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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. # 14-35**  
**AGENDA ITEM**  
**For meeting of July 23, 2014**  
**SUBMITTED LATE**

July 21, 2014

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS*  
Deputy General Counsel

Adav Noti *AN*  
Acting Associate General Counsel

Amy L. Rothstein *ALR by AN*  
Assistant General Counsel

Tracey Ligon *TL by AN*  
Attorney

Subject: Draft AO 2014-05 (Henry Ford Health System Government  
Affairs Services PAC)

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 9:00 am (Eastern Time) on July 23, 2014.

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

3 Charles A. Fiedler, Esq.  
4 Fiedler & Tenney, P.C.  
5 322 West Ottawa Street, Suite 3  
6 Lansing, Michigan 48933

**DRAFT**

8 Dear Mr. Fiedler:

9           We are responding to your advisory opinion request on behalf of the Henry Ford Health  
10 System Government Affairs Services Political Action Committee (the “Requestor”). The  
11 Requestor asks whether it may solicit contributions from employees of its connected  
12 organization’s corporate parent and that parent’s other subsidiaries under the Federal Election  
13 Campaign Act, 2 U.S.C. §§ 431-457 (“FECA”), and Commission regulations. The Requestor  
14 also asks whether FECA preempts Michigan law concerning the solicitation of contributions.

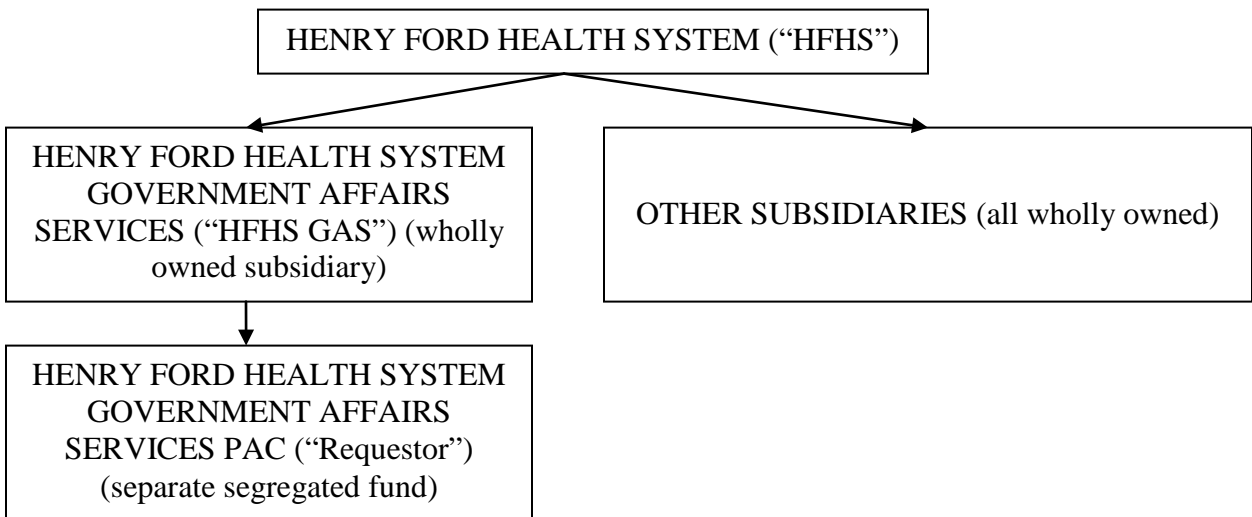
15           The Commission concludes that the Requestor may solicit contributions as it proposes  
16 pursuant to FECA and Commission regulations. The Commission does not reach the preemption  
17 question because the Michigan law at issue does not apply to contributions to federal political  
18 committees, and the state has officially interpreted that law as not regulating contributions or  
19 expenditures made to support or oppose federal candidates.

20 ***Background***

21           The facts presented in this advisory opinion are based on your letter received on July 2,  
22 2014.

23           The Requestor is registered with both the Commission and the Michigan Board of  
24 Elections as the separate segregated fund (“SSF”) of Henry Ford Health System Government  
25 Affairs Services (“HFHS GAS”), a Michigan nonprofit membership corporation. HFHS GAS, in  
26 turn, is a wholly owned subsidiary of Henry Ford Health System (“HFHS”), a Michigan  
27 nonprofit corporation holding tax-exempt status under 26 U.S.C. § 501(c)(3).

