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For meeting of November 10, 2015
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November 5, 2015

MEMORANDUM

TO: The Commission

FROM: Daniel A. Petalas *DAP*
Acting General Counsel

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Assistant General Counsel

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Subject: AO 2015-09 (Senate Majority PAC and House Majority PAC)
Draft D

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 12:00 pm (Eastern Time) on November 9, 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

1 ADVISORY OPINION 2015-09

2

3 Marc E. Elias, Esq.

4 Ezra W. Reese, Esq.

5 Jonathan S. Berkon, Esq.

6 Rachel L. Jacobs, Esq.

7 Perkins Coie LLP

8 700 13th Street, NW

9 Suite 600

10 Washington, DC 20005-3960

11

12 Dear Messrs. Elias, Reese, Berkon and Ms. Jacobs:

DRAFT D

13 We are responding to your advisory opinion request on behalf of Senate Majority PAC
14 and House Majority PAC (collectively, “Requestors”) concerning the application of the Federal
15 Election Campaign Act, 52 U.S.C. §§ 30101-46 (the “Act”), and Commission regulations to
16 Requestors’ proposed activities. Requestors ask 12 questions about activities involving
17 individuals contemplating federal candidacy (“prospective candidates”), individuals who are
18 federal candidates, and certain independent-expenditure-only political committees. As discussed
19 below, the Commission concludes that your questions do not satisfy the requirements of 11
20 C.F.R. part 112 and thus the Commission is unable to issue an advisory opinion in response to
21 them.

22 ***Background***

23 The facts presented in this advisory opinion are based on your letter received on
24 September 11, 2015 (the “AOR”).

25 Requestors are registered with the Commission as independent-expenditure-only political
26 committees (commonly referred to as “super PACs”). Senate Majority PAC makes independent
27 expenditures in support of Democratic candidates for the U.S. Senate, and House Majority PAC
28 makes independent expenditures in support of Democratic candidates for the U.S. House of
29 Representatives. AOR at AOR001. When Requestors registered with the Commission as super

1 PACs, they represented that they planned to “raise funds in unlimited amounts” but would “not
2 use those funds to make contributions, whether direct, in-kind, or via coordinated
3 communications to federal candidates or committees.” AOR001 n.1; Letter from Senate
4 Majority PAC, Misc. Rep. to FEC (July 27, 2010); House Majority PAC, FEC Form 1 at 1 (Apr.
5 11, 2011).¹

6 Requestors “would consider working closely with [prospective candidates] and/or their
7 agents, including establishing single-candidate Super PACs” (hereinafter, the “Single-Candidate
8 Committees”). AOR004. The Single-Candidate Committees would raise funds in unlimited
9 amounts, including from corporations and labor organizations, to “support the [prospective
10 candidates] if they decide to run for office.” *Id.* The Single-Candidate Committees would “work
11 closely” with Requestors to solicit, transfer, and spend funds in particular states, and would also
12 “work directly” with the prospective candidates.² *Id.*

13 The prospective candidates would “participate fully” in the Single-Candidate
14 Committees’ formation. *Id.* The prospective candidates would also select and appoint the
15 individuals who would control the Single-Candidate Committees. *Id.* “Allowing prospective
16 candidates to establish [the Single-Candidates Committees] and appoint their personnel would
17 put the prospective candidates’ direct imprimatur” on the Single-Candidate Committees, “which
18 would make it substantially easier . . . to raise and spend” funds. AOR005.

19 The prospective candidates would share “information about their strategic plans, projects,
20 activities, or needs” with Requestors and the Single-Candidate Committees. AOR006. This

¹ Senate Majority PAC initially formed under the name “Commonsense Ten” and subsequently changed its name to “Majority PAC” and then “Senate Majority PAC.” It was the requestor in Advisory Opinion 2010-11 (Commonsense Ten) and one of the requestors in Advisory Opinion 2011-12 (Majority PAC *et al.*).

² Requestors state that they would, “[i]f required,” identify the Single-Candidate Committees as affiliated committees on the relevant statements of organization. AOR004 n.12.

