



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**MEMORANDUM**

**TO:** The Commission

**FROM:** Commission Secretary's Office 

**DATE:** October 29, 2015

**SUBJECT:** Comments on Draft AO 2015-09  
(Senate Majority PAC and House Majority PAC)

**Attached are timely submitted comments received from Dan Backer. This matter is on the October 29, 2015 Open Meeting Agenda.**

**Attachment**

October 29, 2015

Daniel Petalas, Esquire  
Acting General Counsel  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463

RE: Comment on Draft Advisory Opinion Request 2015-9 DRAFT A

Dear Mr. Petalas,

The Commission, having made the above referenced Advisory Opinion Draft available for public comment, should hold over discussion of AO 2015-09 until a future meeting and extend the deadline for public comment accordingly, as it has not granted adequate time for the public to actually read and comment on AO 2015-09 Draft A.

The Commission has only allowed people<sup>1</sup> who are members of the general public barely seventeen hours, mostly overnight, to assess and respond to the nearly 30-page draft which was released at 3:51 PM the afternoon before the 10:00 AM meeting at which it will be discussed, with a deadline for comments of 9:00 AM.<sup>2</sup> The timing of the distribution of the draft AO is an unfortunate indication of a lack of engagement with the general public and is not in accordance with the fundamental goals underlying the law, to encourage public participation in crafting the rules governing our electoral process. While 11 CFR §112.3(a) and (b) provide only that any member of the public “may submit written comments concerning advisory opinion requests made public at the Commission”, and such comments “shall be submitted within 10 calendar days following the date the request is made public at the Commission,” having made Draft A available for additional public comment, it would be in-keeping with the “spirit” of the law to provide adequate time for precisely the public comment requested. Particularly since certain Commissioners have often pointed to the spirit of the law as a basis for regulation, it would be incongruous for them to exorcise that belief when it comes to facilitating public participation that has been specifically requested in this instance.

Perhaps the Commission, or its Chair, ought to make a greater effort to engage people who are members of the general public in the Commission’s decision-making process, including exercising control over scheduling to ensure adequate time for people who are members of the general public to become aware of, and comment upon, substantive impacts on their free speech.

Respectfully submitted,

/s/

Dan Backer  
DB Capitol Strategies PLLC

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<sup>1</sup> As defined at 52 USC §31010(11).

<sup>2</sup> Draft B was issued by the Commission at 6:43 PM, with the same call for public comment, and even less time to make it.