



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**MEMORANDUM**

**TO:** The Commission

**FROM:** Office of the Commission Secretary *LS*

**DATE:** March 14, 2024

**SUBJECT:** AOR 2024-01 (Texas Majority PAC)  
Comment from NRSC

**Attached is AOR 2024-01 (Texas Majority PAC) Comment from NRSC.  
This matter will be discussed at the Open Meeting on March 14, 2024.**

**Attachment**

March 13, 2024

Lisa J. Stevenson, Esq.  
Acting General Counsel  
Federal Election Commission  
1050 First Street NE  
Washington, DC 20463  
[ao@fec.gov](mailto:ao@fec.gov)

**Re: Advisory Opinion Request 2024-01 (Texas Majority PAC)**

Dear Ms. Stevenson:

On February 21, 2024, the Office of General Counsel published two draft Advisory Opinions in response to advisory opinion request (“AOR”) 2024-01 submitted by Texas Majority PAC (“TMP”), a nonfederal political committee. Each of these drafts contains manifest errors and neither should be adopted by the Commission. The adoption of Draft B would dramatically change how the regulated community navigates the interaction of soft and hard-dollar entities, and the adoption of Draft A would rewrite law and impose major roadblocks against traditional political party activities. Unless the Commission intends to harm political parties, or conversely, bless corporate-sponsored campaign rallies, corporate-sponsored canvassing programs, and other unregulated soft-money activities intended to benefit specified federal candidates, we advise caution before swiftly changing controlling law and custom.

**Draft B**

For over 116 years, since the Tillman Act of 1907, corporations have been prohibited from making contributions to federal candidates. Similarly, the “fundamental purpose” of enacting the Bipartisan Campaign Reform Act of 2002 (“BCRA”) was “prohibiting soft money from being used in connection with federal elections.”<sup>1</sup> And while we believe BCRA and the like have proven incredibly counter-productive and caused long-term injuries to our electoral system, we nevertheless oppose granting Requestor a free pass from the current campaign finance regime, especially only seven months out from Election Day.

It’s no secret that the political party aligned with TMP has made canvassing central to its strategy to win federal elections.<sup>2</sup> It’s also no secret that the political party aligned with TMP has a massive fundraising apparatus of unregulated entities like TMP, often relying on foreign

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<sup>1</sup> *Shays v. FEC*, 528 F.3d 914, 925 (D.C. Cir. 2008) (quoting *McConnell v. FEC*, 540 U.S. 93, 177 (2003)).

<sup>2</sup> See, e.g., Marianne Levine, *Senate Democrats' campaign arm made a big bet on election strategy this year, spending more on its field operations than on TV ads*, Politico (Nov. 8, 2022),

<https://www.politico.com/minutes/congress/11-8-2022/dscc-big-bet/>; Elena Schneider, “*If We Do This Right...* ”: *The New Dem Organizing Strategy Catching Fire Ahead of the Midterms*, Politico (Apr. 8, 2022),

<https://www.politico.com/news/2022/04/08/democrats-spread-organizing-strategy-that-flipped-georgia-to-other-states-00023892>; Rachel Schilke, *Senate Democrats' campaign arm drops millions to try and protect most vulnerable incumbents*, Washington Examiner (Jan. 8, 2024),

<https://www.washingtonexaminer.com/news/senate/2789515/senate-democrats-campaign-protect-red-state-incumbents/>.

national sources.<sup>3</sup> Importantly here, TMP likely hopes its efforts will supplement (if not take over) the resources needed by its chosen Democrat candidates on the ballot in Texas, including in the federal race for U.S. Senate.

In response, Requestor might claim that federal candidates' ambiguous "involvement" will not rise to the level of "control" over funds anticipated by prohibitions like those found in 11 CFR § 300.61. But no matter how TMP characterizes the involvement of its chosen federal candidates, the fact remains that absurd consequences flow from Draft B. To illustrate, we ask the Commission to consider the following hypothetical scenarios which Draft B would render newly permissible:

- Polling indicates that presidential candidate Smith's popularity increases after large rallies. Oil Company A ("Oilco") conducts business in a state without contribution limitations ("State A") and regularly supports pro-oil candidates for state office up and down the State A ballot. Oilco is aligned with the policies of presidential candidate Smith and certain members of State A's federal congressional delegation ("Oil Caucus"). Oilco plans to spend ten million dollars to implement a popular rally event program, which includes building and enhancing lists of potential supporters and retaining a pop star to perform at rallies across the state promoting presidential candidate Smith and any Oil Caucus candidates who choose to participate (in addition to pro-oil candidates for state office). This plan is sincerely motivated by Oilco's desire to elect pro-oil state candidates, but as a rising tide lifts all boats, Oilco seeks the input of presidential candidate Smith and the Oil Caucus on the design, schedule, and programming of the Oilco-sponsored rallies. Certain federal candidates who are low on campaign funds make efforts to persuade Oilco to host rallies in their jurisdiction. Oilco will not treat any of these expenditures as regulated by the Commission despite the extensive federal candidate involvement and will run and fund these events through its state-level committee ("OilcoPAC"). If this program is successful, Oilco will consider implementing this program in other similar states through respective state-level committees.
- After meetings with political consultants, Oilco concludes that canvassing efforts are crucial to winning elections. Oilco decides to invest ten million dollars in a

