



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

March 1, 2012

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2012-03

Barry A. Bostrom, Esq.  
General Counsel  
ActRight  
2524 N. 8<sup>th</sup> Street  
Terre Haute, IN 47804-1811

Dear Mr. Bostrom:

We are responding to your advisory opinion request on behalf of ActRight, concerning the application of the Federal Election Campaign Act (the “Act”) and Commission regulations to ActRight’s proposed plan to solicit and forward unlimited contributions earmarked for nonconnected political committees that make only independent expenditures or earmarked for a nonconnected political committee’s non-contribution account used to finance independent expenditures<sup>1</sup> (collectively “Recipient Committees”).

The Commission concludes, subject to the conditions and representations described below, that ActRight may solicit unlimited contributions earmarked for the Recipient Committees and forward them to the Recipient Committees.

### ***Background***

The facts presented in this advisory opinion are based on your letter received on January 18, 2012.

ActRight is a nonconnected political committee that is registered with the Commission. Through its website, ActRight.com, it solicits contributions earmarked for Federal candidates and then forwards them to the treasurer of candidate’s authorized

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<sup>1</sup> See Press Release, FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.

committee. ActRight now plans to solicit, through the same website, unlimited contributions earmarked for the Recipient Committees.<sup>2</sup>

Donors will select the political committees to which they wish to contribute by going to the ActRight website and clicking the “donate” button next to the name of the political committee. Donors will then complete the website donation form that will include a request for all required contributor information and disclaimers.

ActRight will deposit the contributions earmarked for the Recipient Committees into a bank account separate from its account that contains contributions earmarked for Federal candidates and then forward them to the Recipient Committees. ActRight will not exercise any direction or control over the earmarked funds.

ActRight will forward the contributions and all necessary contributor information to the Recipient Committees according to the requirements of 11 CFR 102.8(b). ActRight will also report all of its non-contribution account activity related to contributions earmarked for the Recipient Committees according to guidance the Commission has issued. *See* Press Release, FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.

### ***Question Presented***

*May ActRight solicit and accept unlimited contributions from individuals, political committees, corporations, and labor organizations, into a non-contribution account and then forward the contributions earmarked for Recipient Committees to those earmarked Recipient Committees?*

### ***Legal Analysis and Conclusions***

Yes, ActRight may solicit unlimited contributions earmarked for Recipient Committees and forward them to the earmarked Recipient Committees subject to the conditions and representations described below.

The Act and Commission regulations require any person who receives contributions on behalf of unauthorized committees to forward the contributions it receives, along with certain contributor information, to the treasurers of the unauthorized committees in a timely manner. 2 U.S.C. 432(b)(2); 11 CFR 102.8(b). Any person who receives a contribution in excess of \$50 on behalf of an unauthorized committee must forward the contribution, as well as the contributor’s name, address, and receipt date, to the treasurer no later than ten days after receipt. 2 U.S.C. 432(b)(2)(B); 11 CFR 102.8(b)(2). If the contribution exceeds \$200, the contributor’s employer and occupation also must be forwarded. 11 CFR 102.8(b)(2). Contributions of \$50 or less to

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<sup>2</sup> ActRight would not solicit or accept funds from foreign nationals, Federal contractors, national banks or corporations organized by authority of any law of Congress.

unauthorized committees must be forwarded within thirty days (with no information forwarding requirement). 2 U.S.C. 432(b)(2)(A); 11 CFR 102.8(b)(1).

ActRight would be receiving contributions earmarked for political committees that are not authorized committees of any candidates. As such, ActRight would have the duty to forward the contributions it receives, along with the required contributor information, to the treasurers of the Recipient Committees within the time frames required by 11 CFR 102.8(b). ActRight states that it will forward all contributions and the information required by the Act and Commission regulations to the Recipient Committees within the time constraints of the Commission's regulations.

Because the contributions would not be intended for ActRight to use for its own purposes, and ActRight would not have any direction or control over the earmarked funds, ActRight would not need to report the earmarked contributions as contributions to ActRight. *See, e.g.*, Advisory Opinion 1996-18 (International Association of Fire Fighters) (finding that a conduit was not accepting or making contributions because funds placed in a separate conduit account remained in the control of the individual contributor). However, because the earmarked contributions would be deposited into ActRight's non-contribution account, ActRight would have to report them as "Other Federal Receipts" on Line 17 of Form 3X with an explanation that they are earmarked by the contributors for noncandidate political committees. In addition, when the funds are distributed, ActRight would have to report the disbursements as "Other Disbursements" on Line 29 of Form 3X. *See* Advisory Opinion 1981-57 (Coal Miners PAC); Advisory Opinion 1983-18 (Stop and Shop); Press Release, FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.

ActRight plans to forward funds from its separate non-contribution account containing contributions of unlimited amounts from individuals, as well as from corporations and labor organizations, to earmarked Recipient Committees. That plan is permissible because the Recipient Committees are permitted to receive such contributions. *See EMILY's List v. FEC*, 581 F.3d 1, 12 (D.C. Cir. 2009); *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010) (*en banc*) (striking down limitations on contributions from individuals to groups that make only independent expenditures); *Carey v. FEC*, 791 F. Supp. 2d 121, 131 (D.D.C. 2011); Press Release, FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), <http://www.fec.gov/press2011/20111006postcarey.shtml>; *see also* Advisory Opinion 2010-11 (Commonsense Ten) (independent expenditure-only committees may receive unlimited contributions from corporations and labor organizations).<sup>3</sup>

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<sup>3</sup> The Commission notes that this advisory opinion implicates issues that may also be the subject of a forthcoming Commission rulemaking in light of recent court rulings in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) and *EMILY's List v. FEC*, 581 F.3d 1 (D.C. Cir. 2009).

In sum, the Commission concludes that ActRight may solicit earmarked contributions and forward them to the earmarked Recipient Committees consistent with the foregoing conditions and representations.

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 requestors 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 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. The cited advisory opinions are available on the Commission's Web site at, [www.fec.gov](http://www.fec.gov), or directly from the Commission's Advisory Opinion searchable database at <http://www.fec.gov/searchao>.

On behalf of the Commission,

(signed)  
Caroline C. Hunter  
Chair