1 would include the prospective candidates' "input" regarding whether Requestors and the Single-
2 Candidate Committees should "sponsor positive advertising or negative advertising." *Id.* The
3 prospective candidates would also "share their campaign messaging and scheduling plans," so
4 that Requestors and the Single-Candidate Committees "can most efficiently complement the
5 campaigns' strategies with their own." *Id.* If the prospective candidates became candidates,
6 Requestors and the Single-Candidate Committees would use this information "immediately" in
7 public communications that would satisfy the "content prong" of the Commission's coordinated
8 communication regulation, 11 C.F.R. § 109.21(c). AOR006-07. Requestors and the Single-
9 Candidate Committees would also film the prospective candidates in a studio setting, discussing
10 their achievements, experiences, and qualifications for office. AOR007-08. If the prospective
11 candidates become candidates, Requestors and the Single-Candidate Committees would then use
12 that footage in public communications that satisfy the "content prong" of the coordinated
13 communication regulation.

14 Additionally, Requestors "would work" with the Single-Candidate Committees and
15 prospective candidates to establish new political organizations under section 527 of the Internal
16 Revenue Code. AOR008. These 527 organizations would raise nonfederal funds ("soft money")
17 to pay for certain "testing-the-waters" expenses for the prospective candidates, including travel
18 to meet with prospective voters, office space, research, consulting, and polling. AOR008.

19 Requestors are concerned that "working closely" with prospective candidates might
20 expose them to liability if those individuals were to be deemed candidates. AOR009, 011, 015.
21 Requestors thus plan to "stop working closely with these individuals" when they become
22 "candidates" under the Act. AOR009.

1 After the prospective candidates officially declare their candidacies, Requestors propose
2 to ask individuals associated with their campaigns to raise funds for Requestors and the Single-
3 Candidate Committees. Requestors would make this request of the campaigns' employees and
4 consultants — those who work primarily as fundraisers, as well as those who work primarily in
5 non-fundraising capacities — who have actual authority to solicit, receive, direct, transfer, or
6 spend funds on behalf of the federal candidates. Acting on their own and not at the request or
7 suggestion of the candidates, Requestors and the Single-Candidate Committees would ask each
8 such individual to become a fundraiser. They would ask the individuals to confirm that they had
9 not been asked to solicit soft money by the candidates or their agents before soliciting funds for
10 Requestors and the Single-Candidate Committees. Requestors represent that, during any
11 conversation with potential contributors, the individuals would be required to identify themselves
12 as fundraisers for Requestors or a Single-Candidate Committee, and not by their campaign titles,
13 and to state that they are soliciting contributions on their own and not at the direction of a
14 candidate or candidate's agent. Requestors also represent that the individuals would not be
15 permitted to use campaign resources (such as letterhead or email) to solicit soft money for
16 Requestors or the Single-Candidate Committees, or to solicit funds for a candidate's authorized
17 committee at the same time that they solicit funds for Requestors and the Single-Candidate
18 Committees.

19 Requestors propose to involve the candidates themselves in fundraisers at which funds are
20 solicited in excess of \$5000 per contributor or from corporations or labor organizations.
21 Requestors and the Single-Candidate Committees would send prospective attendees a written
22 invitation that would note the date and time of the fundraiser, identify the candidate as a "special
23 guest," and include a statement indicating that "[a]ll funds solicited in connection with this event

1 are by [Requestors or a Single-Candidate Committee], and not by [the candidate].” AOR019.

2 The program for the fundraiser would include an introduction by a host (or someone else) and

3 formal remarks by the candidate. The attending candidate would comply with 11 C.F.R.

4 § 300.64(b)(2) while at the fundraiser and would not disseminate publicity for, or invitations to,

5 the event.

6 ***Questions Presented***

7 1. *If an individual, who would not otherwise be a candidate, participates in the formation of a*
8 *Single-Candidate Committee (either directly or through agents), whose purpose is to support the*
9 *individual’s prospective candidacy, is the Single-Candidate Committee barred from raising or*
10 *spending soft money after the individual becomes a candidate? Would the answer be the same if*
11 *the individual or his or her agents ask, request, or appoint the individual who would exercise*
12 *control over the Single-Candidate Committee?*

