



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**

A handwritten signature in black ink, enclosed within a hand-drawn oval. The signature appears to be "J.M.C." or similar initials.

Transmitted herewith is an Ex Parte Communication received from Commissioner Donald F. McGahn II regarding the above-captioned matter.

Attachment



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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COMMISSION
SECRETARIAT

2010 APR 29 A 10:13

Memorandum

To: Commission Secretary

From: Commissioner Donald F. McGahn 

Date: April 29, 2010

Re: *Ex parte* communication (Advisory Opinion 2010-03)

Last evening I received a telephone call from Marc Elias, counsel to the National Democratic Redistricting Trust, with respect to Advisory Opinion 2010-03.

Mr. Elias reiterated the substance of the comment he filed on April 28, 2010, regarding the public drafts of Advisory Opinion 2010-03, which the Commission will consider at the open meeting of April 29, 2010.

Ashley Stow/FEC/US
04/29/2010 10:03 AM

To
cc
bcc
Subject Fw: Advisory Opinion 2010-3

From: "Elias, Marc (Perkins Coie)" [melias@perkinscoie.com]
Sent: 04/28/2010 10:31 AM AST
To: Matthew Petersen; Cynthia Bauerly; Donald McGahn; Ellen Weintraub; Caroline Hunter; Steven Walther
Cc: Thomasenia Duncan
Subject: Advisory Opinion 2010-3

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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Marc E. Elias
Perkins Coie LLP
607 14th St, NW
Washington, DC 20005
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202-654-9126 (fax)
melias@perkinscoie.com

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Thank you. NDRT_Adv.pdf