

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N.W.

P. O. BOX 7566

WASHINGTON, D.C. 20044

(202) 662-6000

TELEFAX: (202) 662-6291

TELEX: 88-593 (COVLING WSH)

CABLE: COVLING

CHARLES F.C. RUFF

DIRECT DIAL NUMBER

(202) 662-5378

09C 9964
RECEIVED
F.E.C.
SECRETARIAT

03 SEP 22 11:10 27

46 HERTFORD STREET
LONDON W1T7TF ENGLAND
TELEPHONE 44-71-495-5855
TELEFAX 44-71-495-3101

BRUSSELS CORRESPONDENT OFFICE
44 AVENUE DES ARTS
BRUSSELS 1040 BELGIUM
TELEPHONE 32-2-512-9890
TELEFAX 32-2-502-1898

September 21, 1993

BY HAND

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

AOR 1993-19

Dear Mr. Noble:

The purpose of this letter is to request an advisory opinion pursuant to Section 437f of Title 2 of the U.S. Code on behalf of the Friends of John Glenn (formerly the John Glenn Presidential Committee, Inc., and referred to herein as "the Committee"), Senator Glenn's authorized committee for his 1984 presidential campaign, with respect to the matters set forth below.

I. Factual Background

The Committee has outstanding obligations of approximately \$3.25 million, owed to roughly 700 creditors. Included in this figure are four secured loans held by Ohio banks totalling approximately \$2 million (including accumulated interest). These debts were incurred by the Committee, chiefly in 1983 and 1984, in connection with Senator Glenn's campaign for the 1984 Democratic presidential nomination. Senator Glenn, who is not personally liable for any of these debts, has already contributed \$50,000 to the Committee, the maximum allowable contribution for a primary candidate receiving matching funds.^{1/} Many of Senator Glenn's main supporters (and those most likely to give additional money) have also contributed the maximum allowable amount to the Committee.^{2/}

^{1/} See 26 U.S.C. § 9035(a); 11 C.F.R. § 9035.2.

^{2/} See 2 U.S.C. 441a(a)(1)(A); 11 C.F.R. § 110.1(b)(1) (limiting contributions from individuals to \$1,000).

Lawrence M. Noble, Esq.
September 21, 1993
Page 2

At the time the Committee incurred these debts, it reasonably and in good faith believed that it would be able to raise enough money to satisfy the debts completely through contributions gathered during the course of Senator Glenn's campaign. The Committee's creditors, including the banks, made loans or allowed the Committee to purchase goods and services on credit in a commercially reasonable manner, with the expectation that the Committee would be able to pay their claims in the ordinary course (see attached affidavit of William R. White).

When Senator Glenn made the decision to end his campaign for the Democratic presidential nomination in March of 1984, however, the Committee did not have sufficient funds to satisfy its outstanding debts. The Committee, in the years between the end of Senator Glenn's campaign and the date of this request, has therefore continued to attempt to raise funds to retire those debts. Specifically, the Committee has held numerous fundraising events during this period, and has also continued to conduct direct mail campaigns and make one-on-one solicitations for funds. Similar efforts by the Committee are ongoing (see attached affidavits of William R. White, Michael J. Petro, M. Anne Nicholson, and Mary P. Bonner).

Notwithstanding its continuing fundraising efforts, the Committee currently has insufficient funds to pay more than a small portion of its total debt. In addition, the Committee has been advised by Mary P. Bonner, a fundraising expert, that given the inherent difficulty of trying to raise money from new sources to retire campaign debts that are more than eight years old, the Committee will not be able to raise sufficient funds to satisfy its outstanding debts if forced to rely solely on gifts from new donors (see attached affidavit of Mary P. Bonner).