13 2. *If individuals, who would not otherwise be candidates, share with the Single-Candidate*
14 *Committees and Requestors (either directly or through agents) information about the*
15 *individuals’ plans, projects, activities, or needs, may the Single-Candidate Committees and*
16 *Requestors use that information to create public communications that satisfy the “content”*
17 *prong under 11 C.F.R. § 109.21 and air after the individuals become candidates? If yes, does*
18 *there need to be a cooling-off period before the Single-Candidate Committees and Requestors*
19 *can use the information and if so, how long is the cooling off period?*

20 3. *May Requestors and the Single-Candidate Committees film footage in a studio of*
21 *individuals, who would not then otherwise be candidates, discussing their achievements,*
22 *experiences, and qualifications for office, and use that footage in public communications that*
23 *satisfy the “content prong” under 11 C.F.R. § 109.21?*

1 4. *May Requestors and the Single-Candidate Committees work with the individuals to*
2 *establish separate 527 organizations to pay for “testing-the-waters” activities with soft money?*

3 5. *Assuming that an individual has raised or spent more than \$5000 on “testing-the-waters”*
4 *activities, does an individual become a candidate when he or she makes a private determination*
5 *that he or she will run for federal office?*

6 6. *Assuming that an individual has raised or spent more than \$5000 on “testing-the-waters”*
7 *activities, does an individual “testing the waters” for six months or longer trigger candidacy?*
8 *Nine months? One year?*

9 7. *Would the activities described in Question 1 trigger candidacy once the Single-Candidate*
10 *Committee had raised more than \$5000? If not, would the Single-Candidate Committee’s*
11 *receipt of \$1 million, \$5 million, \$10 million, \$25 million, \$50 million, or \$100 million trigger an*
12 *individual’s candidacy?*

13 8. *Assuming that an individual has raised or spent more than \$5000 on “testing-the-waters”*
14 *activities, does an individual’s public statement that he or she is running for office trigger*
15 *candidacy, even if the individual subsequently attempts to withdraw that statement?*

16 9. *Assuming that an individual has raised or spent more than \$5000 on “testing-the-waters”*
17 *activities, if the individual or his or her advisers inform the media that the individual will*
18 *announce candidacy on a date certain in the future, has the individual triggered candidacy?*

19 10. *Assuming that an individual has raised or spent more than \$5000 on “testing-the-waters”*
20 *activities, would the activity described in Question 3 trigger candidacy?*

21 11. *Can individuals who are “agents” of candidates solicit soft money for Requestors and the*
22 *Single-Candidate Committees, as long as the steps described in the Request are taken to ensure*
23 *that the fundraising is not undertaken in their capacity as “agents”?*

1 12. Does 11 C.F.R. § 300.64 require that there be a minimum number of expected attendees
2 before the candidate can permissibly speak, attend, or be featured as a special guest?

3 ***Legal Analysis and Conclusions***

4 1. If an individual, who would not otherwise be a candidate, participates in the formation of a
5 Single-Candidate Committee (either directly or through agents), whose purpose is to support the
6 individual's prospective candidacy, is the Single-Candidate Committee barred from raising or
7 spending soft money after the individual becomes a candidate? Would the answer be the same if
8 the individual or his or her agents ask, request, or appoint the individual who would exercise
9 control over the Single-Candidate Committee?

10 The Commission is not answering Question 1 because it concerns the activities of third
11 parties and poses a hypothetical situation.

12 The Act authorizes the Commission to issue an advisory opinion in response to a
13 “complete written request” from a person about “a specific transaction or activity by the person.”
14 52 U.S.C. § 30108(a); *see also* 11 C.F.R. § 112.1(b). The Commission thus does not respond to
15 “[r]equests presenting a general question of interpretation, or posing a hypothetical situation, or
16 regarding the activities of third parties.” 11 C.F.R. § 112.1(b); *see also* H.R. Rep. 96-422 at 20
17 (“Advisory Opinions may not be issued in response to a request posing a hypothetical situation
18 or to a request regarding the activities of third parties.”).

19 Requestors are super PACs that make independent expenditures in support of House and
20 Senate candidates. They represent that, if the Commission “does not disapprove of the practice,
21 [Requestors] would consider working closely with individuals exploring candidacy . . . [to]
22 establish[] [Single-Candidate Committees] that would support the individuals’ candidacies if
23 they decide to run.” AOR004.

