



1776 K STREET NW
 WASHINGTON, DC 20006
 PHONE 202.719.7000
 FAX 202.719.7049

7925 JONES BRANCH DRIVE
 MCLEAN, VA 22102
 PHONE 703.905.2800
 FAX 703.905.2820

www.wileyrein.com

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Jan Witold Baran
 202.719.7330
 jbaran@wileyrein.com

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 FEDERAL ELECTION
 COMMISSION
 OFFICE OF GENERAL
 COUNSEL
 2007 JUL 18 P 4:12

July 18, 2007

Federal Election Commission
 Office of General Counsel
 999 E Street, NW
 Washington, DC 20463

AOR 2007-14

Re: Advisory Opinion Request

Dear Commissioners:

On behalf of the Associated Builders and Contractors (ABC), the National Federation of Independent Business (NFIB), and the National Restaurant Association (NRA) (collectively "Requestors"), we respectfully request an advisory opinion from the Federal Election Commission ("FEC" or "Commission") pursuant to 2 U.S.C. § 437f, regarding the permissibility of holding a joint restricted class event.

The Federal Election Commission (FEC) regulations found at 11 C.F.R. § 114.3 permit each of these associations to have a candidate event before its own restricted class. While the regulations do not address an event at which more than one association has its own restricted class in attendance, there seems to be no rational basis for prohibiting such a natural extension of the regulations. ABC, NFIB, and NRA therefore wish to confirm that they can join together for a restricted class event.

FACTS

A. Background on the Associations

ABC, NFIB, and NRA are each an incorporated nonprofit trade association exempt from taxation under Section 501(c)(6) of the Internal Revenue Code. Further, each association is comprised of incorporated members whose representatives are small business owners. The owners are interested in candidates' positions related to the small business community.

B. Proposed Joint Restricted Class Event

ABC, NFIB, and NRA wish to jointly host several Presidential candidate forums focusing on small business issues. The forums would be educational in nature and would not endorse any candidates. These forums would take the form of a telephone/web conference call with the Requestors' restricted class members. The



Federal Election Commission
July 18, 2007
Page 2

restricted class members of each of the associations would be given a password in order to participate in the call. Then, on a specified time each week, a candidate would be asked to call into the web conference in order to answer questions posed by Requestors. Thus, there would be a call each week for several weeks since it is the intent of the Requestors to ask several Republican and Democratic candidates for President to participate in the calls. The press would be allowed to cover the calls, and the candidates will be permitted to seek contributions from the participants on the call. The candidates will also be allowed to solicit volunteers for their campaigns from among the restricted class members on the call. However, while the regulations governing communication to the restricted class would permit the trade associations to expressly advocate the election of any of the candidates that appear at the restricted class event, Requestors will not endorse any candidates in connection with the calls. Rather, the events are designed to discuss issues. Finally, the costs of the calls will be split evenly among the Requestors.

Requestors suggest that 11 C.F.R. § 114.3(c)(2), which identifies the criteria for candidate and party appearances before the restricted class, will enable them to engage in this joint activity.

QUESTIONS PRESENTED

1. *May ABC, NFIB, and NRA hold a joint restricted class event to which Presidential candidates are invited to speak?*

THE LAW

2 U.S.C. § 441b(b)(2)(A) of the Federal Election Campaign Act (Act) contains an exemption from the prohibition on corporate contributions and expenditures for “communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject.”

The Commission has adopted regulations to enact this provision of the Act. Specifically, pursuant to 11 C.F.R. § 114.3(a)

(2) Incorporated membership organizations, incorporated trade associations, incorporated cooperatives and corporations without capital stock may make communications to their restricted class, or



Federal Election Commission
July 18, 2007
Page 3

any part of that class as permitted in paragraphs (a)(1) and (c) of this section.

