Coolidge-Reagan Foundation

To Defend, Protect and Advance Political Speech

"Free speech. It's just that simple."

August 11, 2025

Office of the General Counsel
Attn: Lisa Stevenson
Federal Election Commission
1050 First Street, NE
Washington, D.C. 20463

RE: Advisory Opinion Request for Coolidge Reagan Foundation Regarding FECA's Applicability to a Non-Partisan, Non-Profit Entity's Provision of Pro Bono Legal Services

Dear Ms. Stevenson:

Pursuant to 52 U.S.C. § 30108, the Coolidge Reagan Foundation ("CRF") requests an advisory opinion concerning the applicability of federal campaign finance law to CRF's intended transactions and activities. CRF is a 501(c)(3) non-profit foundation incorporated and headquartered in the District of Columbia. It is devoted to promoting fundamental First Amendment rights as well as free and fair elections. CFR engages in a wide range of activities to ensure that regulated people and entities comply with campaign finance law, and obtain administrative and judicial rulings concerning important constitutional and statutory issues regarding political speech. In particular, CRF believes the Federal Election Campaign Act ("FECA") should be construed in light of the First Amendment to allow as much political expression and association as possible, to foster robust political debate and maximize public knowledge about the various candidates running in each election. CRF pursues these goals in several ways, including but not limited to engaging in public education efforts, submitting amicus briefs, fundraising to subsidize its activities, filing FEC and ethics complaints, and litigating in appropriate venues. It seeks to hold bad actors accountable for their pernicious misconduct. Here, CRF seeks to provide pro bono legal services to the regulated community to better ensure compliance with federal campaign finance law.

BACKGROUND

CRF was founded by Shaun McCutcheon, whose landmark Supreme Court victory, *McCutcheon v FEC*, helped make speech freer for all Americans. Mr. McCutcheon learned – the hard way – that campaign finance laws are largely designed to keep people out of the political process through onerous burdens and legal and compliance costs, while giving a free ride to incumbents and other establishment scofflaws. For over a decade, CRF has maintained its small, scrappy, and lean profile. Consequently, CRF remains a small organization that lacks the resources and infrastructure to hire full-time paid employees. It relies on a small, periodically changing group of attorneys who regularly work with CRF. These attorneys act as "of counsel" to CRF, many for several years, and are paid as independent contractors as opposed to full-time employees. The attorneys' compensation models vary, but include flat monthly rates over periods of time, per-project payments, and traditional hourly billing, at either regular market rates or below-market rates in recognition of CRF's public interest mission.

The FECA allows a person to seek an advisory opinion from the Federal Election Commission ("FEC" or "Commission") concerning the statute's proper interpretation only if the requester itself seeks to engage in a particular "transaction or activity." 52 U.S.C. § 30108(a)(1). Likewise, an entity may not sue in federal court to obtain relief such as an injunction or declaratory judgment unless, among other things, it has suffered a concrete and particularized injury-in-fact. *See Transunion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). And while CRF may file complaints with the FEC for alleged violations of campaign finance law, 52 U.S.C. § 30109(a)(1), it often lacks standing to challenge in federal court the Commission's refusal to take action on such complaints, *see id.* § 30109(a)(8)(A); *Campaign Legal Ctr. v. FEC*, 31 F.4th 781, 789-90 (D.C. Cir. 2022) (outlining various circumstances in which parties lack standing to sue in federal court to challenge the FEC's refusal to enforce the FECA). These jurisdictional, statutory, and procedural impediments preclude CRF from filing many of the lawsuits, advisory opinion requests, and administrative complaints it otherwise would to clarify the scope of campaign finance law, improve compliance with idiosyncratic, nuanced, and poorly understood campaign finance laws, and raise matters before this Commission and courts to maximize the range of political expression and association permitted under the FECA.