1 The question presented, however, is whether a separate, yet-to-be-established political
2 committee would be required to use federal funds if “an individual, who would not otherwise be
3 a candidate, participates in [its] formation.” On its face, this question solely concerns the
4 activities of a Single-Candidate Committee that is not a party to this AOR — indeed, that does
5 not currently exist — and about an unnamed individual who is also not a party to this request. In
6 Advisory Opinion 2011-12 (Majority PAC *et al.*), by contrast, Requestors proposed to host
7 fundraisers at which federal candidates, officeholders, and national party officials would solicit
8 funds on Requestors’ behalf, and asked the Commission to determine the amounts that could be
9 solicited. Requestors’ questions thus directly implicated their own proposed activities, unlike
10 here. *See also, e.g.*, Advisory Opinion Request 2011-09 (Facebook) (asking about application of
11 disclaimer requirements to advertisements that requestor proposed to sell). And while
12 Requestors represent that the Single-Candidate Committees “would work closely with
13 [Requestors] to solicit, transfer, and spend funds,” AOR004, that fact is immaterial to the
14 question presented: The proposed conduct of the Requestors is not the “specific transaction or
15 activity” of the candidates and Single-Candidate Committees about which the question asks.
16 Because Requestors do not propose to engage in the “specific transaction or activity” that they
17 ask about, 52 U.S.C. § 30108(a), this question is “regarding the activities of third parties.” 11
18 C.F.R. § 112.1(b).

19 The question, moreover, is hypothetical. The request focuses in large part on media
20 reports regarding the activities of other individuals and committees, while providing only a
21 vague outline of Requestors’ own prospective activities. Requestors represent that they “cannot
22 cede strategic advantage to their political competitors” and “wish to engage” in the referenced
23 activities, but the request merely states that the Requestors “anticipate” such conduct arising

1 again in the future and “would *consider*” engaging in the activities discussed in the media reports
2 if the Commission were to deem those activities lawful. AOR004 (emphasis added). Indeed,
3 nowhere in their request do Requestors represent that they have identified any individual who is
4 planning to exploring candidacy and planning to participate in the formation of a Single-
5 Candidate Committee as described in the request. Thus, the activity referenced in Question 1 is
6 hypothetical.

7 Accordingly, the Commission is not responding to Question 1.

8 2. *If individuals, who would not otherwise be candidates, share with the Single-Candidate*
9 *Committees and Requestors (either directly or through agents) information about the*
10 *individuals’ plans, projects, activities, or needs, may the Single-Candidate Committees and*
11 *Requestors use that information to create public communications that satisfy the “content”*
12 *prong under 11 C.F.R. § 109.21 and air after the individuals become candidates? If yes, does*
13 *there need to be a cooling-off period before the Single-Candidate Committees and Requestors*
14 *can use the information and if so, how long is the cooling off period?*

15 3. *May Requestors and the Single-Candidate Committees film footage in a studio of*
16 *individuals, who would not then otherwise be candidates, discussing their achievements,*
17 *experiences, and qualifications for office, and use that footage in public communications that*
18 *satisfy the “content prong” under 11 C.F.R. § 109.21?*

19 As discussed above, the Act authorizes the Commission to issue an advisory opinion in
20 response to a “complete written request” from a person about “a specific transaction or activity
21 by the person.” 52 U.S.C. § 30108(a); *see also* 11 C.F.R. § 112.1(b). The Commission thus
22 does not respond to “[r]equests presenting a general question of interpretation, or posing a
23 hypothetical situation, or regarding the activities of third parties.” 11 C.F.R. § 112.1(b); *see also*

1 H.R. Rep. 96-422 at 20 (“Advisory Opinions may not be issued in response to a request posing a
2 hypothetical situation or to a request regarding the activities of third parties.”).

3 The Commission is not answering Questions 2 and 3 because they concern the activities
4 of third parties and pose hypothetical situations. Requestors ask whether prospective candidates
5 may share information about their “plans, projects, activities, or needs” with the prospective
6 Single-Candidate Committees, as well as allow those Single-Candidate Committees to film the
7 prospective candidates discussing “achievements, experiences, and qualifications.” AOR006-08.
8 As no prospective candidates or Single-Candidate Committees are requestors here, the questions
9 “regard[] the activities of third parties.” 11 C.F.R. § 112.1(b).

