and, most important, to answer any questions you may have. I appreciate that the FEC's rules place a burden upon you when such a contact is made, so I apologize in advance. However, with the redistricting process soon to begin, this issue is of great significance to the political process and the entire country, and it is therefore important that you have a complete understanding of the issues presented by the request and the two drafts.

I have copied General Counsel Duncan. Insofar as her office prepared the two drafts, I intend to contact her regarding this advisory opinion as well.

If you would prefer to call me, you may do so at the number below.

Marc Elias

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