Accordingly, CRF intends to prepare certain filings and otherwise provide legal representation in particular matters to political committees on a *pro bono* basis where such services would promote the public interest by facilitating and ensuring compliance with the FECA. These legal services would be for the sole purpose of enabling those committees to pursue the administrative complaints, advisory opinion requests, and federal litigation concerning the validity and proper interpretation of the FECA which CRF is precluded from bringing in its own name. These services would benefit not only the recipient committees, but the entire regulated community, promoting compliance with the FECA in a manner that advances constitutional principles. Specifically, CRF wishes to:

- provide one or more attorneys to research and draft an advisory opinion request to be filed with the Commission pursuant to 52 U.S.C. § 30108(a)(1), on behalf of a candidate committee concerning expenditures and costs incurred by a joint fundraising committee ("JFC") to which that candidate committee belongs. The requested advisory opinion would enhance the ability of all members of all JFCs to exercise their fundamental First Amendment right to engage in political expression by funding political advertisements and other such communications to a greater extent. The attorney(s) provided by CRF would also handle any subsequent litigation challenging the FEC's failure or refusal to issue the requested advisory opinion pursuant to the Administrative Procedures Act, 5 U.S.C. § 706(1), (2)(A), (2)(B). The putative client candidate committee has agreed to accept such assistance and have the advisory opinion request (as well as any appropriate subsequent lawsuit challenging the FEC's failure or refusal to act) filed in its name, in the event the Commission issues an advisory opinion here confirming the legality of this arrangement. CRF wishes to pursue this avenue because it cannot file the advisory opinion request in its own name. It neither belongs to the underlying JFC nor is involved in the "specific transaction or activity" at issue. 52 U.S.C. § 30108(a)(1).,Resolution of the questions presented in such advisory opinions would directly affect constitutionally protected rights of freedom of speech and association not just for the requesting JFC and its members but all similarly situated third parties, promoting compliance with FECA by clarifying its boundaries and preventing inadvertent violations.

- provide one or more attorneys to research and draft an administrative complaint to be filed with the Commission pursuant to 52 U.S.C. § 30109(a)(1), on behalf of a candidate committee against both an opposing candidate and a political party committee for alleged violations of the Federal Election Campaign Act's contribution limits and reporting requirements, thereby promoting compliance with, and accountability before, the law. These attorneys would handle any subsequent litigation challenging the FEC's failure or refusal to act pursuant to 52 U.S.C. § 30109(a)(8)(A). The putative client candidate committee has agreed to accept such assistance and have the administrative complaint (as well as any appropriate subsequent lawsuit challenging the FEC's failure or refusal to act) filed in its name, in the event the Commission issues an advisory opinion here confirming the legality of this arrangement. CRF wishes to pursue this avenue because, if it were to file the administrative complaint in its own name, it would likely lack standing to challenge the Commission's failure or refusal to act pursuant to 52 U.S.C. § 30109(a)(8)(A), *see Campaign Legal Ctr. v. FEC*, 860 F. App'x 1, 6 (D.C. Cir. 2021).

- provide one or more attorneys to research, draft, and litigate a federal lawsuit to enjoin the FEC from enforcing a particular provision of the FECA on the grounds it violates the First Amendment on behalf of a candidate committee and political party committee. The requested injunction and declaratory relief would enhance the ability of all candidates and political parties to raise and spend funds to exercise their fundamental First Amendment right to engage in political expression. The putative client candidate and political party committees have agreed to accept such assistance and have the complaint filed in their respective names, in the event the Commission issues an advisory opinion here confirming the legality of this arrangement. CRF would likely lack Article III standing to pursue this lawsuit in its own name since it is neither subject to the FECA provisions at issue nor, as a 501(c)(3) nonprofit entity, permitted to engage in substantial partisan election-related speech.

This Advisory Opinion Request will refer to these three types of legal services—filing advisory requests with the FEC, submitting administrative complaints to the FEC, and filing lawsuits challenging the validity or proper application of various FECA provisions and/or FEC regulations—as well as accompanying oral arguments, collectively as "Designated Legal Services." CRF is equipped to immediately provide legal representation for such Designated Legal Services through the attorneys who have worked with CRF on a regular, part-time basis as long-term independent contractors, compensated either: (i) through one time or recurring flat fees, or (ii) at market or below-market rates based on the projects performed each month.