1 HFHS has a number of other wholly owned subsidiaries in addition to HFHS GAS.<sup>1</sup>  
2 HFHS is either the sole member or sole shareholder of each of these subsidiaries, with the  
3 authority to elect and remove all members of their boards of trustees and officers. Accordingly,  
4 the general structure of the entities at issue here is as follows:



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12 HFHS’s board of trustees and the boards of its subsidiaries have “varying degree[s]” of  
13 cross-membership. HFHS and its subsidiaries transfer funds, goods, and personnel between and  
14 among themselves on an ongoing basis. HFHS’s consolidated financial statement and tax return  
15 include HFHS’s subsidiaries.

16 The Requestor states that the primary purpose of HFHS GAS is to serve as a legislative,  
17 regulatory, and advocacy service for HFHS and its subsidiaries, with an incidental purpose of  
18 serving as a sponsor and organizer of a political action committee. HFHS GAS is not expected  
19 to have any employees.

20 The Requestor proposes to solicit contributions from individuals who are employees of  
21 either HFHS or HFHS’s other wholly owned subsidiaries. The Requestor plans to establish three

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<sup>1</sup> These subsidiaries include Henry Ford Macomb Hospital Corporation, Henry Ford Wyandotte Hospital, Health Alliance Plan, and Henry Ford Physicians Network.

1 separate depository accounts for these contributions: (1) a federal account for contributions  
2 raised from solicitations of members of HFHS's "restricted class" (and unsolicited contributions  
3 received from the general public); (2) a second federal account for contributions raised from  
4 employees of HFHS's subsidiaries; and (3) a state account for funds that will be used for  
5 expenditures in support of state, district, and local candidates and committees.

6         The Requestor plans to deposit all contributions initially into one of the federal accounts.  
7 It will then transfer some of the funds to the state account for use in connection with state  
8 political activity. The Requestor states that solicitations of contributions to be transferred from a  
9 federal account to the state account will meet both federal and state legal requirements. For the  
10 funds that will not be transferred to the state account, the Requestor would like to solicit  
11 contributions from all persons from whom it may solicit contributions under FECA and  
12 Commission regulations, without regard to state law.

13         The Michigan Campaign Finance Act, Mich. Comp. Laws Ann. §§ 169.201-.282 (West  
14 2014), provides, in relevant part, that contributions to an SSF established by a nonprofit  
15 corporation may be solicited from any of the following persons or their spouses: (1) members of  
16 the corporation who are individuals; (2) stockholders or members of members of the corporation;  
17 (3) officers or directors of members of the corporation; (4) employees of the members of the  
18 corporation who have policymaking, managerial, professional, supervisory, or administrative  
19 non-clerical responsibilities; and (5) employees of the corporation who have policymaking,  
20 managerial, professional, supervisory, or administrative nonclerical responsibilities. Mich.  
21 Comp. Laws Ann. § 169.255(3) (West 2014).

22         With one exception not relevant here, the term "contribution" as used in the Michigan  
23 Campaign Finance Act "does not include a contribution to a federal candidate or a federal

1 committee.” Mich. Comp. Laws Ann. § 169.204(2) (West 2014). In a declaratory ruling, the  
2 Michigan Secretary of State’s office therefore concluded that the Michigan statute “does *not*  
3 regulate contributions and expenditures made to support or oppose candidates for federal office.”  
4 Mich. Dep’t of State, 1-97-CI at 2 (Nov. 4, 1997), *available at*  
5 [http://www.michigan.gov/documents/sos/Pirich\\_Knowlton\\_1997\\_428690\\_7.pdf](http://www.michigan.gov/documents/sos/Pirich_Knowlton_1997_428690_7.pdf) (emphasis in  
6 original).

### 7 ***Questions Presented***

- 8 1. *May the Requestor solicit contributions from the executive and administrative personnel*  
9 *(and their families) of HFHS and its subsidiaries, and other employees of HFHS and its*  
10 *subsidiaries, under FECA and Commission regulations?*<sup>2</sup>
- 11 2. *Do such solicitations by the Requestor supersede provisions of MCLA 169.201, et seq.*  
12 *with regard to funds that are used to support federal candidates and committees based on*  
13 *federal preemptive provisions?*

### 14 ***Legal Analysis and Conclusions***

- 15 1. *May the Requestor solicit contributions from the executive and administrative personnel*  
16 *(and their families) of HFHS and its subsidiaries, and other employees of HFHS and its*  
17 *subsidiaries, under FECA and Commission regulations?*

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<sup>2</sup> The Requestor refers to executive and administrative personnel and their families as the “restricted class,” and to other potentially solicitable employees as the “expanded class.” Although Commission regulations use the term “restricted class” to describe the group of persons whom a stock corporation may solicit for contributions to the corporation’s SSF, 11 C.F.R. § 114.1(j), that term applies differently to corporations without capital stock, like the Requestor. With regard to such corporations, Commission regulations refer to the group of persons whom the corporation’s SSF may solicit as the “solicitable class,” which “may include some persons who are not considered part of the organization’s restricted class, and may exclude some persons who are in the restricted class.” *Id.* In this advisory opinion, the Commission uses the term “solicitable class” to refer to the members and executive and administrative personnel, and their families, that a corporation without capital stock may solicit for contributions to its SSF. *See* 11 C.F.R. § 114.7(a).

