



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 22, 2021

ADVISORY OPINION 2021-12

Stephen J. Kaufman, Esq.
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Dear Mr. Kaufman:

We are responding to your advisory opinion request on behalf of Congressman Adam Schiff and his principal campaign committee, Schiff for Congress (“the Committee”),¹ concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to two alternative proposals to rent the Committee’s email list to a book publisher to promote a book written by Congressman Schiff and published by Random House. The Committee proposes either to rent its list directly to the book’s publisher or to rent the list to Congressman Schiff, who would later be reimbursed by the book publisher. The Commission concludes that, under the circumstances described in the request, both proposals are permissible under the Act and Commission regulations.

Background

The facts presented in this advisory opinion are based on your letter dated October 6, 2021 and disclosure reports filed with the Commission.

Congressman Schiff is a member of the U.S. House of Representatives and a candidate for re-election in 2022; Schiff for Congress is his principal campaign committee. Advisory Opinion Request (“AOR”) at AOR001. On October 12, 2021, Random House, a division of Penguin House Publishing, LLC, published a non-fiction book written by Congressman Schiff. *Id.* Random House is a “long established and prominent publisher that publishes a wide variety of books and other print and digital

¹ See <https://www.fec.gov/data/committee/C00343871/> (last visited Oct. 19, 2021).

publications, both political and non-political.” *Id.* According to the publisher’s website, it publishes more than 15,000 print titles annually. *Id.*

Congressman Schiff and Random House entered into an agreement (the “publishing agreement”) that established the terms for the publication of the book written by Congressman Schiff. AOR002. The House of Representatives Committee on Ethics approved the publishing agreement and determined that Random House is an established publisher and that Congressman Schiff would be paid under the publishing agreement “in accordance with usual and customary contractual terms for the industry.” *Id.* Random House “will incur all costs associated with publication and promotion of the book” and determine “[a]ll details” of its advertising and promotion. *Id.* After Random House recoups its publication and promotion costs, Congressman Schiff and Random House will each receive 50 percent of the net profits from sale of the book. *Id.* Congressman Schiff’s book “will be sold at the usual and customary sale prices for the industry, including standard bulk discounts, where applicable.” *Id.* Random House’s activities under the publishing agreement “will involve only the publication, promotion and sale of the book and will not include any fundraising activity or solicitations for Congressman Schiff or Schiff for Congress.” *Id.*

The Committee maintains an email list that was compiled over time by the Committee for its own use, and the list has been primarily used for the Committee’s own purposes. AOR002. Random House would like to rent the Committee’s email list for use by Random House and Congressman Schiff, “solely to promote the book.” AOR002, 5. “The Publisher and Congressman Schiff agree that the cost of promoting the book to the Committee’s e-mail list would be an advertising, publicity, and promotional cost” under the publishing agreement. AOR002.

Requestors propose to structure the list rental in one of two ways. AOR002-3. Under the first alternative, Random House would pay the Committee directly for the fair market value of the list rental. *Id.* Under the second alternative, Congressman Schiff would enter into an agreement with the Committee to pay fair market value for the list rental using his personal funds, and Random House would reimburse him for that payment. AOR003. Under both proposals, the Committee would be paid for the fair market value for the list rental “determined by an independent list broker” and no Committee resources or personnel would be used to promote the book. AOR002-3. Random House “will not enter into a list rental agreement with the Committee, make a payment to the Committee, or in the alternative, make a payment to Congressman Schiff, until the Commission has provided its guidance” to requestors. AOR003.

Questions Presented

1. *Under the conditions proposed, may the Committee enter into an agreement to rent its email list to Random House for fair market value to be used to promote a book published by Random House and written by Congressman Schiff?*

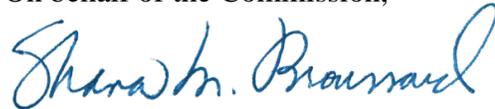
2. *In the alternative, may Congressman Schiff be reimbursed by Random House if he pays for the list rental using his personal funds?*

Conclusion

The Commission concludes that, under the circumstances described in the request, the Committee's proposal to rent its email list to Random House, either directly or indirectly, is permissible under the Act and Commission regulations. The Commission did not agree on a rationale for this conclusion by four affirmative votes.²

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestors may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See id.* § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,



Shana M. Broussard
Chair

² In reaching this conclusion, Commissioners relied on different rationales, some of which are reflected in Agenda Doc. No. 21-37-A (garnering a vote of 3-3) and Agenda Doc. No. 21-37-B (garnering a vote of 3-3). Available at <https://www.fec.gov/data/legal/advisory-opinions/2021-12/>. Because the affirmative vote of four members of the Commission is required to render an advisory opinion under the Act, neither of those agenda documents is a Commission advisory opinion. 52 U.S.C. §§ 30106(c), 30107(a)(7).