QUESTIONS PRESENTED

1. *May CRF provide* pro bono *legal representation to one or more political committees—including candidate or political party committees—for the sole purpose of either:*

a. *filing an administrative complaint on behalf of the committee(s) with the Commission alleging a violation of the Federal Election Campaign Act, and subsequently litigating the Commission's failure or refusal to take action based on that complaint;*

b. *filing an advisory opinion request on behalf of the committee(s) with the Commission concerning the legality of a particular transaction or activity where the resulting opinion would benefit all candidates of all political parties seeking to engage in similar political*

expression or related activities, and subsequently litigating the Commission's failure or refusal to grant the requested advisory opinion; and/or

c. *filing a lawsuit on behalf of the committee(s) concerning the validity or proper interpretation of a provision of the FECA or its implementing regulations where the resulting injunction and ruling would benefit all candidates or all political parties seeking to engage in the political expression or other activities at issue.*

2. *If so, may CRF provide such legal representation through attorneys who regularly work with CRF on a part-time basis as independent contractors and:*

a. *are paid a flat monthly fee, regardless of the amount of work performed;*

b. *are compensated at, or below, market rates on a per-project basis; or*

c. *both.*

DISCUSSION

CRF may provide *pro bono* legal representation to political committees for the sole purpose of preparing advisory opinion requests for the Commission (and conducting any ensuring litigation), administrative complaints for the Commission (and conducting any ensuring litigation), and lawsuits concerning the First Amendment and the FECA. ***First***, such services fall within the exception to the definition of "contribution" for legal services. *Id.* § 30101(8)(B)(viii). ***Second***, such filings and related expression constitute "communications" which are not deemed to be "coordinated" with the client committees and therefore do not qualify as in-kind contributions.

I. CRF'S PROPOSED SERVICES FALL WITHIN THE "LEGAL SERVICES" EXCEPTION TO THE DEFINITION OF "CONTRIBUTION."

Even if CRF's proposal legal services would fall within the definition of contribution under 52 U.S.C. § 30101(8)(A), they fall within the exception to that term for "legal services" established by 52 U.S.C. § 30101(8)(B)(viii)(II). That provision states,

> The term 'contribution' does not include . . .
>
> [1] any legal or accounting services
>
> [2] rendered to or on behalf of . . . an authorized committee of a candidate or any other political committee,
>
> [3] if the person paying for such services is the regular employer of the individual rendering such services,
>
> [4] and if such services are solely for the purpose of ensuring compliance with this Act . . . .

Id.; *accord* 11 C.F.R. § 100.86; S. Rpt. No. 94-677, at 4-5 (Mar. 2, 1976); H. Rpt. No. 94-917, at 59 (Mar, 17, 1976); *see also* 11 C.F.R. § 100.54 (providing that compensating a person to provide "personal services" to a political committee without charge is a "contribution," except for "legal and accounting services provided under 11 C.F.R. §§ 100.85 and 100.86").

Each of these elements is satisfied here. ***First***, there is no question the representation CRF seeks to provide constitutes "legal services." ***Second***, CRF wishes to provide such services on a *pro bono* basis to an authorized candidate committee and political party committee. ***Third***, CRF should be deemed the "regular employer" of its attorneys who providing the specified *pro bono* legal services to political committees. This requirement originally appeared in the Senate version of the Federal Election Campaign Amendments Act of 1976, but neither the statute itself nor anything in the legislative history explains what Congress meant by "regular employer." *See* H. Rpt. No. 94-1057, at 37 (Apr. 28, 1976) (conference report).

The following colloquy occurred at the conference committee:

Chairman Hays:	Legal people tell me we can accede to the Senator's amendment by putting the word 'regular' in front of the word 'employer.' Other than that the regular employer of the individual rendering the services.
Chairman Cannon:	Person other than the 'regular' employer. The same insert would go back in Item 3, as well.
Chairman Hays:	Yes, and three other places in the bill.
Chairman Cannon:	All right. The House recedes and the Senate accepts the word 'regular' before the word 'employer.'

Id. at 28.

