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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 15-10-B-2**  
**AGENDA ITEM**  
**For meeting of March 5, 2015**  
**SUBMITTED LATE**

March 5, 2015

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson  
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Subject: AO 2014-20 (Make Your Laws PAC) Revised Draft B

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 5:00 pm (Eastern Time) on March 4, 2015.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

11 Dear Sai:

13 We are responding to the advisory opinion request that you submitted on behalf of Make

14 Your Laws PAC, Inc. concerning the application of the Federal Election Campaign Act, 52

15 U.S.C. §§ 30101-46 (formerly 2 U.S.C. §§ 431-57) (the “Act”), and Commission regulations to

16 volunteer services provided by foreign nationals. The Commission concludes that the requestor

17 may accept uncompensated services from foreign national volunteers as proposed.

18 ***Background***

19 The facts presented in this advisory opinion are based on the requestor’s advisory opinion

20 request (“AOR”) received on November 24, 2014.

21 The requestor is a nonconnected political committee. The requestor and two other

22 entities (collectively, the “MYL Group”) jointly own the rights to the code, design, graphics,

23 trademarks, and trade dress<sup>1</sup> (collectively, “intellectual property”) of the requestor’s website and

24 brand. Nearly all of the code is open source<sup>2</sup> and open-source licensed.<sup>3</sup>

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<sup>1</sup> The requestor describes “trade dress” as including branding and logos. AOR at 2.

<sup>2</sup> The requestor describes “open source” to mean that the code is available online “for anyone to see.” AOR at 2 n.2.

<sup>3</sup> According to the requestor, “[b]roadly speaking, this [open source license] means a copyright license that permits anyone to re-use software so long as they give credit and publish any derivative works under the same terms.” AOR at 2 n.3; *see also Open Source License*, OPEN SOURCE INITIATIVE, <http://opensource.org/licenses> (last visited Dec. 14, 2014).

1           “To date, all services in creating the [intellectual property] have been provided by unpaid  
2 volunteers who are United States citizens.” AOR at 2. The requestor states that when such  
3 services might result in the creation of intellectual property, the MYL Group asks volunteers to  
4 sign an intellectual property assignment to transfer all rights and ownership in the intellectual  
5 property to the MYL Group. The volunteers, however, receive a perpetual license from the  
6 MYL Group to use their work as they see fit, unless the MYL Group determines that there would  
7 be an impact on its trademark or trade dress.

8           The requestor would like to accept the same kind of volunteer services from foreign  
9 nationals as the MYL Group currently receives from United States citizens, and under the same  
10 terms. These services would be “primarily aimed at improving the MYL Group’s code,” among  
11 other things. AOR at 4. Because this code is open source “and *constantly* available for  
12 collaboration,” the requestor expects to receive these services on an “*ad hoc*, continuous basis.”  
13 *Id.* (emphasis in original). The requestor asks the Commission to assume that all requirements  
14 of 52 U.S.C. § 30101(8)(B) and (9)(B) (formerly 2 U.S.C. § 431(8)(B) and (9)(B)) are met:  
15 “*E.g.* out of pocket costs such as printing, distribution, web hosting, etc. will be paid for by [the  
16 requestor]; volunteers will not be ‘compensated’ by anyone . . . but may use their own equipment  
17 (such as a laptop) in providing such services; [the requestor] will not act as an agent of any  
18 foreign national nor permit any foreign national to participate in its operations, make decisions  
19 regarding contributions or expenditures, etc. . . .” AOR at 3 n.6.

20 ***Question Presented***

21           *May the requestor accept the assignment of any intellectual property in unpaid volunteer*  
22 *services performed by foreign nationals and provided in accordance with 52 U.S.C.*  
23 *§ 30101(8)(B)(i) (formerly 2 U.S.C. § 431(8)(B)(i))?*

1 ***Legal Analysis and Conclusions***

2 Yes, the requestor may accept uncompensated services from foreign nationals as  
3 proposed.

4 The Act prohibits any foreign national from making “a contribution or donation of money  
5 or other thing of value” in connection with a federal, state, or local election.<sup>4</sup> 52 U.S.C. §  
6 30121(a)(1)(A) (formerly 2 U.S.C. § 441e(a)(1)(A)); *see also* 11 C.F.R. § 110.20(b). The Act  
7 also prohibits any person from “solicit[ing], accept[ing], or receiv[ing]” such a contribution or  
8 donation from a foreign national.<sup>5</sup> 52 U.S.C. § 30121(a)(2) (formerly 2 U.S.C. § 441e(a)(2)); *see*  
9 *also* 11 C.F.R. § 110.20(g).