1 Yes, the Requestor may solicit contributions from the executive and administrative  
2 personnel (and their families) of HFHS and its subsidiaries. The Requestor may also solicit  
3 contributions from other employees of HFHS and its subsidiaries twice yearly, as provided by  
4 FECA and Commission regulations.

5 Under FECA and Commission regulations, a corporation without capital stock and its  
6 SSF may solicit contributions to the SSF from the corporation's members and executive and  
7 administrative personnel,<sup>3</sup> and their families (the "solicitable class"). 2 U.S.C. § 441b(b)(4)(C);  
8 11 C.F.R. § 114.7(a); *see also* 11 C.F.R. § 114.1(j). A corporation and its SSF may also solicit  
9 the executive and administrative personnel of the corporation's "affiliates," and their families.  
10 11 C.F.R. § 114.5(g)(1); *see also* Advisory Opinion 2001-18 (BellSouth); Advisory Opinion  
11 1997-25 (Hughes Electronics).

12 "Commission regulations identify organizations that are *per se* affiliated . . . . These  
13 include a single corporation and/or its subsidiaries . . . ." Advisory Opinion 2007-12 (Tyco  
14 International Management) at 3 (citing 11 C.F.R. §§ 100.5(g)(3)(i), 110.3(a)(2)(i)). Thus, as a  
15 parent corporation and its wholly owned subsidiaries, HFHS, HFHS GAS, and HFHS's other  
16 subsidiaries are *per se* affiliated. *See* Advisory Opinion 2004-32 (Spirit Airlines) at 3 ("The  
17 Commission considers an entity that owns a majority interest of another organization to be  
18 affiliated *per se* with that other organization."); Advisory Opinion 1983-48 (Cablevision  
19 Systems); Advisory Opinion 1982-18 (Gannett Fleming Corddry and Carpenter Federal PAC);  
20 Advisory Opinion 1980-18 (Kanter). Accordingly, the Requestor may solicit the solicitable class  
21 of HFHS and its subsidiaries pursuant to 11 C.F.R. § 114.5(g)(1). *See* Advisory Opinion 2004-

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<sup>3</sup> Commission regulations define "executive or administrative personnel" as individuals who are employed by a corporation, paid on a salary rather than hourly basis, and have policymaking, managerial, professional, or supervisory responsibilities. 11 C.F.R. §§ 100.134(d), 114.1(c).

1 32 (Spirit Airlines) at 3 (concluding that if entities are affiliated, any affiliate may solicit any  
2 other's restricted class); *see also* Advisory Opinion 1999-28 (Bacardi-Martini, USA); Advisory  
3 Opinion 1982-18 at 1-2 (Gannett Fleming Corddry and Carpenter Federal PAC) (stating that SSF  
4 of subsidiary corporation may solicit contributions from parent's restricted class and from  
5 restricted class of parent's other subsidiaries).<sup>4</sup>

6 In addition, under FECA and Commission regulations, a corporation and its SSF may  
7 make up to two written solicitations per calendar year for contributions to the SSF from  
8 employees outside the corporation's solicitable class. 2 U.S.C. § 441b(b)(4)(B); 11 C.F.R.  
9 § 114.6(a). This rule also applies to the corporation's affiliates. *See* Advisory Opinion 2004-32  
10 (Spirit Airlines); *see also* Advisory Opinion 1990-25 (Community Psychiatric Centers Federal  
11 PAC). Accordingly, if employees of HFHS or its subsidiaries do not qualify as members of the  
12 solicitable class, the Requestor may solicit contributions from such employees up to two times  
13 per year under the conditions set out in 11 C.F.R. §§ 114.5(a), 114.6.

14 2. *Do such solicitations by the Requestor supersede provisions of MCLA 169.201, et seq.*  
15 *with regard to funds that are used to support federal candidates and committees based on*  
16 *federal preemptive provisions?*

17 Because the Michigan law at issue does not apply to contributions to federal political  
18 committees and the state has confirmed that the law does not regulate contributions made to  
19 support or oppose candidates for federal office, the Commission does not reach the preemption  
20 question.