Thus, the phrase "regular employer" was not a term of art. Rather, "regular" was simply an adjective the conference committee added to the bill to modify the term "employer" without any further discussion, clarification, or context for its use. *Id.*

The FECA itself does not define the term "employer." FEC regulations define employer in the context of the statutory requirement that an individual's "identification" must specify "the name of his or her employer." 52 U.S.C. § 30101(13)(A). The regulation somewhat circularly states, "Employer means the organization or person by whom an individual is employed, and not the name of his or her supervisor." 11 C.F.R. § 100.21; *accord* FEC, *Amendments to Federal Election Campaign Act of 1971*, 45 Fed. Reg. 15,080, 15,083 (Mar. 7, 1980). The term "employer" should be construed broadly in the context of § 30101(8)(B)(viii)(II)—and consistently with 11 C.F.R. § 100.21—to include long-term independent contractor relationships as regular part-time employees.

For example, Section 409 of the *Restatement (Second) of Torts* (emphasis added) refers to the liability of "the ***employer*** of an independent contractor." Similarly, *Black's Law Dictionary* (12th ed. 2024), broadly defines "employer" as "[a] person, company or organization for whom

someone works." Federal courts have likewise recognized it is possible, for many purposes, to "employ" or be the "employer" of an independent contractor. *See, e.g.*, *Borden v. United States*, No. 91-2029, 1991 U.S. App. LEXIS 29288, at *7 (10th Cir. Dec. 6, 1991) ("The foregoing facts do not indicate that the United States and Mr. Chote intended to enter into any ***type of employment relationship***, be it ***employer/independent contractor*** or employer/employee." (emphasis added)); *Wilson v. Good Humor Corp.*, 757 F.2d 1293, 1301 (D.C. Cir. 1985) (holding in general "an ***employer of an independent contractor*** is not liable for physical harm" caused by the contractor, but "a series of longstanding exceptions" allows "employers [to] be held vicariously or directly liable for the torts of their contractors (emphasis added)).

Nothing in the FECA's legislative history suggests Congress intended to adopt a narrower or more technical conception of these terms. To the extent the term is ambiguous, the constitutional avoidance canon, *see Nat'l Labor Rel. Bd. v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), counsels the Commission to construe it broadly, to allow the widest range of entities to engage in constitutionally protected legal representation of, and political association with, candidate committees. *See* In re *Primus*, 436 U.S. 412, 431 (1978) (holding the First Amendment creates a "generous zone of . . . protection . . . [for] litigation as a vehicle for effective political expression and association, as well as a means of communicating useful information to the public"); *Union Transp. Union v. Mich. Bar*, 401 U.S. 576, 585 (1971) ("[C]ollective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment."); *NAACP v. Button*, 371 U.S. 415, 429-30 (1963) ("[L]litigation is . . . a form of political expression. . . . to petition for redress of grievances."). Thus, CRF should be deemed the regular employer of the part-time independent contractor attorneys who are regularly employed by it in long-term relationships.

Fourth, the legal services exception applies if the services are provided "solely for the purpose of ensuring compliance" with the FECA. As an initial matter, this provision does not specify the legal services must be provided to ensure ***the recipient candidate's*** compliance with the FECA. To the contrary, the statute is drafted more broadly, referring instead to "compliance with" the FECA in general. Thus, the plain language of this statute authorizes the provision of *pro bono* legal services to ensure ***anyone***'s compliance with FECA. Each of the types of legal services CRF seeks to offer satisfies this requirement.

Most basically, the whole point of preparing an advisory opinion request is to obtain the Commission's interpretation of the FECA and implementing regulations so the requestor may comply with the statute. *See Maine Right to Life Comm. v. FEC*, 914 F. Supp. 8, 10 (D. Me. 1996) (recognizing, in an advisory opinion, "[t]he FEC will rule only on whether a particular utterance complies with the statute or its regulations"). An advisory opinion "may be relied upon by any person involved in the specific transaction or activity with respect to which the advisory opinion is rendered." 52 U.S.C. § 30108(c)(1)(A). Likewise, any third party "involved in any specific transaction or activity which is indistinguishable in all material aspects" from the matter at issue in the opinion may rely on it, as well. *Id.* § 30108(c)(1)(B). Anyone who relies in good faith on such an advisory opinion "shall not, as a result of any such act, be subject to any sanction provided by this Act." *Id.* § 30108(c)(2). Thus, legal services provided for the purposes of either preparing an advisory opinion request pursuant to 52 U.S.C. § 30108, or judicially challenging the Commission's failure or refusal to issue a requested opinion, ensures compliance with the FECA. Such legal services do not constitute "contributions" to a candidate committee. To the contrary, pursuant to § 30108(c)(1)(B), an advisory opinion benefits the public at large by providing legal

