



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**ADVISORY OPINION 2015-14
(Hillary for America)**

**SECOND CONCURRING STATEMENT OF
COMMISSIONER ELLEN L. WEINTRAUB**

Yesterday, after weeks of negotiation and drafting, the Commission agreed upon a narrow opinion that answered the Advisory Opinion Request put to us. This Advisory Opinion (AO 2015-14) allows DePauw University's Hubbard Center Summer Internship Grant Program to provide summer stipends to the University's students without making a prohibited corporate contribution to a political committee.

Earlier drafts included language that declared earlier Advisory Opinions to be superseded; that language could not garner the four votes required for Commission approval, and was not included in our Advisory Opinion. Last night's fanciful concurring statement from my Republican colleagues declaring a raft of Advisory Opinions "superseded" has zero legal effect. Three Republican commissioners on their own simply cannot supersede Commission opinions. Indeed, if they could, there would be little left of the law.

Under 52 U.S.C. § 30108(c)(1), any advisory opinion rendered by the Commission may be relied upon *only* by the requestor and "any person involved in any specific transaction or activity which is *indistinguishable in all its material aspects* from the transaction or activity with respect to which such advisory opinion is rendered" (emphasis added). This is a high bar. In fact, DePauw University's stipend program for its undergraduate students who are fulfilling degree requirements is easily materially distinguishable from the activity upon which the Commission has previously opined.¹

¹ See, e.g., Advisory Op. 1979-67 (RNC-DNC) (large scholarships served as salary replacements for professional teachers who had no previous relationship to the university); Advisory Op. 1982-31 (Koenig) (request covered only the provision of legal and accounting services and was analyzed under the exception that deals directly with that activity (52 U.S.C. § 30101(8)(B)(viii))); Advisory Ops. 1985-17 & 2003-20 (requestors were separate scholarship funds, not universities, with no previous relationship to the applicants). Any attorney unable to materially distinguish these activities from those in AO 2015-14 is being willfully obtuse or just isn't trying very hard.

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Second Concurring Statement of Commissioner Weintraub

I will repeat what I said in my own statement yesterday: “[T]his opinion about an apolitical university internship stipend provides no cover to super PACs, (c)(4)s, or billionaires with political agendas seeking to subsidize the staff of their favorite candidates.” Anyone tempted to stray afield from DePauw’s program in reliance upon Advisory Opinion 2015-14 does so at their peril.

A handwritten signature in black ink that reads "Ellen L. Weintraub". The signature is written in a cursive, flowing style with a long horizontal flourish at the end.

February 12, 2016

Ellen L. Weintraub
Commissioner