



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

MEMORANDUM

TO: The Commission
Acting Staff Director
Acting General Counsel
Press Office
Public Disclosure

FROM: Commission Secretary and Clerk 

DATE: May 31, 2011

SUBJECT: *Ex Parte* Communication Regarding
Advisory Opinion Request 2011-11 (Colbert)

Transmitted herewith is an *ex parte* communication from
Commissioner Steven T. Walther regarding the above matter.

Attachment



"r_e_rutkowski"
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05/28/2011 04:44 PM

To <CommissionerWalther@fec.gov>
cc
bcc
Subject Deny Stephen Colbert's Request to Expand 'Press Exemption'

Steven T. Walther
Chairman
Federal Election Commission
999 E Street, NW
Washington, DC 20463
(800) 424-9530
E-mail: CommissionerWalther@fec.gov

Re: Deny Stephen Colbert's Request to Expand 'Press Exemption'

Dear Chairman Walther:

The Campaign Legal Center together with Democracy 21, Friday urged the Commission to deny a request by comedian Stephen Colbert to significantly expand the so-called "press-exemption" to a number of federal election laws. The two organizations [filed comments, http://campaignlegalcenter.org/attachments/CLC_D21_Comments_on_AOR_2011-11_Colbert.pdf](http://campaignlegalcenter.org/attachments/CLC_D21_Comments_on_AOR_2011-11_Colbert.pdf), in response to an advisory opinion request by Mr. Colbert seeking the FEC's opinion as to whether the Viacom corporation, which owns, produces and distributes his television show, *The Colbert Report*, may pay for a variety of expenses of his Colbert Super PAC without disclosing any of the expenses as in-kind contributions to the PAC under the "press exemption."

Although I recognize that Mr. Colbert submitted his advisory opinion in the spirit of political comedy, an opinion by the FEC permitting all that Mr. Colbert requests would have a sweeping and damaging impact on disclosure laws and the public's right to know about campaign finance activities. Many television show hosts who are serious politicians have PACs that could reap great financial benefit from the expansion of the scope of the 'press exemption' to cover the costs of independent expenditure ads made for their federal PACs and the payment of such PACs' administrative expenses.

For example, Sarah Palin has Sarah PAC, Mike Huckabee has Hock PAC, Newt Gingrich has American Solutions PAC, Rick Santorum has America's Foundations PAC—and all are or recently were, television hosts or commentators. An opinion from the FEC granting all that Mr. Colbert requests would permit the corporate media employer of these individuals to make unlimited, undisclosed contributions to their PACs under the guise of the "press exemption." There is no legal justification for such a radical evisceration of our disclosure laws.

The 'press exemption' in the campaign finance laws simply does not apply to allow a corporation like Viacom to secretly finance independent ads for Mr. Colbert's Super PAC, nor does it allow Viacom to secretly pay for the administrative costs of the Colbert Super PAC. For the FEC to rule otherwise on the Colbert advisory opinion request, would result in the Commission opening

up a gaping loophole in the disclosure laws.

While some of Mr. Colbert's proposed activities would fall within the scope of the "press exemption," some clearly do not. I urge the FEC to make clear that neither (1) Viacom's costs associated with producing political ads for Colbert Super PAC to be "air[ed] as paid advertisements on other shows and networks," nor (2) Viacom's payment of the PAC's administrative costs (*e.g.*, preparing and filing campaign finance reports with the FEC) would fall within the "press exemption."

Federal campaign finance law defines "contribution" to include "anything of value" given to a PAC and makes clear that "the provision of any goods or services without charge . . . is a contribution." Federal PACs are required to disclose all contributions received.

However, federal law exempts from the definition of "contribution" and, therefore, from disclosure requirements, "[a]ny cost incurred in covering or carrying any news story, commentary, or editorial." Part of the FEC's test for applying this so-called "press exemption" requires that the press entity be acting in its "legitimate press function".

The production of political ads for a federal PAC and the payment of a PAC's administrative expenses do not constitute legitimate press functions and, consequently, are beyond the scope of the "press exemption." These expenses should not be exempt from campaign finance disclosure.

Thank you for the opportunity to bring these remarks to your attention.

Yours sincerely,
Robert E. Rutkowski

cc: House Minority Leadership

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