



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: June 29, 2011

SUBJECT: *Ex Parte* Communication Regarding
Draft Advisory Opinion 2011-12 (Majority PAC and
House Majority PAC)

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

Attachment



"r_e_rutkowski"
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06/29/2011 12:30 PM

To <CommissionerWalther@fec.gov>
cc
bcc
Subject Hearing Thursday on Advisory Opinion Request Regarding
Legality of Federal Officeholders and Candidates Raising
Unlimited Contributions for Super PACs

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

Re: Hearing Thursday on Advisory Opinion Request Regarding Legality of Federal Officeholders and Candidates Raising
Unlimited Contributions for Super PACs

Dear Chairman Walther:

On May 19, 2009, Majority PAC and House Majority PAC, two Super PACs established to raise unlimited contributions and make independent expenditures in support of Senate and House Democratic candidates, submitted an Advisory Opinion (AO) request to the Federal Election Commission.

In their request, the two pro-Democratic PACs asked the FEC for an advisory opinion on whether it would be legal for federal officeholders and candidates, and national party officials, to solicit unlimited contributions from corporations, labor unions and individuals for their Super PACs, where the money will then be spent to influence federal elections

The FEC is scheduled to consider this AO request tomorrow, Thursday, June 30, 2011

The advisory opinion request followed an earlier announcement by an official of another group, Republican Super PAC (RSPAC), that it planned to use federal officeholders and candidates, and Republican Party officials, to solicit unlimited contributions for the PAC to then spend in federal elections. RSPAC also said that it would earmark the unlimited funds raised by any Republican candidate and spend those funds on that candidate's election.

Section 441i(e)(1)(A) of the Federal Election Campaign Act provides that a "candidate or an individual holding Federal office . . . shall not . . . solicit . . . funds in connection with an election for Federal office . . . unless the funds are subject to the limitations, prohibitions, and reporting requirements" of FECA.

Section 441i(a) of the Federal Election Campaign Act provides that a national party committee, and any officer or agent acting on behalf of such a national party committee, may not solicit any funds "that are not subject to the limitations, prohibitions, and reporting requirements" of the Federal Election Campaign Act (FECA).

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The FEC has before it three alternative draft advisory opinions, one of which would permit federal officeholders and candidates and national party officials to solicit unlimited contributions from corporations, labor unions and individuals for Super PACs to spend on federal elections, despite the language in the law prohibiting these solicitations. The other drafts before the FEC would prohibit such solicitations of unlimited contributions.

The proposed solicitation by federal officials and candidates, and national party officials, of unlimited contributions for Super PACs is blatantly illegal under provisions of the federal campaign finance laws.

The provisions of federal law banning solicitation of unlimited contributions by federal officials and candidates, and national party officials, were upheld by the Supreme Court in *McConnell v. Federal Election Commission* and have never been challenged since then.

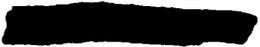
The solicitation of a million-dollar contribution by a President or by a member of Congress to be spent by a Super PAC on the officeholder's election from donors with interests pending before the government would be an invitation to wholesale corruption of the federal officeholders. That is why this practice is clearly and unequivocally banned by federal law and why the Supreme Court upheld the ban.

The Campaign Legal Center and Democracy 21 submitted comments, http://www.democracy21.org/vertical/Sites/{3D66FAFE-2697-446F-BB39-85FBBBA57812}/uploads/CLC_D21_Comments_on_AOR_2011-12_June_6_2011.pdf, on June 6, 2011 spelling out in detail why the proposal for federal officeholder and candidates, and national party officials, to solicit unlimited contributions is illegal, and calling on the FEC to answer the AO request by so stating.

Thank you for your thoughtful consideration of this important issue.

Yours sincerely,
Robert E. Rutkowski

cc: House Minority Leadership


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