



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 10, 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2006-20

John J. Duffy, Esq.
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Washington, DC 20036-1795

Dear Mr. Duffy:

We are responding to your advisory opinion request on behalf of Unity 08, concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to Unity 08's status as a political committee. The Commission concludes that Unity 08 will have to register as a political committee once it makes expenditures in excess of \$1,000, and therefore will be subject to the amount limitations, source prohibitions, and reporting requirements of the Act.

Background

The facts presented in this advisory opinion are based on your letter received on May 30, 2006, your comments received on July 19, supplemental submissions received on August 16, September 18 and 22, telephone conversations with you, and information from Unity 08's website.¹

Unity 08 is organized under the laws of the District of Columbia as a not-for-profit corporation and under Section 527 of the Internal Revenue Code. Unity 08 describes itself as a "nascent political party" that "will act to assure that an alternative ticket is presented to the American voters in 2008." Unity 08 was founded by individuals who have been involved in political campaigns at the State and national levels, including political consultants and media advisors, and by individuals who have served in high

¹ See <<http://www.unity08.com>> (last visited 9/18/06).

government positions, including a former State Senator, former White House Chief of Staff, former White House communications director, former State Governor, and former heads of State agencies. Unity 08 aims to build a “solidly-funded movement of up to 20,000,000 Americans . . . in order to nominate a Unity Ticket of their choice for 2008.”

Unity 08 states that it has three goals: (1) “to elect a Unity Ticket for President and Vice-President of the United States” in 2008; (2) “for the American people to pick that Unity Ticket in the first half of 2008” through an online nominating convention; and (3) a “*minimum* goal” of “effect[ing] *major* change and reform in the 2008 national elections” by “organizing a group of voters who comprise at least 20% of the national electorate” and whose commitment to the Unity 08 agenda will have to be accounted for by the major parties if they are to be successful in the 2008 presidential election. (Emphasis in the original). The Unity 08 nominees may consist of candidates from either or both of the two major political parties, or of independent candidates. Although Unity 08 may support the candidates offered by one of the two major parties, it plans to hold an online nominating convention in the summer of 2008, during which Unity 08 delegates will vote via the Internet to nominate candidates for the Unity 08 ticket.² Unity 08 does not intend to support or oppose candidates in the 2006 elections or in any congressional, State, or local election at any time.

Unity 08 will finance its activities with solicitations of funds and sales of t-shirts, mugs, pens, bumper stickers, and other similar items. Unity 08 is currently soliciting funds using the Internet and intends to make solicitations using telephone banks and mass mailings. Unity 08’s website proposes that supporters give specific monetary amounts ranging from ten dollars to \$5,000, with an option to give any amount of the supporter’s choosing. Unity 08’s online solicitation form includes the following language: “To succeed we don’t have to match the massive war chests of either party. And, like other successful citizens’ movements before us, we can raise the funds we need to build a lean and effective movement if each of us simply does our part. . . . Please do your part. The stakes for our country have never been higher.” The movement for which Unity 08 is soliciting money is to “Select and Elect a Unity Ticket in the 2008 Presidential Race,” which also appears as the header on the online solicitation form. Elsewhere on the website, this language is repeated: “Unity 08 is a citizens’ movement to get our country back on track by nominating and electing a Unity Ticket in the ’08 presidential election to promote leadership, not partisanship. Every day – with your support – we’re making progress toward this goal.” The phrase “with your support” is a hyperlink to the online solicitation form. A disclaimer was recently added to Unity 08’s online solicitation form, stating that: “Donations made on this website will not be used to support or oppose any federal candidates, but will be used to support Unity08’s organizational building efforts.”

² In your supplemental submission, you indicated that Unity 08 will hold the online nominating convention only if necessary, and if it does become necessary you will file another advisory opinion request. Accordingly, the Commission does not address Unity 08’s activities regarding an online nominating convention.

Unity 08 does not accept money or any other thing of value from “any ‘prohibited source,’” including corporations, foreign nationals, or government contractors. Although Unity 08 did not initially place a limit on the amount of donations it solicits or accepts, it recently imposed a \$5,000 limitation on donations from individuals.

