



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Commission Secretary's Office 

DATE: November 9, 2015

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

Attached are timely submitted comments received from Nick Harper. This matter is on the November 10, 2015 Open Meeting Agenda.

Attachment



**Comments on AOR 2015-09 and Draft AOs 2015-09 D and E
Nicholas Harper**

to:

ao

11/09/2015 04:56 AM

Hide Details

From: Nicholas Harper <nharperesq@gmail.com>

To: ao@fec.gov,

1 Attachment



Comment on AOR 2015-09 and Drafts D and E.pdf

Please find attached comments regarding AOR 2015-09 (Senate Majority PAC and House Majority PAC) and Draft AOs 2015-09 D and E.

Thank you,

Nick Harper

11/9/2015

November 9, 2015

By Email

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

Re: Comments on Draft Advisory Opinions 2015-09 D and E

Dear Mr. Petalas:

I write to comment on Advisory Opinion Request 2015-09 (Senate Majority PAC and House Majority PAC) and Draft Advisory Opinions 2015-09 D and E. I write on the behalf of only myself as a citizen and young attorney interested in political law and the work of the Federal Election Commission.

Like Campaign Legal Center and Democracy 21, I believe that this AOR is invalid. The Requestors have not met that burden for the reasons described in the comments from Campaign Legal Center and Democracy 21. I agree generally with all of their comments.

I would like to provide additional comments based on the open meeting on October 29, 2015, and the new draft advisory opinions.

Mr. Elias asserted at the open meeting that the activities that the AOR describes are not hypothetical because his clients intend to take the actions described. I have no doubt that the Senate Majority PAC and House Majority PAC intend to take every strategic advantage to win elections in their respective houses of Congress, including the tactics that the AOR describes. Yet this assertion, however true, does not negate the fact that the AOR discusses unnamed, hypothetical "Contenders" who are not party to the AOR. The AOR would be more appropriate if submitted with actual, named individuals.

As a further example, Question 12 is a general question of interpretation, and Mr. Elias's comments at the meeting reflect this fact. The question as initially phrased seems proper, but the AOR then asks, "[W]hat would the minimum number of expected attendees be?" AOR 2015-09 at 19. This is a general question of interpretation, one that would require rulemaking (as Draft E notes). Mr. Elias sought an answer to this general question of interpretation at the October 29 meeting when he asserted that Draft B's answer to Question 12 is insufficient because it supposedly "doesn't answer the question" by failing to define a minimum number of attendees. Again, I believe the logic of Draft E is correct

that defining an exact minimum number would require rulemaking. However, Draft E goes too far by assuming the AOR warrants a substantive response at all.

I am empathetic to the concerns of the Requestors. Like Campaign Legal Center, Democracy 21, and the Requestors themselves, I have serious doubts of the legality of the actions that the AOR describes. Draft E demonstrates the issues of illegality. I also believe that the Senate Majority PAC and House Majority PAC deserve answers to their questions. There is freedom in clarity of the law. But to provide that clarity, the Commission needs either to receive a proper AOR or to begin rulemaking procedures.

For the reasons above, I hope the Commission will adopt Advisory Opinion Draft D.

Sincerely,

/s/ Nick Harper

Nick Harper

Minneapolis, MN 55408