Section 114.3(c) identifies four types of express advocacy communications that a trade association may engage in pursuant to this provision. Pursuant to 11 C.F.R. § 114.3(c)(2), an incorporated trade association may

allow a candidate, candidate's representative or party representative to address its restricted class at a meeting, convention or other function of the corporation . . . A corporation or labor organization may bar other candidates for the same office or a different office and their representatives, and representatives of other parties addressing the restricted class.

11 C.F.R. § 114.3(a)(2), (c)(2). See, e.g., FEC Adv. Op. 1999-2.

The regulations do not otherwise define what constitutes an "other function" of the corporation or trade association, but as explained in the 1983 Explanation and Justification for the provision, the event did not have to be a regularly scheduled event of the corporation nor an event "primarily held for other purposes." 48 Fed. Reg. 50503 (1983). Thus, the proposed candidate forum/ conference call event would qualify as an "other function" of the three trade associations. For incorporated trade associations such as ABC, NRA, and NFIB, the "restricted class" includes the association's executive or administrative personnel and their families, members of the association who are individuals, and the representatives of member corporations "with whom the trade association normally conducts the association's activities." 11 C.F.R. §§ 114.1(j), 114.3(a)(2), 114.8(h), (i)(1).

Section 114.3(c)(2) is permissive in that it allows trade associations and candidates to engage in significant activity at such events. For instance, a candidate "may ask for contributions to his or her campaign or party," and the candidate, his representative, or a party representative "may accept contributions before, during, or after the appearance at a meeting, convention or other function of the corporation or labor organization." Id. § 114.3(c)(2)(ii). The trade association also "may suggest that members of its restricted class contribute to the candidate or party committee." Id. § 114.3(c)(2)(iii). In addition, if more than one candidate for the same office is permitted to address the restricted class and the trade association "permits the news

Federal Election Commission
July 18, 2007
Page 4

media to cover or carry an appearance by one candidate or candidate's representative, the [trade association] shall also permit the news media to cover or carry appearances by the other candidate(s) for that office." Id. § 114.3(c)(2)(iv).

Further, while by the terms of the regulation, the trade associations could expressly advocate the election of any of the candidates that appear at restricted class events, Requestors do not intend to do so in connection with the events. Rather, the events are designed to discuss issues.

DISCUSSION

There is no question that each Requestor, on its own, may hold a restricted class event of the type described above. Thus, the only issue presented is whether the three associations may join together to hold an event. The Commission approved a similar request in Advisory Opinion 1984-13, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5759 (1984) when the National Association of Manufacturers (NAM) asked if it could cosponsor a conference with the Dallas Study Group (DSG) in connection with the Republican National Convention during which candidates would be invited to speak. The two organizations had no connection other than some employees of NAM participated in DSG activities. As was the case in that opinion, the invitations to the speakers will be based on their status as candidates which triggered the application of 11 C.F.R. § 114.3. While the Commission appeared to limit the attendance to NAM's restricted class (since the DSG was a non-member association), the Commission permitted both NAM and DSG to co-sponsor the event. Pursuant to the regulations, DSG could not sponsor a "partisan" event that included the general public. The Commission viewed the DSG event which as qualified for the restricted class exemption.

Indeed, nothing in the regulations would prohibit the Requestors from coordinating the timing of their events such that candidates could call into a web conference sponsored by each association consecutively and be within the limits of the FEC regulations. Given that they could organize the events seriatim, there seems to be no basis for prohibiting them from joining together for a single restricted class event of the three associations. The event would still qualify as an event of the association as required by the regulations, the event would still only be before the restricted class of each association, and it will save the candidates considerable time, cutting down by two thirds the amount of time that they would need to spend responding to the same questions.



Federal Election Commission
July 18, 2007
Page 5

CONCLUSION

In sum, the FEC regulations seem to permit these three associations to join together for an event at which only the restricted class of each association is in attendance. Allowing the three associations to join together to have a single event, rather than three separate events would enable candidates to more easily appear before the associations which all have similar issues they wish addressed by the candidates

Our clients respectfully requests an advisory opinion confirming the above.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Baran", written over a horizontal line.