In attempting to elect presidential and vice-presidential candidates in 2008, Unity 08 plans to purchase access to mass media and commission polls, and to “qualify for ballot positions in certain key states for the offices of President and Vice President of the United States through petitions, and if required, litigation.” Specifically, Unity 08 plans to obtain “ballot access as a ‘party’” in approximately 37 States.

Questions Presented

1. *Will Unity 08 make “expenditures” such that Unity 08 must register as a political committee?*
2. *May Unity 08 incorporate for liability purposes only?*

Legal Analysis and Conclusions

Question 1: Will Unity 08 make “expenditures” such that Unity 08 must register as a political committee?

Yes, for the reasons stated below, Unity 08 will make “expenditures” as defined under the Act and Commission regulations, and Unity 08 must register as a political committee when it makes more than \$1,000 in expenditures.³

I. Expenditures

Monies spent by Unity 08 to obtain ballot access through petition drives will be expenditures. An “expenditure” is a “purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.”⁴ 2 U.S.C. 431(9)(A)(i); 11 CFR 100.111(a).

³ Unity 08 does not ask and the Commission does not address whether Unity 08 qualifies as a “political party” under the Act and Commission regulations. The Commission notes, however, that to be a “political party,” an organization must “actually obtain ballot access for one or more Federal candidates.” Advisory Opinion 2004-34 (Libertarian Party of Virginia); *see* 2 U.S.C. 431(16) and 11 CFR 100.15.

⁴ The only exception in the Act from the definition of “expenditure” for ballot access costs applies to “payments received by a political party committee as a condition of ballot access which are transferred to another political party committee or the appropriate State official.” 2 U.S.C. 431(9)(B)(x); *see also* 11 CFR 100.150. The purpose of this exception is to prevent a candidate or a candidate’s authorized committee from having to exceed the limits on contributions to a State party committee in order to gain ballot access. *See FECA Amendments: Hearing Before the Committee on Rules and Administration, United States Senate*, 96th Cong. 4-25, app. at 21 (July 13, 1979) (Statement of Robert Tiernan, Chairman, Federal Election Commission).

The Commission has previously determined that expenses incurred in gathering signatures to qualify for a ballot for Federal office are expenditures. *See* Advisory Opinion 1994-05 n.1 (White) (“[E]xpenditures to influence your election would include amounts you spend . . . to promote yourself for the general election ballot by seeking signatures on nomination petitions”); *see also* Advisory Opinion 1984-11 (Serrette) (determining that expenses made to collect petition signatures for the general election ballot are expenditures, and therefore are, “qualified campaign expenses,” which are expenses made in connection with a candidate’s campaign for nomination, *see* 11 CFR 9032.9).

Although Unity 08 plans to qualify for ballot access for itself as an organization, but not yet for any named candidates, Unity 08 is, in effect, using its name as a placeholder for its candidates’ names on the ballot. Moreover, unlike organizations that secure ballot access for themselves in order to field a slate of Federal and non-Federal candidates, Unity 08 has announced that it will field only two candidates – for the offices of President and Vice President – in the 2008 election only. Thus, in promoting itself through petition drives to obtain ballot access, Unity 08 is promoting its presidential and vice-presidential candidates, and any payments by Unity 08 for these activities will constitute expenditures.⁵

II. Political Committee Status

The Act and Commission regulations, with certain exceptions, define a “political committee” as “any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.” 2 U.S.C. 431(4)(A); 11 CFR 100.5(a). Under the Act and Commission regulations, political committees are subject to certain registration and reporting requirements, as well as limitations and prohibitions on contributions received and made, and on expenditures made. As the Commission stated previously, “[a]ny funds that are ‘contributions’ by operation of new section 100.57 are contributions for purposes of the ‘political committee’ definition in 2 U.S.C. 431(4)(A) and 11 CFR 100.5(a)” *Political Committee Status Final Rules*, 69 Fed. Reg. at 68058. Once Unity 08 receives over \$1,000 in contributions, or makes over \$1,000 in expenditures, it will satisfy the statutory definition of “political committee,” *see* 2 U.S.C. 433.