10 The Act and Commission regulations also provide that the term “contribution” does not  
11 include “the value of services provided without compensation by any individual who volunteers  
12 on behalf of a candidate or political committee.” 52 U.S.C. § 30101(8)(B)(i) (formerly 2 U.S.C.  
13 § 431(8)(B)(i)); *see also* 11 C.F.R. § 100.74. Applying this “volunteer services exception” in the  
14 context of foreign nationals, the Commission has concluded that a foreign national entertainer  
15 who performed without compensation at a candidate’s fundraiser did not provide a contribution  
16 to that candidate. *See* Factual & Legal Analysis at 6, MUR 5987, 5995, and 6015 (Hillary  
17 Clinton For President) (Feb. 30, 2009), <http://eqs.fec.gov/eqsdocsMUR/29044230266.pdf>.  
18 Similarly, in Advisory Opinion 2004-26 (Weller), the Commission found that a foreign national

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<sup>4</sup> A “foreign national” is “an individual who is not a citizen of the United States or a national of the United States . . . and who is not lawfully admitted for permanent residence.” 52 U.S.C. § 30121(b)(2) (formerly 2 U.S.C. § 441e(b)(2)); *see also* 11 C.F.R. § 110.20(a)(3)(ii).

<sup>5</sup> Congress added the prohibition on donations by foreign nationals to 52 U.S.C. § 30121(a)(1)(A) (then 2 U.S.C. § 441e) in the Bipartisan Campaign Reform Act of 2002. Pub. L. No. 107-155, § 303, 116 Stat. 81, 96. That addition followed several requests by the Commission for Congress to amend the Act “to clarify that the statutory prohibition on foreign national contributions extends to State and local elections.” Contribution Limitations and Prohibitions, 67 Fed. Reg. 69,928, 69,944 (Nov. 19, 2002). As the Commission has noted previously, the amendment “prohibits foreign nationals from making . . . any contribution in connection with federal, state or local elections.” *Id.* (quoting Statement of Sen. Feingold, 148 Cong. Rec. S1991-97 (daily ed. Mar. 18, 2002)).

1 would not provide a contribution to a candidate by participating without compensation in certain  
2 of the candidate’s campaign-related activities, including the solicitation of contributions,  
3 attendance at political events, and meeting with the candidate and his campaign committee.  
4 Because the services would not be contributions, they would not be subject to the prohibition on  
5 contributions from foreign nationals. Advisory Opinion 2004-26 (Weller) at 2; *see also*  
6 Advisory Opinion 2007-22 (Hurysz) at 3 (“[T]he value of volunteer services provided to your  
7 campaign by Canadian nationals would not constitute a prohibited in-kind contribution to your  
8 campaign.”); Advisory Opinion 1987-25 (Otaola) at 1 (concluding that foreign national’s “work  
9 as a volunteer without compensation would not . . . result in a contribution to a candidate because  
10 the value of uncompensated volunteer services is specifically exempted from the definition of  
11 contribution under the Act”).

12 For the same reasons, to the extent that a foreign national volunteers his or her  
13 uncompensated personal services to the requestor to help design the requestor’s website code,  
14 logos, “trademarks,” and “trade dress,” the value of those services would not constitute an  
15 unlawful foreign national contribution or donation because they are exempt from the definition  
16 of “contribution” under the volunteer services exemption.<sup>6</sup>

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<sup>6</sup> Consistent with the legislative history indicating that Congress expanded section 30121 to apply to state and local “donations” in the same manner as that section had previously applied to federal “contributions,” *see supra* n.5, the Commission’s definition of “donation” in this context is essentially equivalent to the definition of “contribution.” Compare 11 C.F.R. § 300.2(e) (incorporated by reference at 11 C.F.R. § 110.20(a)(2)) (defining “donation” as “payment, gift, subscription, loan, advance, deposit, or anything of value given to a person”), with 11 C.F.R. § 100.52(a) (defining “contribution” as “gift, subscription, loan . . . , advance, or deposit of money or anything of value made by any person”). While the Commission has noted that certain exemptions from the definition of “contribution” cannot necessarily be applied to donations because of differences among states’ laws, *see Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 Fed. Reg. 49,064, 49,085 (July 29, 2002), the foreign national prohibition is a nationwide provision that does not vary among the states. Thus, the volunteer services exemption applies uniformly to federal contributions and state and local donations by foreign nationals.