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<sup>3</sup> See, e.g., Kenneth P. Vogel and Shane Goldmacher, *Democrats Decried Dark Money. Then They Won With It in 2020*, New York Times (Aug. 21, 2022), <https://www.nytimes.com/2022/01/29/us/politics/democrats-dark-money-donors.html> ("A New York Times analysis reveals how the left outdid the right at raising and spending millions from undisclosed donors to defeat Donald Trump and win power in Washington"); Kenneth P. Vogel, *Swiss Billionaire Quietly Becomes Influential Force Among Democrats*, New York Times (May 3, 2021), <https://www.nytimes.com/2021/05/03/us/politics/hansjorg-wyss-money-democrats.html>; see also, *How Swiss Billionaire Hansjörg Wyss and the Arabella Advisors Network Uses Foreign Dark Money to Sway American Politics and Policy*, Americans for Public Trust (July 2023), available at: <https://americansforpublictrust.org/document/report-foreign-influence-in-u-s-elections/>.

canvassing program run by OilcoPAC with the purpose of electing pro-oil state level candidates. But Oilco would like to kill two birds with one stone. Given Oilco’s hope that presidential candidate Smith and the Oil Caucus will win their respective elections, Oilco’s canvassing program will “refer to federal candidates and political parties” in the literature it distributes.<sup>4</sup> It will also distribute this literature “within the pre-election timeframes described in 11 C.F.R. § 109.21(c)(4),” and some of the OilcoPAC literature “will include express advocacy or its functional equivalent with respect to federal candidates.”<sup>5</sup> Moreover, in order to effectively execute this canvassing program, OilcoPAC “anticipates that it will come into possession of nonpublic plans, projects, activities, or needs of candidates (federal and nonfederal) and/or political parties within the meaning of 11 C.F.R. § 109.21(d)(3)” in the course of its planning discussions with the federal candidates referenced in its literature.<sup>6</sup> In addition, OilcoPAC will employ common canvassing vendors used by presidential candidate Smith and the federal Oil Caucus candidates, but will not require them to adhere to any non-coordination policies. Certain federal candidates who are low on campaign funds make efforts to persuade OilcoPAC that a canvassing program in their jurisdiction will help with Oilco’s primary goal of electing pro-oil state candidates. But despite the extensive involvement of federal candidates in designing and participating in a canvassing program that will spend soft dollars that inure to their electoral benefit, neither the federal candidates nor OilcoPAC will report any of these activities to the Commission. If this program is successful, Oilco will consider implementing this program in other similar states through respective state-level committees.

Littered throughout the controlling statutes, regulations, and caselaw is a clear presumption against soft and hard-money entities working closely together to win federal elections.<sup>7</sup> In some ways, BCRA, *Citizens United*, and the like may cut in different directions, but on this point the statute, regulations, and the caselaw speak with one voice: Neither of the hypothetical scenarios described above can possibly be permissible under current law. If the degree of coordination that TMP lays out in its advisory opinion request is lawful, then it is difficult to imagine what types of coordination with federal candidates are legally off the table. And to no surprise, Democrat-aligned entities have already begun requesting additional free passes from these prohibitions, again through the Advisory Opinion process.<sup>8</sup>

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<sup>4</sup> AOR 2024-01 at 3.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *See, e.g.*, 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61; *Citizens United v. FEC*, 558 U.S. 310, 360–61 (2010) *Shays*, 528 F.3d at 925; *McConnell*, 540 U.S. 93 (2003).

<sup>8</sup> AOR 2024-05 (Nevadans for Reproductive Freedom).

To be sure, TMP has laid out smart, sincere arguments to get this AOR across the finish line, as evidenced in public meetings and in TMP's thoughtful comments. However, at its foundation, Requestor is asking the Commission to move the goalposts to help its preferred candidates win elections. The Commission makes a major error in analyzing this request through the distracting lens of individual components and input costs. Regardless of how TMP treats the individual components of the canvassing program that it outlines, at bottom TMP seeks to use unregulated and unlimited dollars to help its preferred federal candidates win elections.

Although we long for the day when the federal campaign finance regime no longer burdens protected political activity, that day is not today. And this regime certainly cannot be changed selectively—for one partisan entity—through the AO process in the middle of election season.

### **Draft A**

By contrast, OGC's Draft A determines that TMP's proposed canvassing efforts are coordinated communications, but that they are not coordinated expenditures. Draft B's coordinated communications analysis (as well as many commentors) correctly elucidates the errors plainly obvious in Draft A's first conclusion, and there is little need to reiterate the reasons to reject Draft A.

### **CONCLUSION**

Draft A plainly attempts to rewrite the definition of 'public communication' and should be swiftly rejected. Draft B, at its core, grants permission to expend unlimited amounts of soft money to influence federal elections in coordination with federal candidates, all while avoiding the consequences of having that spending classified as impermissible contributions or "coordinated" with the benefited candidates. To neglect the real question here would fly in the face of statute and decades-long legal precedent. Accordingly, we respectfully urge the Commission to analyze TMP's request in light of not only the permissibility of the proposed scheme's *components*, as Requestor would have you do, but on the permissibility of its *outcome*. When viewed from this perspective, Draft B very clearly presents significant legal concerns.

We urge the Commission to reject both drafts and move on from this request.

Respectfully Submitted,



Ryan G. Dollar  
NRSC General Counsel