However, the Committee's ability to raise funds will be greatly enhanced if the Committee is able to accept additional gifts from Senator Glenn and his "at-limit" contributors (see Id.). The Committee believes that if it is allowed to accept such gifts, its chances of raising sufficient funds to come to an over-all agreement with its creditors to retire its debt completely will be greatly enhanced. If it is able to do so, the Committee would then be able to terminate as a political committee without debt.^{3/}

The Committee submits that under the unique facts presently facing the Committee, Senator Glenn and his at-limit contributors may, consistent with the Federal Election Campaign

^{3/} See 2 U.S.C. § 433(d)(1); 11 C.F.R. § 102.3.

Lawrence M. Noble, Esq.
September 21, 1993
Page 3

Act ("FECA")^{4/} and current FEC regulations, give additional money to the Committee for the limited purpose of retiring the Committee's outstanding debt. Specifically, the Committee believes that where a political committee has incurred debts with the good faith belief that it would be able to raise sufficient funds to pay them during the course of the campaign, where the debts were incurred in arm's-length transactions in a commercially reasonable manner, and where the political committee has striven for more than eight years without success to raise funds to pay these debts, additional gifts by the candidate and his at-limit contributors for the purpose of retiring the debts cannot reasonably be characterized as "for the purpose of influencing [an] election," and therefore should not be considered "contributions" or "expenditures" subject to the FECA limitations. The Committee is therefore seeking an advisory opinion stating that it may accept additional funds from Senator Glenn and his at-limit contributors, for the limited purpose of retiring the Committee's debts, without violating the FECA or the FEC's regulations.

II. Analysis

- A. Allowing Senator Glenn and his at-limit contributors to give additional funds to the Committee would not -- eight years and two presidential cycles after the 1984 election -- contravene the purpose of the limitations on contributions and expenditures contained in the FECA and the FEC's regulations.

Under the FECA and related FEC regulations, individuals are prohibited from making contributions in excess of \$1,000 to any one candidate with respect to any federal election.^{5/} Similarly, candidates for President who accept matching funds are prohibited from making expenditures from their personal funds in excess of \$50,000.^{6/} The term "contribution" is defined to include "a gift, subscription, loan . . . advance, or deposit of money or anything of value made by any person for the purpose of influencing any election" ^{7/} "Expenditure" -- for

^{4/} 2 U.S.C. §§ 431-455; 26 U.S.C. §§ 9001-9042.

^{5/} See 2 U.S.C. 441a(a)(1); 11 C.F.R. 110.1(b)(1) ("Section 110.1").

^{6/} See 2 U.S.C. § 9035(a); 11 C.F.R. 9035.2(a)(1) ("Section 9035.2").

^{7/} 2 U.S.C. § 431(8)(A)(1); 11 C.F.R. § 100.7(a)(1) ("Section 100.7") (emphasis added).

Lawrence M. Noble, Esq.
September 21, 1993
Page 4

purposes of the limitation on personal expenditures by presidential candidates -- is defined in a virtually identical manner.^{9/}

The purpose of these limitations on contributions and personal expenditures by a presidential candidate is to limit the actual or apparent influence that any one individual can have over the outcome of an election.^{2/} The FEC has in the past taken the position that gifts made after an election to retire campaign debts are "for the purpose of influencing [an] election," and therefore "contributions" subject to the limits imposed by Section 110.1.^{10/} This interpretation has been upheld by the courts on the reasoning that if post-election donations to retire campaign debts were not subject to the contribution limits, candidates would be able to "evade FECA's restrictions . . . by running their campaigns at a deficit and then collecting contributions after the election." Federal Election Comm'n v. Ted Haley Congressional Committee, 852 F.2d 1111, 1116 (9th Cir. 1988) (quoting Federal Election Comm'n v. Lance, 617 F.2d 365, 372 at n.4 (5th Cir. 1980)).

Allowing Senator Glenn and his at-limit contributors to give the Committee additional funds at this point would not contravene the purpose of the FECA limitations. Allowing such gifts would also not conflict with the cases cited above, which dealt with policy concerns fundamentally different from those at issue in the Committee's request. The decisions in Ted Haley and Lance were based upon two main concerns. The first was the possibility that the committees in those cases had in fact incurred more debt than they expected to be able to pay, with the intent of raising funds from at-limit contributors once the election had ended. If so, these additional funds would have

^{9/} See 2 U.S.C. § 431(9)(A)(i); 11 C.F.R. § 100.8(a)(1) ("Section 100.8").