10 Additionally, the question is hypothetical. The request does not represent that Requestors
11 have identified any individuals who are “prospective candidates” within the meaning of the
12 request and are planning either to share their “plans, projects, activities, or needs” with
13 Requestors or to be filmed by Requestors while discussing their “achievements, experiences, and
14 qualifications.”

15 Accordingly, the Commission is not responding to Questions 2 and 3.

16 4. *May Requestors and the Single-Candidate Committees work with the individuals to*
17 *establish separate 527 organizations to pay for “testing-the-waters” activities with soft money?*

18 The Commission is not answering Question 4 because it concerns the activities of third
19 parties and poses a hypothetical situation.

20 As discussed above, the Act authorizes the Commission to issue an advisory opinion in
21 response to a “complete written request” from a person about “a specific transaction or activity
22 by the person.” 52 U.S.C. § 30108(a); *see also* 11 C.F.R. § 112.1(b). The Commission thus
23 does not respond to “[r]equests presenting a general question of interpretation, or posing a

1 hypothetical situation, or regarding the activities of third parties.” 11 C.F.R. § 112.1(b); *see also*
2 H.R. Rep. 96-422 at 20 (“Advisory Opinions may not be issued in response to a request posing a
3 hypothetical situation or to a request regarding the activities of third parties.”).

4 In Question 4, Requestors ask whether the prospective candidates and Single-Candidate
5 Committees may establish section 527 organizations to pay for the prospective candidates’
6 testing-the-waters activities. AOR008. As no prospective candidates or Single-Candidate
7 Committees are requestors here, this question is therefore “regarding the activities of third
8 parties.” 11 C.F.R. § 112.1(b).

9 With respect to Requestors, the question is hypothetical. Requestors do not represent that
10 they have identified any actual individuals planning to “work with” Requestors to engage in the
11 relevant conduct. Additionally, Requestors represent that they “believe . . . such conduct is not
12 permissible” but “would *consider* following suit” if the Commission were to determine
13 otherwise. AOR008 (emphasis added). Mere contemplation does not demonstrate that
14 Requestors “plan[] to undertake or [are] presently undertaking” the activity about which they
15 ask. 11 C.F.R. § 112.1(b).

16 Accordingly, the Commission is not responding to Question 4.

17 5. *Assuming that an individual has raised or spent more than \$5000 on “testing-the-waters”*
18 *activities, does an individual become a candidate when he or she makes a private determination*
19 *that he or she will run for federal office?*

20 The Commission is not responding to Question 5 because it concerns the activities of
21 third parties and poses a hypothetical situation.

22 As discussed above, the Act authorizes the Commission to issue an advisory opinion in
23 response to a “complete written request” from a person about “a specific transaction or activity

1 by the person.” 52 U.S.C. § 30108(a); *see also* 11 C.F.R. § 112.1(b). The Commission thus
2 does not respond to “[r]equests presenting a general question of interpretation, or posing a
3 hypothetical situation, or regarding the activities of third parties.” 11 C.F.R. § 112.1(b); *see also*
4 H.R. Rep. 96-422 at 20 (“Advisory Opinions may not be issued in response to a request posing a
5 hypothetical situation or to a request regarding the activities of third parties.”).

6 The question presented here does not ask about a specific transaction or activity
7 involving Requestors. Rather, it asks the Commission to “assum[e]” that an unnamed individual
8 raises or spends over \$5000 on testing-the-waters activities, and then the question asks whether
9 such an individual would become a candidate if he or she were to make a private determination
10 to run for federal office. Absent some indication that such an individual actually exists and plans
11 to make such a “private determination,” the question poses a hypothetical situation. 11 C.F.R.
12 § 112.1(b). Even if the question were not hypothetical, it would concern the “activities of third
13 parties,” *i.e.*, the candidates who make the “private determinations.” As such, this question is
14 inappropriate for an advisory opinion.

15 Accordingly, the Commission is not responding to Question 5.

16 6. *Assuming that an individual has raised or spent more than \$5000 on “testing-the-waters”*
17 *activities, does an individual “testing the waters” for six months or longer trigger candidacy?*
18 *Nine months? One year?*

19 The Commission is not responding to Question 6 because it concerns the activities of
20 third parties and poses a hypothetical situation.