protection to anyone who wishes to engage in the type of transaction it discusses. Advisory opinions are about the rules governing the campaign finance system, not to influence the outcome of any particular election.

Similarly, a person may file an administrative complaint when they "believe a violation of this Act . . . has occurred." 52 U.S.C. § 30109(a)(1). If the Commission concludes a violation has occurred, it may enforce the act by entering into a conciliation agreement with the respondent, *id.* § 30109(a)(5)(A), or filing a civil action against it, *id.* § 30109(a)(6)(A). In the event the FEC fails or unreasonably delays in adjudicating an administrative complaint, the party that filed it may sue for a court order allowing the party itself to sue to compel compliance with the FECA. *Id.* § 30109(a)(8)(A)-(C). Thus, legal services provided for the purposes of either filing an administrative complaint with the FEC pursuant to 52 U.S.C. § 30109(a)(1), or judicially challenging the Commission's failure or refusal to act pursuant to 52 U.S.C. § 30109(a)(8), ensures compliance with the FECA. *See, e.g.*, *FEC v. Adams*, 558 F. Supp. 2d 982, 988 (C.D. Cal. 2008) (explaining the FEC "ensures compliance with the [FECA]" by "investigating [an] alleged violation and, when necessary . . . initiat[ing] a civil action to enforce the provisions of the Act"); *Common Cause v. Schmitt*, 512 F. Supp. 489, 502 (D.D.C. 1980) (holding "an enforcement action . . . ensure[s] compliance with various provisions of the Fund Act," the Title 26 analogue to the FECA). Accordingly, such legal services do not constitute "contributions" to a candidate committee.

Likewise, a lawsuit seeking an injunction against enforcement of an erroneous or unconstitutional application of the FECA seeks to ensure compliance with FECA. A declaratory judgment in particular "declare[s] the rights" of the parties to the case. 28 U.S.C. § 2201(a); *see United States v. New York*, 700 F. Supp. 2d 186, 198 (N.D.N.Y. 2010) (holding a declaratory judgment can be "useful in resolving the impasse between the parties concerning the reach and scope" of a federal statute regulating elections). As the district court recognized in *Democratic Congressional Campaign Comm. v. FEC*, No. 240cv02835 (RDM), 2024 U.S. Dist. LEXIS 198787, at *26 (D.D.C. Nov. 1, 2024), a declaratory judgment allows a court to decide the extent to which a party is constitutionally required to "comply[] with" the FECA's requirements. Legal services provided for filing a federal lawsuit against the Federal Election Commission seeking declaratory or injunctive relief concerning the proper interpretation or constitutionally valid application of the FECA or its implementing regulations ensures compliance with the FECA. Such legal services are therefore not "contributions" to a candidate committee.

The legislative history also counsels in favor of construing the range of permissible *pro bono* legal services broadly. During the House Administration Committee's markup of the 1976 amendments, the committee discussed the phrase "In the case of any legal services rendered to or on behalf of a candidate or political committee." *Hearing Before the H. Admin. Comm.* 13 (Mar. 3, 1976). Representative Burton offered a narrow example, stating, "Now, as I read that, that means that I could go to an attorney with my firms and say, 'Would you take a look at that?' And he looks at it, doesn't charge me and I don't have to report it and he doesn't have to report it. I don't think that's too bad." *Id.* (statement of Rep. Burton).

