



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 14, 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2010-07

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Dear Messrs. Svoboda and Woocher and Mss. Keane and Dudovitz:

We are responding to your advisory opinion request on behalf of Yes on FAIR,¹ concerning the application of the Federal Election Campaign Act of 1971, as amended (“the Act”), and Commission regulations to the solicitation of funds by Members of Congress on behalf of Yes on FAIR.

The Commission concludes that Members of Congress may solicit funds on behalf of Yes on FAIR outside the amount limitations and source prohibitions of the Act and Commission regulations during the period before the initiative qualifies for the ballot. Members of Congress may also solicit up to \$20,000 from individuals on behalf of Yes on FAIR after the initiative qualifies for the ballot. The Commission was unable to agree on whether, during the post-qualification period, Members of Congress may solicit donations of more than \$20,000 and from persons other than individuals.

¹ The requestor’s full name is Yes on FAIR, a coalition of entrepreneurs, working people, Karen Bass, and other community leaders devoted to eliminating bureaucratic waste of taxpayer dollars on the political game of redistricting committee (“Yes on FAIR”).

Background

The facts presented in this advisory opinion are based on your letter dated April 7, 2010, your email dated April 15, 2010, and the representations of Mr. Svoboda at the Commission's Open Meeting on May 27, 2010.

Yes on FAIR is a ballot measure committee in the State of California. Yes on FAIR has applied to the Internal Revenue Service for recognition as a section 501(c)(4) organization under Title 26 of the Internal Revenue Code. Although Karen Bass, who is currently a Federal candidate for the 33rd Congressional District of California, is identified in Yes on FAIR's official name, counsel for Yes on FAIR represents that Yes on FAIR was not directly or indirectly established by, and is not financed, maintained, or controlled by, any Federal candidate or officeholder.²

The requestor represents that Yes on FAIR's sole purpose is to support the qualification and passage of the Financial Accountability In Redistricting Act ("FAIR Act"), a proposed ballot initiative, for the statewide November 2, 2010 general election ballot. Yes on FAIR is seeking signatures to qualify the FAIR Act for the November ballot. The last date on which the California Secretary of State may qualify a measure for the November ballot is June 24, 2010.

Once the ballot initiative has qualified for the general election ballot in California, Yes on FAIR intends to engage in "an extensive campaign to promote the FAIR Act's passage." Among other things, this campaign will involve "get-out-the-vote programs specifically designed to get the measure's supporters to the polls" on election day. You represent that Yes on FAIR's campaign advertisements will not promote, support, attack or oppose any federal candidate "or result in coordinated communications under Commission rules."

² The requestor represents that California state law requires the official name of certain ballot initiative committees to identify state officeholders who have contributed \$50,000 or more to the committee. The request states that Karen Bass "is identified in Yes on FAIR's official name only because of" this state law requirement. Ms. Bass is a California State legislator; she was speaker of the California State Assembly until March 1, 2010 and remains a member of the State Assembly. The request states that "[w]hile Bass has not personally contributed to Yes on FAIR, state political committees associated with her have made two contributions [to Yes on FAIR] totaling \$50,000" and that, subsequently, "Bass decided to run for election to the U.S. House of Representatives in the 33rd Congressional District of California." The request further represents that "Bass has not and will not establish, finance, maintain, or control Yes on FAIR, which has raised and will continue to raise the bulk of its funds from other, unconnected sources." Indeed, the request represents that "Yes on FAIR is not directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, any federal candidate or officeholder." In this context, the Commission notes that Yes on FAIR received over \$2.5 million from various contributors in the first quarter of 2010, according to reports filed with the California Secretary of State. If these representations are inaccurate, then the requestor may not be entitled to rely on this advisory opinion. *See* 2 USC 437f(c).

Questions Presented

1. *May Members of Congress solicit funds on behalf of Yes on FAIR before the initiative qualifies for the ballot?*
2. *May Members of Congress solicit funds on behalf of Yes on FAIR after the initiative qualifies for the ballot?*
3. *May Members of Congress solicit up to \$20,000 from individuals and from persons other than individuals on behalf of Yes on FAIR after the initiative qualifies for the ballot?*

Legal Analysis and Conclusions

1. *May Members of Congress solicit funds on behalf of Yes on FAIR before the initiative qualifies for the ballot?*

Yes, Members of Congress may solicit funds outside the amount limitations and source prohibitions of the Act and Commission regulations on behalf of Yes on FAIR during the period before the initiative qualifies for the November ballot. In the Bipartisan Campaign Reform Act (“BCRA”), Congress amended the Act to prohibit Federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained or controlled by them or acting on their behalf from raising and spending funds in connection with an election unless the funds are consistent with the limits and prohibitions contained in the Act. 2 U.S.C. 441i(e)(1); *see also* 11 CFR 300.61, 300.62. The Commission concludes under the facts of this advisory opinion that 2 U.S.C. 441i(e)(1) does not apply to solicitations on behalf of the initiative before it qualifies for the ballot.

2. *May Members of Congress solicit funds on behalf of Yes on FAIR after the initiative qualifies for the ballot?*

Yes, Members of Congress may solicit funds on behalf of Yes on FAIR after the initiative qualifies to be placed on the ballot. All Commissioners agree that Members of Congress may solicit funds within the limits and prohibitions of the Act. However, the Commission is unable to agree on whether Members of Congress may solicit funds outside the Act’s limits and prohibitions.

3. *May Members of Congress solicit up to \$20,000 from individuals and from persons other than individuals on behalf of Yes on FAIR after the initiative qualifies for the ballot?*

Yes. All Commissioners agree that, after the initiative qualifies for the ballot, Members of Congress may solicit up to \$20,000 from individuals on behalf of Yes on

FAIR during that period.³ However, as discussed above, the Commission is unable to agree on whether Members of Congress may solicit funds outside the Act's limits and prohibitions after the initiative qualifies for the ballot.

The Commission expresses no opinion regarding the possible application of the Internal Revenue Code or State tax laws, or any other State laws, to the proposed activities, as those questions are outside of its jurisdiction.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requester may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions and case law.

On behalf of the Commission,

(signed)
Matthew S. Petersen
Chairman

³ BCRA contains an exception to the limits of 2 U.S.C. 441i(e)(1) that applies to solicitations for specific types of Federal election activity on behalf of certain tax exempt organizations, provided that the solicitations are made only to individuals and do not seek more than \$20,000 per individual. *See* 2 U.S.C. 441i(e)(4); 11 CFR 300.65.