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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

December 5, 2012

**AGENDA ITEM**

MEMORANDUM

TO: The Commission

For Meeting of 12-6-12

FROM: Anthony Herman  
General Counsel

*AH*

**SUBMITTED LATE**

Kevin Deeley  
Acting Associate General Counsel

*NFS for KD*

Amy Rothstein  
Assistant General Counsel

*NFS for ALR*

Neven Stipanovic  
Attorney

*NFS*

Subject: AO 2012-34 (Freedom PAC and Friends of Mike H)  
(Revised Draft A)

Attached is a proposed draft of the subject advisory opinion. We have been asked to have this draft placed on the Open Session agenda for December 6, 2012.

Attachment

1 ADVISORY OPINION 2012-34

2

3 Laurence A. Levy, Esq.  
4 Bracewell & Giuliani LLP  
5 1251 Avenue of the Americas  
6 49<sup>th</sup> Floor  
7 New York, NY 10020-1104

**REVISED DRAFT A**

8

9 Dear Mr. Levy:

10 We are responding to your advisory opinion request on behalf of Freedom PAC  
11 and Friends of Mike H, concerning the application of the Federal Election Campaign Act  
12 (the "Act") and Commission regulations to a proposed contribution by Friends of Mike  
13 H, the principal campaign committee of former Federal candidate Mike Haridopolos, to  
14 Freedom PAC, an independent expenditure-only committee.

15 The Commission concludes that Friends of Mike H may use campaign funds  
16 raised for Mr. Haridopolos' primary election to make a contribution of \$10,000 or more  
17 to Freedom PAC.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter received on  
20 September 24, email received on October 2, 2012, and publicly available information on  
21 the Commission's website.

22 Freedom PAC is a nonconnected political committee that makes only independent  
23 expenditures. It does not make contributions to Federal candidates or political  
24 committees. Freedom PAC makes decisions about the raising and spending of its funds  
25 "without the donor providing advice [or] guidance, or having any operational control."

26 Friends of Mike H is the principal campaign committee of Mike Haridopolos.

27 Mike Haridopolos was a candidate in Florida's 2012 Senate primary election but

1 withdrew his candidacy before the primary election, which was held on August 14, 2012.  
2 He was not a candidate in the 2012 general election and does not hold any Federal office.

3 Friends of Mike H reported having more than \$1 million cash on hand as of June  
4 30, 2012 and would like to contribute some of those funds to Freedom PAC.<sup>1</sup> Friends of  
5 Mike H will contribute only funds received for Mr. Haridopolos's primary election  
6 campaign. The requestors represent that Friends of Mike H will not direct, control, or in  
7 any way be involved in the specific content, timing, or target audience of Freedom PAC's  
8 communications.

9 ***Question Presented***

- 10 1. *May Freedom PAC accept contributions of \$10,000 or more in excess funds from*  
11 *Friends of Mike H, after the candidate has withdrawn from the election and is no*  
12 *longer seeking Federal office?*  
13  
14 2. *If the answer to Question 1 is no, may Freedom PAC accept a contribution of up*  
15 *to \$5,000 from the aforementioned committee?*  
16

17 ***Legal Analysis and Conclusions***

18  
19 *Question 1: May Freedom PAC accept contributions of \$10,000 or more in excess funds*  
20 *from Friends of Mike H, after the candidate has withdrawn from the election and is no*  
21 *longer seeking Federal office?*  
22

23 Yes, Freedom PAC may accept contributions of \$10,000 or more in excess funds  
24 from Friends of Mike H.

25 The Act and Commission regulations identify six categories of permissible uses  
26 of contributions accepted by a Federal candidate, including "for any other lawful  
27 purpose." 2 U.S.C. 439a(a)(6); 11 CFR 113.2(e). A principal campaign committee's use  
28 of its campaign funds to make contributions to other political committees is a lawful

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<sup>1</sup> See Report of Receipts and Disbursements by Friends of Mike H, July 9, 2012,  
<http://images.nictusa.com/pdf/424/12020490424/12020490424.pdf>.

1 purpose. *See* 2 U.S.C. 441a(a)(1)(C); 11 CFR 110.1(d); *see also, e.g.*, Advisory Opinions  
2 2012-06 (RickPerry.org) (funding the activities of a converted nonconnected committee  
3 with remaining primary election funds); 1988-41 (Stratton) (transfer of campaign funds  
4 from a principal campaign committee to other political committees).

5 Contributions accepted by a candidate may not, however, be converted to the  
6 “personal use” of any person. 2 U.S.C. 439a(b)(1); 11 CFR 113.1(g). Conversion to  
7 personal use occurs when funds in a campaign account of a present or former candidate  
8 are used “to fulfill a commitment, obligation or expense of any person that would exist  
9 irrespective of the candidate’s campaign or duties as a Federal officeholder.” 11 CFR  
10 113.1(g); *see also* 2 U.S.C. 439a(b)(2).

11 Friends of Mike H plans to use campaign funds for a lawful purpose – that is, to  
12 make a contribution to Freedom PAC, a registered independent expenditure-only  
13 committee. Based on the facts of the request, there is no indication that the proposed  
14 contribution would result in the conversion of campaign funds to personal use or any  
15 other unlawful purpose. Accordingly, Friends of Mike H may use campaign funds  
16 accepted for Mr. Haridopoulos’ primary election to make a contribution to Freedom PAC.

17 Contributions to nonconnected political committees are limited under the Act to  
18 \$5,000 per year. 2 U.S.C. 441a(a)(1). Courts have held, however, that the Act’s amount  
19 limitations are generally unconstitutional as applied to contributions that will be used to  
20 finance independent activity. *See SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir.  
21 2010) (*en banc*); *EMILY’s List v. FEC*, 581 F.3d 1, 11 (D.C. Cir. 2009); *see also*  
22 Advisory Opinion 2010-11 (Commonsense Ten) (concluding that political committees  
23 may make unlimited contributions to independent expenditure-only committees).

1           The requestors ask whether Friends of Mike H may make a contribution in excess  
2 of \$10,000 to Freedom PAC. Freedom PAC is a nonconnected, independent expenditure-  
3 only political committee. The funds contributed by Friends of Mike H to Freedom PAC  
4 will be used to fund independent activity. Accordingly, the contribution from Friends of  
5 Mike H to Freedom PAC may be in an amount of \$10,000 or more.

6 *Question 2: If the answer to Question 1 is no, may Freedom PAC accept a contribution of*  
7 *up to \$5,000 from the aforementioned committee?*

8  
9           Because the Commission answered Question 1 in the affirmative, Question 2 is  
10 moot.

11           This response constitutes an advisory opinion concerning the application of the  
12 Act and Commission regulations to the specific transaction or activity set forth in your  
13 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any  
14 of the facts or assumptions presented, and such facts or assumptions are material to a  
15 conclusion presented in this advisory opinion, then the requestors may not rely on that  
16 conclusion as support for its proposed activity. Any person involved in any specific  
17 transaction or activity which is indistinguishable in all its material aspects from the  
18 transaction or activity with respect to which this advisory opinion is rendered may rely on  
19 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis in  
20 conclusions in this advisory opinion may be affected by subsequent developments in the  
21 law including, but not limited to, statutes, regulations, advisory opinions, and case law.

22

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

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On behalf of the Commission,

Caroline C. Hunter  
Chair