The Supreme Court has held that, “[t]o fulfill the purposes of the Act,” and to avoid “reach[ing] groups engaged purely in issue discussion,” only organizations whose major purpose is campaign activity can be considered political committees under the Act. *See e.g., Buckley v. Valeo*, 424 U.S. 1, 79; *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986). An organization’s “major purpose” may be established

⁵ The Commission’s conclusion is restricted to the facts presented here: Unity 08 intends to support only two candidates, one for the office of President of the United States and one for the office of Vice President; it “does not intend to support or oppose candidates for Congress or State and local elections at any time”; and it is “not looking to build a new and permanent party.”

through its own public statements. *See e.g., FEC v. Malenick*, 310 F. Supp. 2d 230, 234-36 (D.D.C. 2004) (finding the organization evidenced its “major purpose” through its own materials which stated the organization’s goal of supporting the election of Republican Party candidates for Federal office and through efforts to get prospective donors to consider supporting Federal candidates); *FEC v. GOPAC, Inc.*, 917 F. Supp. 851, 859 (D.D.C. 1996) (finding that the “organization’s [major] purpose may be evidenced by its public statements of its purpose or by other means. . .”).

Unity 08’s self-proclaimed major purpose is the nomination and the election of a presidential candidate and a vice-presidential candidate.⁶ Unity 08 clearly states this goal in its advisory opinion request and on its website. While Unity 08 has a subsidiary objective of influencing the major parties to adopt, in connection with the 2008 national elections, the core positions of Unity 08 supporters, your letters of May 30 and August 16, as well as Unity 08’s website, state that Unity 08’s first goal is the election “of a Unity Ticket for President and Vice-President of the United States in 2008.”

Therefore, given that Unity 08 is making “expenditures” under the Act and Commission regulations, Unity 08 will become a political committee once it makes more than \$1,000 in expenditures.⁷ Unity 08 must register with the Commission by filing a statement of organization within ten days after becoming a political committee, and it will be subject to the provisions of the Act and Commission regulations applicable to political committees.⁸ *See* 2 U.S.C. 433, 11 CFR 102.1 and 102.2.

Question 2: May Unity 08 incorporate for liability purposes only?

Yes, Unity 08 may incorporate for liability purposes only, once it becomes a political committee. Under Commission regulations, a political committee may incorporate for liability purposes only without running afoul of the Act’s prohibitions on corporate contributions and expenditures. *See* 11 CFR 114.12. Thus, Unity 08 may incorporate for liability purposes without being subject to the corporate prohibitions in 2 U.S.C. 441b and 11 CFR part 114.

⁶ *See Buckley v. Valeo*, 424 U.S. 1, 79 (the term “political committee” encompasses organizations “the major purpose of which is the nomination or election of a candidate”).

⁷ The Commission notes that Unity 08 must also register as a political committee if it accepts more than \$1,000 in contributions. The Commission has made no determination as to whether Unity 08 will accept contributions under the facts presented here.

⁸ In its advisory opinion request, Unity 08 cites *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380 (D.C. Cir. 1981), to support its assertion that Unity 08 is not a political committee. In *Machinists*, the Court of Appeals for the D.C. Circuit held that so-called “draft groups” were not political committees under the Act. 655 F.2d at 392. Unity 08, however, is not a draft group. Draft groups do not promote the election of certain candidates for Federal office, but have the more limited aim of convincing individuals who are not yet candidates to run for office. By contrast, the declared purpose of Unity 08 is not to “draft” candidates but to get its chosen presidential candidate and vice-presidential candidate on the ballot, and to raise and spend funds in support of its two candidates. Moreover, *Machinists* expressly left open the question of whether draft groups could be treated as political committees for purposes of the Act’s contribution limits after Congress’s 1979 amendments to the Act. 655 F.2d at 395-96.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)

Robert D. Lenhard
Vice Chairman

Enclosures (Advisory Opinions 2004-34, 1994-05, and 1984-11)