

Make Your Laws PAC, Inc. (FEC ID # C00529743)
% Nick Staddon, Secretary
122 Pinecrest Rd.
Durham, NC 27705

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, DC 20463

Re: MYL PAC Advisory Opinion Request re. Foreign National Intellectual Property contributions

March 10, 2015

Dear Commissioners:

Please accept the following comments on AOR 2014-20 draft C. Aside from stylistic changes, Draft C is substantially the same as draft B-2, except the two issues below. We broadly support the adoption of either Draft B-2 or C, but would ask the Commission to revise and adopt Draft C as follows.

1. Context regarding the contribution being inextricable from the service was removed.

Draft B-2 has this text, deleted from draft C:

"The requestor states that, if it may not obtain the intellectual property rights in such items, it will not be able to use those items, or even accept the foreign nationals' volunteer services. AOR at 4. Such a result here is contrary to the Commission's prior interpretations of the Act and Commission regulations, which have permitted foreign nationals to provide volunteer services, consistent with the Act's volunteer services exception."

While we would support a draft without this text, we suggest that it would be better to leave in, or even to make it more explicitly a part of the AO's premises.

We believe that the fact that a contribution of IP is inextricably bound up in the volunteer services provided to us is an important part of the material facts and assumptions relied upon by this AOR, and should be documented for the benefit of future Commissions' interpretation.

Including this as part of the material facts of the AO would help to ensure that it is not interpreted too broadly in the future. We are not asking that a foreign national's contributions that are entirely *separable* from purely volunteer services be permitted, and believe they are not.

2. Draft C's statement of federal preemption drops discussion of legislative history and adds an interpretation of 11 CFR 110.20.

We agree with the Commission's drafts B-2 and C with regard to federal preemption. We have no position regarding the discussion or omission of legislative history.

Our only point of concern is technical. Draft C adds this language:

"Consistent with congressional intent, and in light of the uniqueness of the foreign national prohibition, the Commission interprets the definition of "donation" in 11 C.F.R. § 110.20 as essentially equivalent to the definition of "contribution."

Though we agree in principle, we suggest that the Commission employ consistent definitions throughout its analysis.

- A. The phrase "the definition of 'contribution'" should be followed by a regulatory citation to the definition referred to (e.g. 11 CFR 100.51(a)).
- B. 'Contribution' appears in 11 CFR 110.20 itself, right next to 'donation'. They cannot be defined to mean the same thing.

Equating the two words would make either 'donation' or 'contribution' surplusage — both in 11 CFR 110.20 and 2 USC 441e(a)(1)(A). The Commission should not consider equivalent two terms that Congress has distinguished.

Equating 'contribution' with 'donation' could also cause confusion regarding other parts of the Commissions' regulations (e.g. between in-kind contributions and monetary donations).

- C. 11 CFR 110.20(a)(2): "*Donation* has the same meaning as in 11 CFR 300.2(e)."

11 CFR 300.2(e): "*Donation*. For purposes of part 300, *donation* means a payment, gift, subscription, loan, advance, deposit, or anything of value given to a person, but does not include contributions."

The language quoted above conflicts with this regulatory definition, which explicitly *excludes* 'contributions'. The Commission could of course amend 110.20(a)(2) by rulemaking, but we believe that that is unnecessary.

We suggest replacing the quoted text above with the following:

"Consistent with congressional intent, and in light of the uniqueness of the foreign national prohibition, the Commission interprets the words 'contribution', 'expenditure', and 'independent expenditure' in 11 C.F.R. § 110.20 to be defined by 11 C.F.R. § 100.51(a), 11 C.F.R. § 100.110(a), and 11 C.F.R. § 100.113, respectively, with the exceptions defined in 11 C.F.R. § 100.71 and 11 C.F.R. § 100.130."

This language leaves alone the terms already defined in 11 CFR 110.20(a), and instead states that the Commission interprets the remaining terms as defined the same way they normally are throughout the rest of the Commission's regulations.

We believe that our AOR deals only with (exempt) 'contributions', not 'donations'.

Again, in principle we endorse *both* drafts B-2 and C. The above are simply concerns about the details of the language used, which we believe are easily addressed, as suggested above.

We would appreciate if the Commission, in issuing alternate or revised AOR drafts, would provide redlines of the changes as well, to make it easier for requesters and the public to notice the differences between various drafts.

As always, please feel free to contact me if you have any questions or comments. I look forward to discussing this AOR with the Commission at its next open meeting.

Sincerely,
Sai¹
President & Treasurer
Make Your Laws PAC, Inc. (MYL PAC)

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¹ I should note that I wrote this comment, but I am *not* a lawyer, and this is not legal opinion or advice.

I believe that my comments in part 2 above regarding statutory interpretation and regulatory law are correct, but I defer to the opinion of the Commission's Office of General Counsel.