21 As discussed above, the Act authorizes the Commission to issue an advisory opinion in
22 response to a “complete written request” from a person about “a specific transaction or activity
23 by the person.” 52 U.S.C. § 30108(a); *see also* 11 C.F.R. § 112.1(b). The Commission thus

1 does not respond to “[r]equests presenting a general question of interpretation, or posing a
2 hypothetical situation, or regarding the activities of third parties.” 11 C.F.R. § 112.1(b); *see also*
3 H.R. Rep. 96-422 at 20 (“Advisory Opinions may not be issued in response to a request posing a
4 hypothetical situation or to a request regarding the activities of third parties.”).

5 The question presented here does not ask about a specific transaction or activity
6 involving Requestors. Rather, it asks the Commission to “assum[e]” that an unnamed individual
7 raises or spends more than \$5000 on testing-the-waters activities, and then the question asks
8 whether such an individual would become a candidate if he or she were to test the waters for
9 three different time periods. Absent some indication that such an individual actually exists, plans
10 to raise or spend more than \$5000 on “testing-the-waters” activities, and plans to test the waters
11 for those three time periods, the question poses a hypothetical situation. 11 C.F.R. § 112.1(b).
12 And even if the question were not hypothetical, it would concern the “activities of third parties,”
13 *i.e.*, the candidates who engage in the testing-the-waters activities. As such, this question is
14 inappropriate for an advisory opinion.

15 Accordingly, the Commission is not responding to Question 6.

16 7. *Would the activities described in Question 1³ trigger candidacy once the Single-Candidate*
17 *Committee had raised more than \$5000? If not, would the Single-Candidate Committee’s*
18 *receipt of \$1 million, \$5 million, \$10 million, \$25 million, \$50 million, or \$100 million trigger an*
19 *individual’s candidacy?*

³ The “activities described in Question 1” are as follows: “[A]n individual, who would not otherwise be a candidate, participates in the formation of a single-candidate super PAC (either directly or through agents), whose purpose is to support the individual’s prospective candidacy” and “the individual or his or her agents ask, request, or appoint the individual who would exercise control over the single-candidate super PAC.” AOR004-06.

1 The Commission is not answering Question 7 because it concerns third-party and
2 hypothetical activities.

3 As discussed above, the Act authorizes the Commission to issue an advisory opinion in
4 response to a “complete written request” from a person about “a specific transaction or activity
5 by the person.” 52 U.S.C. § 30108(a); *see also* 11 C.F.R. § 112.1(b). The Commission thus
6 does not consider “[r]equests presenting a general question of interpretation, or posing a
7 hypothetical situation, or regarding the activities of third parties.” 11 C.F.R. § 112.1(b); *see also*
8 H.R. Rep. 96-422 at 20 (“Advisory Opinions may not be issued in response to a request posing a
9 hypothetical situation or to a request regarding the activities of third parties.”).

10 As noted above, the Commission is not responding to Question 1 because it does not
11 present a specific ongoing or planned transaction or activity of Requestors. Question 7 asks
12 whether those same hypothetical activities would trigger candidacy for individuals who are not
13 parties to this Request once those individuals raise more than \$5000. Because, as in Question 1,
14 the activities at issue involve third parties and not Requestors, the Commission is not answering
15 Question 7.

16 8. *Assuming that an individual has raised or spent more than \$5000 on “testing-the-waters”*
17 *activities, does an individual’s public statement that he or she is running for office trigger*
18 *candidacy, even if the individual subsequently attempts to withdraw that statement?*

19 The Commission is not responding to Question 8 because it concerns activities of third
20 parties and poses a hypothetical situation.

21 As discussed above, the Act authorizes the Commission to issue an advisory opinion in
22 response to a “complete written request” from a person about “a specific transaction or activity
23 by the person.” 52 U.S.C. § 30108(a); *see also* 11 C.F.R. § 112.1(b). The Commission thus

1 does not respond to “[r]equests presenting a general question of interpretation, or posing a
2 hypothetical situation, or regarding the activities of third parties.” 11 C.F.R. § 112.1(b); *see also*
3 H.R. Rep. 96-422 at 20 (“Advisory Opinions may not be issued in response to a request posing a
4 hypothetical situation or to a request regarding the activities of third parties.”).