Representative Thompson then replied with an even broader example, "I, for instance, have an office in a building where there is a firm downstairs. One of those fellows in the firm has been kind enough to be my legal advisor, he doesn't charge me." *Id.* (statement of Rep. Thompson). Following complaints about the FEC's improperly expansive interpretation of the terms

"contribution" and "expenditure," *id.* at 14-15, the committee voted in favor of the proposed amendment, *id.* at 17. Similarly, the Explanation and Justification accompanying the implementing regulations broadly discussed "the exclusion of legal and accounting services from the definition of contribution." *Federal Election Regulations*, H. Doc. No. 95-4a, at 40 (Jan. 12, 1977).

Finally, the constitutional avoidance canon requires the Commission to construe broadly the range of *pro bono* legal services which the FECA allows to be provided to political committees. As noted earlier, the U.S. Supreme Court has recognized the First Amendment protects the fundamental right to provide *pro bono* legal representation, particularly for the enforcement of constitutional rights such as free speech and association. *Button*, 371 U.S. at 428-29 (holding the First Amendment protects the fundamental right of the NAACP to offer the assistance of its attorneys to potential clients seeking to enforce their constitutional rights); *Primus*, 436 U.S. at 432-33 (holding ACLU attorneys had a fundamental right to solicit potential pro bono clients); *see also United Transp. Union*, 401 U.S. at 585. Under these precedents, strict scrutiny applies to restrictions on the ability of a non-profit public interest organization to offer the *pro bono* assistance of the attorneys it pays to clients seeking to vindicate constitutional or other rights in court. The FEC should avoid unnecessarily raising these constitutional questions by construing the scope of permissible *pro bono* legal services broadly.

II. CRF'S PROPOSED SERVICES ARE NOT SUBJECT TO CONTRIBUTION LIMITS BECAUSE THEY ARE EXPENDITURES THAT DO NOT CONSTITUTE "COORDINATED COMMUNICATIONS"

In the alternative, CRF's payments to its regularly employed attorneys to provide legal services to candidate committees and other political committees for certain designated legal services should be deemed "expenditures." 52 U.S.C. § 30101(9)(A) ("The term 'expenditure' includes any purchase, payment . . . or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office . . . ."). Expenditures which are "coordinated" with a candidate are not deemed "independent," but instead are treated as in-kind contributions from the donor to that candidate committee, subject to contribution limits. *Id.* § 30116(a)(1)(A)-(B), (a)(2)(A)-(B). CRF's payment for specific legal services to a political committee do not qualify as in-kind contributions, and therefore are not subject to limits, since they are neither "coordinated communications" under 11 C.F.R. § 109.21 nor "coordinated expenditures" under 11 C.F.R. § 109.20(b).

A. CRF's Subsidization of Its Attorneys Providing Designated Legal Services for Candidate Committees Results in Expenditures That are not "Coordinated Communications" Under 11 C.F.R. § 109.21.

All of the legal services CRF seeks to provide—advisory opinion requests, administrative complaints, judicial filings—along with any accompanying oral arguments or other related filings or interactions, result in "communications." A communication is deemed to be a "coordinated communication" with a candidate or political party committee if ***three*** requirements are satisfied. 11 C.F.R. § 109.21(a). "If one or more of the prongs are not met, then the communication is not a coordinated communication." *Weinzapfel*, A.O. 2003-25, at 5 (Oct. 17, 2003).

The first requirement is that the communication must be partly or wholly paid for by someone other than the candidate or party committee. 11 C.F.R. § 109.21(a)(1). That requirement

would be satisfied here since CRF would be paying the costs associated with having its attorneys generate communications for the client candidate committee. *See Akin*, A.O. 2004-29, at 4 (Sept. 30, 2004). The third requirement is likewise satisfied here because the client candidate committee would play a role in determining the content of the filings or arguments, 11 C.F.R. § 109.21(a)(3), (d)(1)(i), and would likely review the final draft before filing or service, *Weinzapfel*, A.O. 2003-25, at 6 (Oct. 17, 2003).