^{2/} See Buckley v. Valeo, 424 U.S. 1, 26 (1976) (finding the FECA's contribution limitations constitutional based upon "the Act's primary purpose -- to limit the actuality and appearance of corruption resulting from large financial contributions").

^{10/} See, e.g., FEC Adv. Op. 1985-2, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 5806; FEC Adv. Op. 1983-2, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5709. See also 11 C.F.R. § 110.1(g) ("contributions" to retire debt from elections occurring after 1974 are subject to the contribution limitations). This regulation is of course only applicable if the gifts are "for the purpose of influencing [an] election," and therefore contributions under the FECA.

Lawrence M. Noble, Esq.
September 21, 1993
Page 5

been "for the purpose of influencing [the] election[s]," even though they were received after the end of the campaigns, because the committees had altered their campaign spending in reliance upon the money to be collected later. In Ted Haley, the loan guarantees challenged by the FEC had been provided by the candidate's contributors to retire debt incurred in an election that had taken place just five months earlier. Similarly, in Lance, the FEC challenged loans made between 1975 and 1977 to an unsuccessful gubernatorial candidate whose campaign ended in August of 1974. Given the relatively short period between the end of the candidates' campaigns and the time they received additional "contributions" from at-limit contributors, the connection between the "contributions" and the elections was close enough to infer that the committees could have run their campaigns at a deficit on the assumption that they would be able to solicit additional assistance from their main contributors once the election was over.

In contrast, there is absolutely no evidence to indicate, and under the circumstances there is no basis to infer, that the Committee intentionally ran Senator Glenn's campaign at a deficit in hopes of receiving additional funds from the Senator and his at-limit contributors after the election. As noted above, the Committee has tried for more than eight years to solicit additional contributions to retire its outstanding debt - - making this request only as a last resort. In addition, there is nothing to contradict the Committee's assertion that both it and its creditors reasonably and in good faith believed when the debts were incurred that the Committee would be able to raise sufficient funds during the campaign to pay them. Finally, the possibility that gifts given now in any sense had an actual influence on Senator Glenn's presidential campaign, i.e. that the Committee incurred excess debt with the intent or knowledge that it would seek permission to solicit additional funds from the Senator and his at-limit contributors eight years later, is on its face implausible. In sum, the primary concern of the courts in Ted Haley and Lance, that post-election gifts actually influenced the campaign, is simply not at issue in this case.

The second concern underlying the courts' reasoning in Ted Haley and Lance was the possibility that even if the committees had not intentionally run their campaigns at a deficit, a different outcome would have undermined the purpose of the contribution limitations, because future candidates would have been tempted to run their campaigns at a deficit if they knew they would be able to solicit additional funds from their at-limit contributors immediately after the end of the election cycle. Again, because of the unique circumstance in which the Committee has made its request, this concern is not implicated. The Committee has made this request for an advisory opinion only

Lawrence M. Noble, Esq.
September 21, 1993
Page 6

after trying without success for almost a decade to raise sufficient funds to retire its debt. This long-standing debt has not only been personally troubling to Senator Glenn, it has also proved to be politically troublesome, and was in fact used against Senator Glenn during his most recent reelection campaign. A decision by the FEC to allow the Committee to accept gifts now from Senator Glenn and his at-limit contributors is unlikely to encourage other candidates intentionally to incur politically difficult campaign debts in hopes that the FEC might allow them to raise additional money from at-limit contributors at some uncertain point in the distant future.