5 The question presented here does not ask about a specific transaction or activity
6 involving Requestors. Rather, it asks the Commission to “assum[e]” that an unnamed individual
7 has raised or spent more than \$5000 on testing-the-waters activities and will make a public
8 statement about his or her candidacy and then attempt to withdraw the statement. Absent some
9 indication that such an individual actually exists, plans to raise or spend more than \$5000 on
10 testing-the-waters activities, and then plans to make and withdraw such a statement, the question
11 poses a hypothetical situation. 11 C.F.R. § 112.1(b). Even if the question were not hypothetical,
12 it would concern the “activities of third parties,” *i.e.*, the individuals who make and withdraw the
13 statements. As such, this question is inappropriate for an advisory opinion.

14 Accordingly, the Commission is not responding to Question 8.

15 9. *Assuming that an individual has raised or spent more than \$5000 on “testing-the-waters”*
16 *activities, if the individual or his or her advisers inform the media that the individual will*
17 *announce candidacy on a date certain in the future, has the individual triggered candidacy?*

18 The Commission is not responding to Question 9 because it concerns the activities of
19 third parties and poses a hypothetical situation.

20 As discussed above, the Act authorizes the Commission to issue an advisory opinion in
21 response to a “complete written request” from a person about “a specific transaction or activity
22 by the person.” 52 U.S.C. § 30108(a); *see also* 11 C.F.R. § 112.1(b). The Commission thus
23 does not respond to “[r]equests presenting a general question of interpretation, or posing a

1 hypothetical situation, or regarding the activities of third parties.” 11 C.F.R. § 112.1(b); *see also*
2 H.R. Rep. 96-422 at 20 (“Advisory Opinions may not be issued in response to a request posing a
3 hypothetical situation or to a request regarding the activities of third parties.”).

4 The question presented here does not ask about a specific transaction or activity
5 involving Requestors. Rather, it asks the Commission to assume that an unnamed individual has
6 raised or spent more than \$5000 on testing-the-waters activities, and then the question asks
7 whether that individual would become a candidate if he or she, or his or her advisors, inform the
8 media that the individual will announce candidacy on a date certain. Absent some indication that
9 such an individual actually exists, plans to raise or spend more than \$5000 on testing-the-waters
10 activities, and then plans to inform the media (either directly or through advisors) that he or she
11 will announce candidacy on a date certain, the question poses a hypothetical situation. 11 C.F.R.
12 § 112.1(b). Even if the question were not hypothetical, it would concern the “activities of third
13 parties,” *i.e.*, the individuals who inform the media about their plans to announce candidacy. As
14 such, this question is inappropriate for an advisory opinion.

15 Accordingly, the Commission is not responding to Question 9.

16 *10. Assuming that an individual has raised or spent more than \$5000 on “testing-the-waters”*
17 *activities, would the activity described in Question 3⁴ trigger candidacy?*

18 The Commission is not responding to Question 10 because it concerns activities of third
19 parties and poses a hypothetical situation.

⁴ The “activity described in Question 3” is that “Requestors and the single-candidate super PACs film footage in a studio of individuals, who would not then otherwise be candidates, discussing their achievements, experiences, and qualifications for office, and use that footage in public communications that satisfy the ‘content prong’ under 11 C.F.R. § 109.21.” AOR007.

1 As discussed above, the Act authorizes the Commission to issue an advisory opinion in
2 response to a “complete written request” from a person about “a specific transaction or activity
3 by the person.” 52 U.S.C. § 30108(a); *see also* 11 C.F.R. § 112.1(b). The Commission thus
4 does not respond to “[r]equests presenting a general question of interpretation, or posing a
5 hypothetical situation, or regarding the activities of third parties.” 11 C.F.R. § 112.1(b); *see also*
6 H.R. Rep. 96-422 at 20 (“Advisory Opinions may not be issued in response to a request posing a
7 hypothetical situation or to a request regarding the activities of third parties.”).

