



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

ADVISORY OPINION 2007-28

**CONCURRING STATEMENT OF
CHAIRMAN ROBERT LENHARD
COMMISSIONER STEVEN T. WALTHER
COMMISSIONER ELLEN L. WEINTRAUB**

Representatives Kevin McCarthy and Devin Nunes submitted an Advisory Opinion Request asking the Commission's guidance on what limits apply, under the Federal Election Campaign Act ("FECA" or the "Act"), as amended by the Bipartisan Campaign Reform Act ("BCRA"), to their fundraising activities in support of a California ballot initiative committee, the Citizens Fair Redistricting Initiative. Both requesters are officeholders and candidates for re-election to the House of Representatives. Should the initiative qualify for the ballot, it will be put to a vote on the same day and on the same ballot as the primary election in which Representatives McCarthy and Nunes will seek their party's nomination for election to their respective seats in Congress.

The Commission was divided in its analysis of this question. We believe that the requestors may solicit individuals for donations of up to \$20,000 per calendar year for the ballot initiative committee, pursuant to 2 U.S.C. § 441i(e)(4)(B). Because all commissioners agreed that such solicitations would be permissible, that conclusion is reflected in the opinion of the Commission (although two commissioners would have allowed more latitude). This statement explains our rationale.

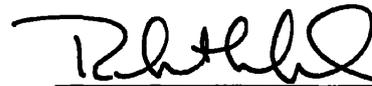
With some exceptions, BCRA prohibits Federal candidates and officeholders from raising and spending funds outside the limits and prohibitions of the Act (non-Federal funds) "in connection with an election for Federal office" or "in connection with an election other than an election for Federal office." 2 U.S.C. § 441i(e)(1). In this circumstance, when a candidate is raising funds that will be used for voter registration and get-out-the-vote (GOTV) activity to bring people to the polls to vote for an initiative on the same day (and using the same ballot) as the Federal candidate's primary election, these activities will inherently affect turnout for the Federal candidate's election. It would make little sense to bar a candidate from raising non-Federal funds for GOTV activity in support of his or her own election but permit the candidate to raise non-Federal funds for GOTV activity in support of an initiative that appears on the same ballot.

Either way, the funds raised by the candidate will be used in connection with an election in which that candidate appears on the ballot.¹

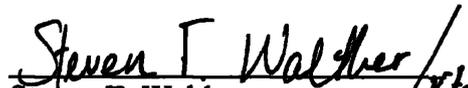
In BCRA, Congress did provide exemptions permitting Federal candidates and officeholders to make certain solicitations beyond the Federal limits on behalf of non-profit organizations. Specifically, BCRA permits Federal candidates to make general solicitations on behalf of tax exempt entities (described in section 501(c) of the tax code) whose principal purpose is *not* to conduct defined Federal election activities (*i.e.*, voter identification, voter registration, GOTV and generic campaign activities). 2 U.S.C § 441i(e)(4)(A). In regulations implementing this provision, the Commission specified that a Federal candidate or officeholder may not use this exception to solicit “funds for activities in connection with an election or” funds for any of the defined Federal election activities. 11 CFR 300.65(a)(2)(ii). Thus, the general solicitation exception does not apply to the request presented here.

However, BCRA goes on to permit Federal candidates and officeholders to make certain specific solicitations of funds to carry out defined Federal election activities or for a 501(c) organization whose principle purpose is to conduct such activities. 2 U.S.C § 441(i)(e)(4)(B); 11 CFR 300.65(b). These solicitations are permissible as long as they are only made to individuals and the amount solicited from any individual during a calendar year does not exceed \$20,000. Because the ballot initiative committee at the heart of this request is a 501(c)(4), we concluded that the requestors may solicit funds on behalf of the ballot initiative committee in \$20,000 annual increments, as long as those solicitations are made exclusively to individuals.

12/31/07
Date


Robert D. Lenhard
Chairman

12/31/07
Date


Steven T. Walther
Commissioner

12/31/07
Date


Ellen L. Weintraub
Commissioner

¹ This fact distinguishes this opinion from the Commission’s conclusion in Advisory Opinion 2005-10 (Berman-Doolittle). That Advisory Opinion was predicated on the fact that no Federal candidate would appear on the ballot on the day that the initiative petitions were put to a vote.