1           The fact that the requestor may obtain rights to intellectual property resulting from the  
2 foreign nationals' volunteer services does not change the result. As discussed above, the  
3 Commission has consistently interpreted the Act and Commission regulations as permitting  
4 foreign nationals to provide volunteer services to political committees. *See* Advisory Opinion  
5 2004-26 (Weller) at 2 (finding that foreign nationals' uncompensated participation in campaign-  
6 related activities are not contributions); Advisory Opinion 2007-22 (Hurysz) at 3 (same);  
7 Advisory Opinion 1987-25 (Otaola) at 2 (“[A]ny individual, including a foreign national, may  
8 volunteer his or her uncompensated services to a candidate without making a contribution to that  
9 candidate.”); Factual & Legal Analysis at 2-6, MUR 5987, 5995, and 6015 (Hillary Clinton For  
10 President).

11           Here, the volunteer services requestor proposes to accept from foreign nationals are  
12 intended to, and will very likely result in, the creation of website code, logos, and other items.  
13 The requestor states that, if it may not obtain the intellectual property rights in such items, it will  
14 not be able to use those items, or even accept the foreign nationals' volunteer services. AOR at  
15 4. Such a result here is contrary to the Commission's prior interpretations of the Act and  
16 Commission regulations, which have permitted foreign nationals to provide volunteer services,  
17 consistent with the Act's volunteer services exception. Because the requestor here proposes to  
18 receive only benefits resulting directly and exclusively from the provision of volunteer services  
19 by foreign nationals, the Commission concludes that the proposal would not result in a  
20 prohibited contribution.

1           In reaching this conclusion, the Commission supersedes Advisory Opinion 1981-51  
2 (Metzenbaum).<sup>7</sup> A statute must be interpreted “as a symmetrical and coherent regulatory  
3 scheme.” *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (U.S.  
4 2000) (internal citations and quotations omitted). In Metzenbaum, however, the Commission did  
5 not construe the Act’s foreign national contribution ban and volunteer services exception in  
6 conjunction with each other. To the extent that MURs 5987, 5996, and 6015 (Hillary Clinton  
7 For President) sought to distinguish Advisory Opinion 1981-51 by making a distinction between  
8 the provision of volunteer services by a foreign national and the creation and donation of a  
9 tangible good, the Commission is also not adopting that reasoning.

10           This response constitutes an advisory opinion concerning the application of the Act and  
11 Commission regulations to the specific transaction or activity set forth in your request. *See* 52  
12 U.S.C. § 30108 (formerly 2 U.S.C. § 437f). The Commission emphasizes that, if there is a  
13 change in any of the facts or assumptions presented, and such facts or assumptions are material  
14 to a conclusion presented in this advisory opinion, then the requestor may not rely on that  
15 conclusion as support for its proposed activity. Any person involved in any specific transaction  
16 or activity that is indistinguishable in all its material aspects from the transaction or activity with  
17 respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 52  
18 U.S.C. § 30108(c)(1)(B) (formerly 2 U.S.C. § 437f(c)(1)(B)). Please note that the analysis or  
19 conclusions in this advisory opinion may be affected by subsequent developments in the law  
20 including, but not limited to, statutes, regulations, advisory opinions, and case law. Any

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<sup>7</sup> The Commission previously considered superseding Metzenbaum in Advisory Opinion 1987-25 (Otaola), and two Commissioners supported such a decision. Advisory Opinion 1987-25 (Otaola) at 2.

1 advisory opinions and enforcement materials cited herein are available on the Commission's  
2 website.

3 On behalf of the Commission,

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Ann M. Ravel  
Chair