



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**MEMORANDUM**

**TO:** The Commission

**FROM:** Commission Secretary's Office 

**DATE:** August 7, 2012

**SUBJECT:** Comments on Draft AO 2012-26  
(Cooper for Congress, ArmourMedia,  
Inc., and m-Qube, Inc.)

**Attached is a timely submitted comment from William J. McGinley, counsel, on behalf of the National Defense PAC.**

**Attachment**

**PATTON BOGGS** LLP2550 M Street, NW  
Washington, DC 20037  
202-457-80002012 AUG -7 P 3 56  
Facsimile 202-457-6315  
www.pattonboggs.com

August 7, 2012

William J. McGinley  
202-457-6561  
wmcginley@pattonboggs.com**VIA FACSIMILE**Anthony Herman, Esquire  
General Counsel  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: Advisory Opinion Request 2012-26

Dear Mr. Herman:

On behalf of our client, the National Defense PAC ("NDP"), we submit these comments on Advisory Opinion Request 2012-26 ("AOR").<sup>1</sup> We have reviewed the draft advisory opinion published by the Federal Election Commission ("Commission") on August 2, 2012 ("DAO"), and submit these comments emphasizing the need for the Commission to provide treasurers in the regulated community with more precise, practical compliance guidance. The DAO fails to provide committee treasurers with the detailed practical guidance necessary for them to satisfy the onerous compliance responsibilities foisted on them in the current draft. In the alternative, the Commission should impose greater compliance responsibilities on the connection aggregators to ensure that committee treasurers can be confident in the information they receive from their vendors and to reduce the staggering compliance costs that would result under the current draft.

The DAO places the compliance burden squarely on the recipient committee's treasurer without the benefit of permitting the committee treasurer sufficient control to gather the information necessary to satisfy his or her compliance, recordkeeping or reporting requirements. To be clear, the only committees who will be in a position to devote the resources to comply with the new compliance and administrative burdens imposed on treasurers by the DAO are large national committees such as presidential campaigns and national party committees. These are the only committees that have the resources to negotiate with the vendors and the personnel to devote to chasing down the information necessary to satisfy the regulatory burdens imposed on them. This

<sup>1</sup> On July 27, 2012, NDP submitted initial comments requesting the Commission to decline to issue the AOR on an expedited basis or to decline to issue an advisory opinion and initiate a rulemaking on this important issue. NDP still believes that this issue must be addressed correctly and not expeditiously and NDP's July 27, 2012 comments are hereby incorporated by reference.

**PATTON BOGGS LLP**

Anthony Herman, Esquire

August 7, 2012

Page 2

result does not increase the democratization of campaign contributions; instead, it restricts the potential benefits to only the largest of political committees regulated by the Commission.

Small, volunteer-driven campaigns and PACs, on the other hand, will not have the compliance resources to avail themselves of this new technology to pursue small dollar donations. We have seen this situation before when the Congress passed laws and the Commission adopted rules designed to prevent perceived threats from large dollar donations to national party committees and other organizations. However, the biggest losers in the regulatory regime were the grassroots, volunteer-driven county party committees that were required to eliminate grassroots programs due to the high compliance costs of engaging in traditional grassroots activities that were reclassified by regulatory fiat as "federal election activity." In short, the DAO seeks to advance the academic ideal of increasing small dollar donations while placing these services beyond the reach of small, volunteer political committees – the committees who need this service the most.

Moreover, unlike credit card contributions made over the internet or by phone basis, the committee treasurer is operating solely at the mercy of the vendors.

- After spelling out the onerous compliance responsibilities placed on the committees in this misguided DAO, the DAO states that the compliance responsibilities will be undertaken "based only on the information that m-Qube makes available to the Committee in m-Qube's ordinary course of business and without receiving any information from, or entering into any contractual relationships with, wireless service providers." DAO at 5.
- DAO footnote 6 states that the committees will be "required to refund to m-Qube any factored contributions that it receives in excess of the amounts later received by m-Qube from wireless service providers, to post deposits to guard against such overpayments, or to have overpayments offset against future factored payments." Thus all of the compliance burdens and financial risks will be born by the committees, not the connection aggregator vendors.

In order to provide committee treasurers with the information necessary to satisfy their compliance responsibilities under the Federal Election Campaign Act and Commission regulations, the Commission must make clear in this advisory opinion that the connection aggregator vendors must be liable for collecting the information from the contributor and for ensuring that the contribution satisfies the source prohibitions and contribution limitations on the front end of the transactions. Otherwise, measures will be disadvantaged by being forced to refund contributions at great expense to the committees due to the potentially large number of donations accumulated by the connection aggregators. If the Commission elects to adopt the compliance regime outlined in the current draft, it must provide committees and their treasurers

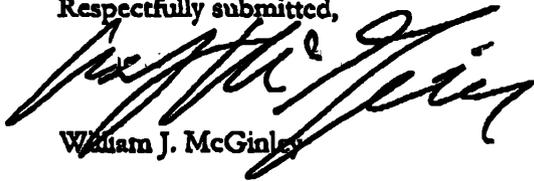
**PATTON BOGGS****Anthony Herman, Esquire****August 7, 2012****Page 3**

with immunity in the audit and enforcement processes until the Commission has adopted a rule to govern these types of transactions. Fundamental fairness requires no less.

As stated in our previous comment, the issues raised in the AOR will have a significant impact on all political committees, and their treasurers, and should be answered through the rulemaking process. As stated in the AOR, the Commission specifically reserved comment "as to particulars of political committees' recordkeeping and reporting requirements under the Act and Commission regulations" in FEC AO 2012-17. See AOR at 1 n.1; FEC AO 2012-17 at 6 n.10. Political committee treasurers and the compliance professional community need practical, detailed guidance so that they can satisfy their compliance, recordkeeping and reporting requirements under the Act and Commission regulations – guidance that is best provided through the rulemaking process. The rulemaking process – including the notice and comment requirements – will encourage participation in the decision-making process from the relevant stakeholders, including the opportunity to hear testimony from political committees and vendors who will be directly affected by the outcome of this request.

Please do not hesitate to contact me with any questions.

Respectfully submitted,



William J. McGinley

cc: The Honorable Caroline C. Hunter  
Chair  
The Honorable Ellen L. Weintraub  
Vice Chair  
The Honorable Cynthia L. Bauerly  
Commissioner  
The Honorable Donald F. McGahn II  
Commissioner  
The Honorable Matthew S. Petersen  
Commissioner  
The Honorable Steven T. Walther  
Commissioner