The distinction between allowing a committee to accept additional gifts shortly after the close of a campaign, and allowing the Committee to accept such gifts after more than eight years of "best efforts" to pay its debts from other sources, also sets the Committee's request apart from the majority of advisory opinions that have addressed this issue. As in Ted Haley and Lance, most of these advisory opinions have concerned requests by a committee that it be allowed to accept additional gifts from at-limit contributors (or raise money with equipment purchased by contributors) shortly after the end of the election cycle.^{11/} The Committee acknowledges that on at least one occasion the FEC has stated that the contribution limitations apply to contributions to retire a committee's campaign debt, even though a significant amount of time had passed since the election from which the debts arose.^{12/} The Committee believes, however, that the FEC has not been asked to address the specific points the Committee raises in this request under the unique circumstances facing the Committee.

In sum, the Committee incurred its current debts in good faith and in a commercially reasonable manner during the course of an election cycle that ended more than eight years ago. The Committee has spent the time between the end of the campaign and the date of this request using its best efforts to raise sufficient funds to retire these debts, but has been unable to do so. Under these circumstances, allowing the Committee to accept

^{11/} See, e.g., FEC Adv. Op. 1983-2, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5709 (advisory opinion request filed less than one year after the end of the election cycle); FEC Adv. Op. 1979-3, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5390. See also FEC Adv. Op. 1981-16, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5604 (request to establish fund for post-election litigation filed less than one year after the end of the election cycle).

^{12/} See FEC Adv. Op. 1985-2, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 5806.

Lawrence M. Noble, Esq.
September 21, 1993
Page 7

gifts from Senator Glenn and his at-limit contributors will not contravene the purpose for which Congress established the contribution and expenditure limits contained in the FECA. The Committee therefore should be allowed to accept such gifts at this time.

- B. **Applying the contribution and expenditure restrictions to additional gifts by Senator Glenn and his at-limit contributors would place an unreasonable burden on the Committee's creditors and the Committee.**
-

Applying the regulations limiting contributions and expenditures to additional gifts by Senator Glenn and his at-limit contributors -- where the purpose of the limitation is no longer applicable -- would also place an unreasonable burden on the Committee's creditors and on the Committee itself. The Committee's creditors provided loans and services to the Committee in good faith, with the reasonable expectation that they would be repaid in due course. Many of these creditors are individuals or small businesses that cannot afford to carry these debts on their books indefinitely. Yet they have now waited more than eight years for their money, and unless the Committee is allowed to accept additional gifts from Senator Glenn and his at-limit contributors, they are unlikely ever to receive the majority of the money owed to them. As noted above, however, the Committee believes that if the FEC allows Senator Glenn and his at-limit contributors to make additional gifts to the Committee, the Committee's ability to raise money will be substantially enhanced, and the Committee will be able to pay its creditors a much greater portion of their total claims.

In addition, allowing the Committee to accept gifts from Senator Glenn and his at-limit contributors will greatly enhance the Committee's chances of raising enough money to arrange settlement agreements with its creditors so that it may terminate. Under the FECA and related regulations, a committee cannot terminate while it has any outstanding debts.^{13/} Without the ability to accept gifts from Senator Glenn and his at-limit contributors, it is unlikely that the Committee will be able to reach agreement with all of its creditors. The Committee therefore faces the prospect of filing reports with the FEC

^{13/} See 2 U.S.C. § 433(d)(1); 11 C.F.R. § 102.3.

Lawrence M. Noble, Esq.
September 21, 1993
Page 8

indefinitely, absent a grant of administrative termination (which the FEC itself has noted is rarely granted).^{14/}

Given that the purpose of the limitations on contributions and expenditures contained in the FECA would not be undermined by allowing Senator Glenn and his at-limit contributors to make additional gifts to the Committee, the Committee submits that it is unreasonably burdensome to deny the Committee's creditors their best source of repayment -- and the Committee its best opportunity to terminate as a committee without debt.

III. Conclusion

Despite its continuing efforts, the Committee has been unable in the more than eight years since the end of Senator Glenn's presidential campaign to raise sufficient funds to retire its outstanding debt. At this late stage, allowing the Committee to accept additional gifts from Senator Glenn and his at-limit contributors will not contravene the purpose for which Congress established limits on contributions and personal expenditures by candidates. Prohibiting the Committee from accepting such gifts will simply prolong the existence of the Committee and deprive the Committee's creditors of a promising source of repayment. The Committee therefore requests that the FEC issue an advisory opinion allowing it to accept additional gifts from Senator Glenn and his at-limit contributors for the limited purpose of retiring the Committee's outstanding debt.