8 The Commission is not responding to Question 3, above, because it concerns the
9 activities of third parties and poses a hypothetical situation. Question 10 asks the Commission to
10 assume that the same third parties addressed in Question 3 have raised or spent more than \$5000
11 on testing-the-waters activities, and Question 10 asks whether the conduct described in the
12 hypothetical situation posed in Question 3 would trigger the third parties’ candidacies. Given
13 that the Commission has determined that Question 3 poses a hypothetical situation and concerns
14 the activities of third parties, Question 10 is similarly inappropriate for an advisory opinion.

15 Accordingly, the Commission is not responding to Question 10.

16 *11. Can individuals who are “agents” of candidates solicit soft money for Requestors and*
17 *Single-Candidate Committees, as long as the steps described in the Request are taken to ensure*
18 *that the fundraising is not undertaken in their capacity as “agents”?*

19 The Commission is not responding to Question 11 because it poses a hypothetical
20 situation and, in part, concerns the activities of third parties.

21 As discussed above, the Act authorizes the Commission to issue an advisory opinion in
22 response to a “complete written request” from a person about “a specific transaction or activity
23 by the person.” 52 U.S.C. § 30108(a); *see also* 11 C.F.R. § 112.1(b). The Commission thus

1 does not respond to “[r]equests presenting a general question of interpretation, or posing a
2 hypothetical situation, or regarding the activities of third parties.” 11 C.F.R. § 112.1(b); *see also*
3 H.R. Rep. 96-422 at 20 (“Advisory Opinions may not be issued in response to a request posing a
4 hypothetical situation or to a request regarding the activities of third parties.”).

5 This question asks the Commission to assume that the unnamed individuals described in
6 the request have become candidates, and the question posits that Requestors and the potential
7 Single-Candidate Committees would like to retain as fundraisers certain of the candidates’
8 campaign employees, consultants, and volunteers with actual authority to raise or spend funds on
9 the candidates’ behalf. The request presents no facts regarding any of these material aspects of
10 the questions: The request does not say that any individuals described therein plan to become
11 candidates, that such candidates plan to form the Single-Candidate Committees, or that such
12 candidates would cause or permit their agents to fundraise for Requestors or the Single-
13 Candidate Committees. This question therefore poses a hypothetical situation. Moreover, to the
14 extent that the question asks about the activities of individuals and the Single-Candidate
15 Committees rather than Requestors, it also concerns the activities of third parties.

16 Accordingly, the Commission is not responding to Question 11.

17 *12. Does 11 C.F.R. § 300.64 require that there be a minimum number of expected attendees*
18 *before the candidate can permissibly speak, attend, or be featured as a special guest?*

19 The Commission is not answering Question 12 because it presents a general question of
20 interpretation of Commission regulations, poses a hypothetical situation, and concerns the
21 activities of third parties.

22 As discussed above, the Act authorizes the Commission to issue an advisory opinion in
23 response to a “complete written request” from a person about “a specific transaction or activity

1 by the person.” 52 U.S.C. § 30108(a); *see also* 11 C.F.R. § 112.1(b). The Commission thus
2 does not respond to “[r]equests presenting a general question of interpretation, or posing a
3 hypothetical situation, or regarding the activities of third parties.” 11 C.F.R. § 112.1(b); *see also*
4 H.R. Rep. 96-422 at 20 (“Advisory Opinions may not be issued in response to a request posing a
5 hypothetical situation or to a request regarding the activities of third parties.”).

6 This question asks the Commission to assume that the unnamed individuals described in
7 the request have become candidates, and the question posits that Requestors and the potential
8 Single-Candidate Committees would host fundraisers at which the individuals would serve as
9 featured guests. Requestors ask, “Does 11 C.F.R. § 300.64 require that there be a minimum
10 number of expected attendees before the candidate can permissibly speak, attend, or be featured
11 as a special guest?” On its face, this question presents a general question of interpretation of
12 Commission regulations. Moreover, in the absence of any indication that any individuals
13 described in the request plan to become candidates, this question also poses a hypothetical
14 situation. Finally, to the extent that the question asks about the activities of the individuals and
15 the Single-Candidate Committees rather than Requestors, it concerns the activities of third
16 parties.

17 Accordingly, the Commission is not responding to Question 12.

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On behalf of the Commission,

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Ann M. Ravel

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Chair

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