



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 7, 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2011-04

Philip Friedman, Esq.
American Israel Public Affairs Committee
2401 Pennsylvania Ave, N.W. Suite 410
Washington, DC 20037

Dear Mr. Friedman:

We are responding to your advisory opinion request on behalf of the American Israel Public Affairs Committee ("AIPAC"), concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to AIPAC's plan to post candidate position papers on a portion of its website accessible only to AIPAC members.

The Commission concludes that AIPAC may post candidate position papers on its members-only website.

Background

The facts presented in this advisory opinion are based on your letter received on February 25, 2011.

AIPAC is a non-profit 501(c)(4) corporation dedicated to maintaining and improving the bonds between the United States and Israel. The Commission has previously determined that AIPAC is primarily a lobbying organization and qualifies as a

membership organization under 11 CFR 114.1(e).¹ In addition to its lobbying activities, AIPAC also encourages its members to be involved in campaign activities, such as volunteering for campaigns and making contributions.

AIPAC compiles information on candidates and races for Federal office, including the political history of the district or state, information about money raised by the candidates, public polling data, recent news about the race, and a list of announced candidates for the office. Although it does not rate or endorse candidates, AIPAC compiles voting records of incumbents and encourages its members to review those records. Because non-incumbent candidates do not have voting records, AIPAC plans to encourage all Federal candidates to prepare position papers on the United States-Israel relationship, which it intends to post on a portion of its website that is accessible only to AIPAC members.

The candidate position papers would be available to all 100,000 AIPAC members on the members-only portion of AIPAC's website. The position papers would be prepared by the candidates or their campaign staff, and would be posted in their entirety without any editing by AIPAC. The position papers would set forth the candidates' views on issues affecting the United States-Israel relationship and would not contain any express advocacy. The four sample position papers submitted by AIPAC with the request conform to this description; they state the candidates' positions on a number of policy issues relevant to the United States-Israel relationship and do not contain any information about the candidates' campaigns or their opponents.

Question Presented

May AIPAC post candidate position papers written by candidates' campaigns on a members-only portion of AIPAC's website?

Legal Analysis and Conclusions

Yes, AIPAC may post candidate position papers on a portion of its website accessible only to its members.

The Act and Commission regulations prohibit corporations, including incorporated membership organizations like AIPAC, from making contributions in connection with a Federal election. 2 U.S.C. 441b(a); 11 CFR 114.2(b). The Act and Commission regulations, however, exempt from the definition of expenditure and

¹ See MUR 2804, Certification of Commission Action dated June 16, 1992 (Commission voting 6-0 to find no probable cause to believe AIPAC violated 2 U.S.C. 433 and 434 by failing to register and report as a "political committee") and MUR 2804R, Certification of Commission Action dated March 21, 2000 (Commission voting 6-0 to find that AIPAC was a membership organization during the time period addressed in MUR 2804); see also, MUR 5272, Statement of Reasons Chair Ellen L. Weintraub, Vice-Chairman Bradley A. Smith, Commissioners David M. Mason, Danny L. McDonald, Scott E. Thomas, and Michael E. Toner, dated November 13, 2003 (describing the history of Commission enforcement actions and related litigation involving AIPAC).

contribution “any communication by a membership organization” to its restricted class.² 2 U.S.C. 431(9)(B)(iii) and (8)(B)(vi); 11 CFR 114.1(a)(2)(x). Indeed, Commission regulations expressly permit an incorporated membership organization to communicate with its restricted class on any subject, including communications that contain express advocacy. 11 CFR 114.3(a)(2).

AIPAC, as a membership organization, may communicate with its members on any subject. AIPAC plans to provide candidate position papers so that its members may have “unvarnished access to the views of the candidate.” Moreover, AIPAC states that it will not post on its members-only website position papers that “contain any express advocacy of a candidate’s election or defeat.” Rather, the position papers will be limited to a discussion of the candidate’s position on policy issues concerning the United States-Israel relationship.

The Commission therefore concludes that AIPAC may post candidate-prepared position papers on a section of its website accessible only by its members. Because posting the position papers constitutes a permissible membership communication, any costs associated with posting the papers would not be contributions or expenditures. 2 U.S.C. 441b(b)(2)(A) and 431(9)(B)(iii); 11 CFR 100.134(a) and 114.1(a)(2)(x).

A membership organization must report the “costs incurred” that are “directly attributable” to an express advocacy communication to its membership if those costs exceed \$2,000 for any election, except that communications containing express advocacy but that are “primarily devoted to subjects other than the express advocacy” need not be reported. 2 U.S.C. 431(9)(B)(iii); 11 CFR 114.3(b), 100.134(a), and 104.6(a). Because the member communications at issue here do not contain express advocacy, AIPAC need not report any costs associated with the communications to the Commission.³ 2 U.S.C. 431(9)(B)(iii); 11 CFR 114.3(b), 100.134(a), and 104.6(a).

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 requestor 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 the analysis or

² The restricted class of a membership organization includes its members. 11 CFR 114.1(j); *see also* 11 CFR 114.1(e)(2) (defining the term “members”).

³ For the same reasons, 11 CFR 114.3(c) is not applicable to the communications.

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)
Cynthia L. Bauerly
Chair