Jan Witold Baran
Carol A. Laham



"Baran, Jan"
<JBaran@wileyrein.com>
08/02/2007 05:06 PM

To <ARothstein@fec.gov>
cc <esferra@fec.gov>
Subject RE: Advisory Opinion Request

Ms. Rothstein,

Thank you for your message. Below I have confirmed the facts as requested. I understand that upon receipt of this email the 60 day period for an advisory opinion will commence.

Jan Witold Baran
WILEY REIN LLP
1776 K Street NW
Washington, DC 20006

202.719.7330 (Direct)
202.719.7207 (Fax)
www.wileyrein.com/electionlaw

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Effective February 1, 2007, Wiley Rein & Fielding LLP became Wiley Rein LLP. The firm's website address became www.wileyrein.com and all firm email addresses reflect the new Internet domain name. Please take a moment to update your records with our new information.

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From: ARothstein@fec.gov [mailto:ARothstein@fec.gov]
Sent: Wednesday, August 01, 2007 4:27 PM
To: Baran, Jan
Cc: esferra@fec.gov
Subject: Advisory Opinion Request

Dear Mr. Baran,

In a telephone conversation on Tuesday, July 31, you provided us with additional information regarding a request for an advisory opinion from the Associated Builders and Contractors, the National Federation of Independent Business, and the National Restaurant Association (collectively "Trade Associations"). We have set out below our understanding of certain points that you made during this conversation. We'd appreciate it if you would please review the statements below and either confirm their accuracy or correct any misperceptions.

(1) The restricted class of each of the Trade Associations includes hundreds of thousands of members. There may be some overlap among members of the restricted classes, but not in large numbers. **CORRECT EXCEPT THE RESTRICTED CLASS OF ALL THE TRADE ASSOCIATIONS (NOT EACH ASSOCIATION) TOTAL SEVERAL HUNDREDS OF THOUSAND MEMBERS.**

(2) The Trade Associations' restricted classes will be able to participate in live conferences with candidates by accessing streaming video through a password protected website or by telephoning into the conference using a restricted telephone number. Access to the conferences will also be granted to members of the press. **I HAVE BEEN INFORMED THAT STREAMING VIDEO WILL NOT BE USED. ALL PARTICIPANTS WILL JOIN A TELECONFERENCE EITHER BY CALLING IN WITH A PASSWORD OR WILL BE CONTACTED AND CONNECTED TO THE CALL.**

(3) The conferences will be bipartisan, including both Democratic and Republican presidential candidates. The Trade Associations will invite the candidates in accordance with the current polls, beginning with the most popular candidates. The Trade Associations will offer each candidate a similar opportunity to participate in the conferences in terms of time and format. **CORRECT**

(4) The Trade Associations have decided not to endorse any of the candidates or to expressly advocate the election or defeat of any of them in connection with the conferences. **CORRECT**

(5) The Trade Associations will contact the candidates' campaigns to schedule each candidate's appearance, but do not contemplate coordinating with the candidates on anything other than scheduling in advance of the conferences. **CORRECT**

(6) The Trade Associations will ask the candidates to answer specific questions at the conferences, but will not limit the content of any candidate's discussion. CORRECT. RESTRICTED CLASS MEMBERS WILL ASK THE QUESTIONS.

(7) Candidates will solicit contributions during their appearances, but the Trade Associations will not collect any contributions. Candidates will also solicit volunteers by asking conference participants to visit a website or call a telephone number. CORRECT.

(8) The Trade Associations plan to split the costs of the conferences and are open to cost splitting arrangements other than an "even" three-way split. The Trade Associations may also be able to track restricted class participation and to split costs based on the number of restricted class members of each Trade Association that participates in the conferences. CORRECT.

Thank you very much for your cooperation.

Sincerely,

**Amy L. Rothstein
Assistant General Counsel for Policy
Federal Election Commission**