The second requirement for coordinated communications, however—the "content" prong—is not satisfied here. 11 C.F.R. § 109.21(a)(2). To satisfy the content prong, a communication must ***either*** constitute an "electioneering communication," *id.* § 109.21(c)(1), ***or*** fall within any of four different categories of "public communications," *id.* § 109.21(c)(2)-(5); *see Maggie for New Hampshire*, A.O. 2022-20, at 3 (Oct. 4, 2022).

The term "electioneering communication" includes only certain "broadcast, cable, or satellite communications." 52 U.S.C. § 30104(f)(3)(A)(i); 11 C.F.R. § 100.29(a)(1); *see Sony Pictures Tele.* A.O. 2023-10, at 3 (Jan. 11, 2024). Advisory opinion requests, administrative complaints, court filings, and associated arguments are not made through those mediums. Accordingly, those designated legal services do not result in electioneering communications.

Nor do the proposed legal services qualify as "public communications," either. Federal law defines a "public communication" as "a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising." 52 U.S.C. § 30101(22) (emphasis added); *accord* 11 C.F.R. § 100.26. Again, neither the administrative/judicial filings nor associated oral arguments fall within any of those categories. *See Maggie for New Hampshire*, A.O. 2022-20, at 4 (Oct. 4, 2022); *Citizens Against Plutocracy*, A.O. 2017-10, at 3 (Sept. 20, 2017).

Since CRF's expenditures on legal services would result in communications that do not qualify as "coordinated communications," they would not be deemed in-kind contributions to the client candidate committee. *See Utah Bankers Ass'n*, A.O. 2011-14, at 5 (Sept. 22, 2011) ("Because the content prong is not satisfied, the Project's communications via email and on its own website will not be coordinated communications . . . [and] will not be in-kind contributions . . . .").

B. CRF's Subsidization of Its Attorneys Providing Designated Legal Services for Candidate Committees Do Not Otherwise Result in "Coordinated Expenditures" Under 11 C.F.R. § 109.20(b).

CRF would not make a "coordinated expenditure" under 11 C.F.R. § 109.20(b) by having its attorneys provide Designated Legal Services to candidate committees. Section 109.20(a) provides an expenditure is "coordinated" when it is "made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee." 11 C.F.R. § 109.20(a). The regulation goes on to state an expenditure which qualifies as "coordinated" under § 109.20(a), but which is "not made for a coordinated expenditure under 11 C.F.R. § 109.21" qualified as "an in-kind contribution to . . . the candidate or political party with . . . which it was coordinated." *Id.* § 109.20(b).

The explanation and justification accompanying this regulation, however, state § 109.20(b) applies only to "expenditures that are ***not made for communications*** but that are coordinated with a candidate" or political party committee. FEC, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 425 (Jan. 3, 2003) (emphasis added). Applying this reasoning, the FEC has concluded if a communication does not meet the requirements for being a "coordinated communication" under § 109.21(a), any funds spent in connection with that communication cannot constitute a "coordinated expenditure" under § 109.20. *Texas Majority PAC*, A.O. 2024-01, at 8 (Mar. 20, 2024).

The FEC has adopted the sweepingly broad *Black's Law Dictionary* definition of "communication" as including "[t]he interchange of messages or ideas by speech, writing, gestures, or conduct; the process of bringing an idea to another's perception." *Texas Majority PAC*, A.O. 2024-01, at 7 & n.42 (Mar. 20, 2024). As noted earlier, CRF wishes to provide attorneys to generate various communications for client political committees, including advisory opinion requests to the FEC, administrative complaints to the FEC, complaints and other filings for federal court, as well as associated oral arguments. Section III.A above demonstrates such filings and oral discussions do not meet 11 C.F.R. § 109.21(a)'s three-prong test for being deemed "coordinated communications." Thus, the expenditures CRF makes in connection with those communications "do not constitute coordinated expenditures under 11 C.F.R. § 109.20(b), which only applies to expenditures 'not made for communications.'" *Texas Majority PAC*, A.O. 2024-01, at 8 (Mar. 20, 2024) (quoting 68 Fed. Reg. at 425). Accordingly, CRF's expenditures in connection with the provision of Designated Legal Services to candidate committees do not constitute in-kind contributions to those committees. CRF's provision of such services therefore would not violate contribution limits.