Respectfully submitted,


Charles F.C. Ruff

^{14/} See FEC Adv. Op. 1988-44, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 5947, n.2 (noting that no administrative terminations were approved by the FEC between 1983 and 1988), and concurring opinion of Commissioner Scott B. Thomas (stating that the FEC should be very stringent in reviewing any administrative termination request).

AFFIDAVIT

District of
Columbia

William R. White, being duly sworn, states as follows:

1. My name is William R. White. During the period from March 15, 1984, until December 31, 1984, I supervised the fundraising efforts of the John Glenn Presidential Committee, Inc. (the "Committee"), Senator Glenn's authorized committee for his 1984 presidential campaign. During this time I was an employee of the Committee. During 1985, while in the private practice of law, I continued to assist the Committee in its fundraising efforts.

2. The Committee incurred the debts it now owes chiefly in 1983 and the first two months of 1984, during Senator Glenn's campaign for the Democratic presidential nomination, and prior to his withdrawal from the race. At the time the Committee incurred these debts, the Committee believed it would be able to pay the debts in full.

3. To my knowledge and belief, the Committee's creditors, including the banks, loaned money or allowed the Committee to purchase goods and services on credit in a commercially reasonable manner, and with the expectation that the Committee would repay the loans and debts it incurred in full in the normal course. The bank loan transaction was structured and reviewed by outside counsel who, prior to closing the transaction, rendered an opinion to the Committee that implementation of the transaction would comply with federal election laws and regulations. The Committee relied on this opinion. The lending banks advised that their outside counsel had provided a similar opinion.

4. After Senator Glenn's presidential campaign ended in March of 1984, the Committee continued to attempt to raise funds to retire its debts. While I was in charge of the Committee's fundraising efforts, the Committee held fundraising events and made solicitations for funds by direct mail on a regular basis, and throughout the period also solicited funds through personal contacts with potential donors. The Committee's debt was reduced from approximately \$3.7 million on the day Senator Glenn withdrew from the race to approximately \$2.2 million at the end of 1984.

William R. White

William R. White

Subscribed and sworn to before me this 27th day of August, 1993.

Karen S. Kuger

Notary Public

My Commission expires 10/31/95

AFFIDAVIT

District of

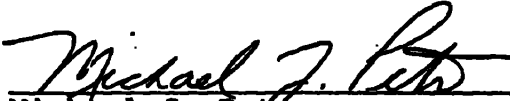
Columbia

Michael J. Petro, being duly sworn, states as follows:

1. My name is Michael J. Petro. During the period from March 1989 until January 1991, I was responsible for the fundraising efforts of the John Glenn Presidential Committee, Inc. (the "Committee"), Senator Glenn's authorized committee for his 1984 presidential campaign. I also served as treasurer of the Committee from 1990 through 1992.


2. During the period 1989 to early 1991, the Committee was unable to conduct any large-scale fundraising events or direct mailings. In large part, this was because the events leading up to the Senate Ethics Committee's investigation (which began in late 1989) of Senator Glenn's contacts with Charles Keating, as well as the investigation itself, created a situation in which there was little time or opportunity to conduct an effective fundraising program.

3. The Committee did send out a small targeted mailing to approximately 40 individuals in 1989. These people included individuals who had given the maximum contribution to Senator Glenn's senatorial campaign, but not to his presidential campaign, and others who had offered their support to help retire the Committee's debt.



Michael J. Petro

Subscribed and sworn to before me this 20th day of August, 1993.



Notary Public

My Commission expires _____
TRACI L. FLORES
Notary Public, District of Columbia
My Commission Expires October 31, 1994

AFFIDAVIT

District of
Columbia

M. Anne Nicholson, being duly sworn, states as follows:

1. My name is M. Anne Nicholson. During the period from August 1985 until November 1987, I coordinated the fundraising efforts of the John Glenn Presidential Committee, Inc. (the "Committee"), Senator Glenn's authorized committee for his 1984 presidential campaign.