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<sup>4</sup> The Commission notes that the Requestor and an SSF established by any of its affiliates would be deemed affiliated committees under FECA and Commission regulations. *See* 2 U.S.C. § 441a(a)(5); 11 C.F.R. §§ 100.5(g)(2), 110.3(a)(1)(ii). Accordingly, all such committees would be treated as a single political committee for purposes of FECA's contribution limits. 2 U.S.C. § 441a(a)(5); Advisory Opinion 1999-28 (Bacardi-Martini, USA).

1           FECA and Commission regulations “supersede and preempt any provision of State law  
2 with respect to election to Federal office.” 2 U.S.C. § 453(a); *see also* 11 C.F.R. § 108.7(a). The  
3 Commission has previously applied this provision in the context of state laws restricting the  
4 solicitation of contributions by federal political committees. *See, e.g.*, Advisory Opinion 1989-  
5 27 (Bryan) (concluding that FECA preempts state restrictions on federal political committee’s  
6 solicitation and receipt of contributions); *see also* Advisory Opinion 1992-43 (Erwin)  
7 (concluding that FECA preempts state law regulating timing of solicitation and acceptance of  
8 contributions by federal political committee).

9           The situation presented here, however, is most similar to Advisory Opinion 2014-04  
10 (Enterprise Holdings). In that advisory opinion, the requestor asked the Commission to conclude  
11 that FECA preempted New York’s statutory and regulatory prohibitions on using payroll  
12 deductions to facilitate contributions to political committees, as applied to the requestor’s  
13 intended use of payroll deductions to facilitate its employees’ contributions to its federal SSF.  
14 The New York statute in question contained a global exemption that permitted payroll  
15 deductions “made in accordance with . . . any law or . . . regulation issued by any governmental  
16 agency,” *id.* at 3, and the New York agency charged with enforcing that statute had clarified that  
17 this exemption rendered the state statute inapplicable to payroll deductions authorized by FECA  
18 and Commission regulations. *Id.* Relying on the state agency’s clarification that New York law  
19 did not apply to the requestor’s activity, the Commission did not reach the question of whether  
20 the law was preempted by FECA. *Id.*

21           Similarly, here, the state statute on its face does not apply to contributions to a federal  
22 political committee, like the Requestor, or to federal candidates. Mich. Comp. Laws Ann.  
23 § 169.204(2) (West 2014) (providing that definition of “contribution” under Michigan Campaign



1 Finance Act “does not include a contribution to a federal candidate or a federal committee”).  
2 Moreover, while confirming that the Michigan statute applies to contributions and expenditures  
3 that are made to support or oppose candidates for state and local offices and Michigan ballot  
4 questions, the Michigan Department of State has officially opined that the Michigan Act “does  
5 *not* regulate contributions and expenditures made to support or oppose candidates for federal  
6 offices or offices in other states.” Mich. Dep’t of State, 1-97-CI at 2 (Nov. 4, 1997), *available at*  
7 [http://www.michigan.gov/documents/sos/Pirich\\_Knowlton\\_1997\\_428690\\_7.pdf](http://www.michigan.gov/documents/sos/Pirich_Knowlton_1997_428690_7.pdf) (emphasis in  
8 original). Accordingly, as in Advisory Opinion 2014-04 (Enterprise Holdings), the Commission  
9 relies on the state’s interpretation that its statute does not apply to the Requestor’s proposed  
10 activity, and the Commission therefore does not reach the question of whether the state law is  
11 preempted.

12 The Commission expresses no opinion regarding any implications of the Requestor’s  
13 proposal under the Internal Revenue Code because those issues are outside the Commission’s  
14 jurisdiction.

15 This response constitutes an advisory opinion concerning the application of FECA and  
16 Commission regulations to the specific transaction or activity set forth in your request. *See* 2  
17 U.S.C. § 437f. The Commission emphasizes that, if there is a change in any of the facts or  
18 assumptions presented, and such facts or assumptions are material to a conclusion presented in  
19 this advisory opinion, then the requestor may not rely on that conclusion as support for its  
20 proposed activity. Any person involved in any specific transaction or activity which is  
21 indistinguishable in all its material aspects from the transaction or activity with respect to which  
22 this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C.  
23 § 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be

1 affected by subsequent developments in the law including, but not limited to, statutes,  
2 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available  
3 on the Commission's website.

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On behalf of the Commission,

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Lee E. Goodman

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Chairman

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