CONCLUSION

For these reasons, this Commission should issue an advisory opinion concluding CRF may direct the attorneys it regularly employs on a part-time basis to provide legal services to political committees to prepare (and litigate as appropriate) advisory opinion requests for the FEC, administrative complaints to the FEC, and federal judicial challenges against the FEC concerning the validity or proper interpretation of the FECA without triggering contribution limits.

Respectfully submitted,

Dan Backer, Esq.
Counsel for Coolidge-Reagan Foundation

From: Dan Backer
To: Joanna Waldstreicher
Cc: Amy Rothstein; Margaret Forman
Subject: External - RE: Request for Advisory Opinion
Date: Wednesday, September 17, 2025 2:44:24 PM
Attachments: image001.png

Dear Joanna,

1. Yes, your e-mail's explanation of CRF's inquiry is accurate. Question 2(c) was intended to include the other remaining method through which CRF sometimes compensates attorneys (i.e., on an hourly basis for all or part of a matter). It was similarly intended to cover "all the types of payment arrangements that CRF might use for the proposed legal services, including when the different methods are combined in various ways, for different matters or attorneys or for different parts of the same matter. " In the event the Commission concludes only certain types of payment arrangements are permissible, CRF can adapt its ongoing and future activities to rely on such permissible payment structures.

2. Yes. The litigation which CRF proposes in the second paragraph on Page 3 of its request to bring on a pro bono basis on behalf of specific candidates and party committees includes:

    a. challenging the FEC's interpretation and application of a particular provision of Title 52, chapter 301 federal campaign finance law and accompanying FEC regulations;
    b. challenging the validity of those applicable FEC regulations under federal law; and
    c. challenging the constitutionality of those provisions of Title 52, chapter 301 federal campaign finance law and accompanying FEC regulations.

For all claims, the provisions of federal campaign finance law and FEC regulations at issue govern the conduct of the candidates and party committees. Those candidates and committees have definite, concrete plans to engage in conduct allegedly regulated by these provisions and would have done so but for the chilling effect of federal law and regulations.

Regards,

Dan Backer
Direct: (202) 210-5431
dbacker@ChalmersAdams.com

Chalmers, Adams, Backer & Kaufman, LLC

From: Joanna Waldstreicher <JWaldstreicher@fec.gov>
Sent: Tuesday, September 16, 2025 2:19 PM
To: Dan Backer <dbacker@chalmersadams.com>
Cc: Amy Rothstein <ARothstein@fec.gov>; Margaret Forman <mforman@fec.gov>
Subject: Request for Advisory Opinion

Dear Mr. Backer:

Thank you for speaking with us on August 26 and September 10 regarding your request for an advisory opinion on behalf of Coolidge Reagan Foundation ("CRF"). We are following up to confirm our understanding of the following information that you provided to us on the calls:

1. With respect to the payment models described on page 1 of the request, CRF proposes to pay attorneys in three ways: (1) hourly billing (for all or part of a matter); (2) project-based, for discrete pieces of work such as preparing a document, doing research or appearing in court; and (3) a flat monthly rate. In Question 2(c), "both" was intended to cover all the types of payment arrangements that CRF might use for the proposed legal services, including when the different methods are combined in various ways, for different matters or attorneys or for different parts of the same matter. Question 2 was also intended to include hourly payments.

2. With respect to the litigation described in the second paragraph on page 3 of the request, CRF proposes to provide pro bono legal services on behalf of specific candidates and party committees in seeking clarification of provisions of the Federal Election Campaign Act and Commission regulations, including:
(a) Statutory interpretation regarding the applicable contribution limits for a certain type of contribution and how to report it;

(b) Whether contribution limits infringe free speech rights in a particular area;
(c) The application of the definition of Federal Election Activity to state parties' activities;
(d) Coordinated communication rules.

Please reply to this email to confirm the accuracy of this information or to correct it as necessary. Please note that your response may become part of the advisory opinion request. If so, it will be posted on the Commission's website.

Regards,
Joanna S. Waldstreicher
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