2. While I was Washington Finance Office Coordinator for the Committee, the Committee continued in its efforts to raise funds to retire the debts it incurred during Senator Glenn's campaign for the 1984 Democratic presidential nomination. For example, in 1987 the Committee held at least five (5) major fundraising events. The Committee also conducted numerous targeted telephone solicitations to raise funds from potential donors between August 1985 and November 1987.



M. Anne Nicholson

Subscribed and sworn to before me this 14 day of September, 1993.



Notary Public

My Commission expires My Commission Expires April 30, 1994

AFFIDAVIT

District of
Columbia

Mary P. Bonner, being duly sworn, states as follows:

1. My name is Mary P. Bonner. I work full-time as a professional fundraiser for various state and federal political campaigns and committees. I have been a professional fundraiser for approximately six years, during which time I have managed the fundraising campaigns of numerous political committees, including the fundraising campaigns of approximately fifteen (15) candidates for the United States Congress. Among the committees I have worked for were the Gore for Senate Committee in 1990, the Matsui for Congress Committee, and the McCurdy for Congress Committee. I have extensive experience coordinating both local and national fundraising programs, including the use of direct mail, the planning of large-scale fundraising events, and the use of personal solicitations by the candidates themselves to potential donors.

2. In May 1993, I was engaged by the John Glenn Presidential Committee, Inc. (the "Committee"), Senator Glenn's authorized committee for his 1984 presidential campaign, to raise funds to retire the debts the Committee incurred during Senator Glenn's campaign for the Democratic presidential nomination.

3. When I was contacted by the Committee to raise funds to retire the Committee's debt, I stated that it would be one of the most difficult jobs I had undertaken as a fundraiser, given the time that has passed since Senator Glenn's 1984 presidential campaign, and the general reluctance of individuals to give money to retire the post-campaign debts of a political committee. In my experience, it is extremely difficult to raise money to satisfy the debts of a political committee after a campaign has ended, particularly when the campaign was ultimately unsuccessful.

4. Since I became responsible for the Committee's fundraising efforts, the Committee has held one large-scale fundraising event. In addition, Senator Glenn has personally contacted numerous individuals in order to solicit funds to retire the Committee's debt. An additional seven fundraising events have been planned, to take place in October and November of 1993, and February of 1994. It is also anticipated that the Committee will send out one or more targeted direct mailings later this year.

5. Through my efforts, the Committee has been able to secure promises of support from 65 individuals. However, in my experience as a fundraiser I have found that the actual return on such promises is uncertain. Thus far, the Committee has received approximately \$60,000 in actual cash contributions.

6. In my judgment as a professional fundraiser, the Committee will not be able to raise sufficient funds to satisfy its outstanding debts if it is forced to rely solely on gifts from individuals who have not yet contributed the maximum amount to the Committee under the restrictions imposed on contributions by the Federal Election Campaign Act (the "FECA").

7. I believe that the Committee's ability to raise funds will be greatly enhanced if the Committee is also allowed to accept additional funds from those individuals who have already made the maximum allowable contribution to the Committee under the FECA. In my experience, those individuals most likely to contribute to the debt retirement efforts of a political committee are the ones who supported a candidate while his election campaign was ongoing. Here, most of Senator Glenn's main supporters during his campaign for the 1984 Democratic presidential nomination, and therefore those most likely to give additional money, have already contributed the maximum allowable under the FECA. Allowing the Committee to accept additional gifts from these individuals would give the Committee access to what I believe is one of its most promising sources of funds.

COMMONWEALTH OF VIRGINIA
FAIRFAX, VA (COUNTY)

Mary Pat Bonner
Mary P. Bonner

Subscribed and sworn to before me this 10th day of August, 1993.

Marcia Jean Meade Schlemmer
Notary Public

My Commission expires 10/31/96