



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

**TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
CHIEF COMMUNICATIONS OFFICER
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE**

FROM: COMMISSION SECRETARY *M. D.*

DATE: SEPTEMBER 21, 2007

**SUBJECT: COMMENT ON DRAFT AO 2007-14
Associated Builders and Contractors,
the National Federation of Independent
Business, and the National Restaurant
Association**

Transmitted herewith is a timely submitted comment from Jan Witold Baran regarding the above-captioned matter.

Proposed Advisory Opinion 2007-14 is on the agenda for Monday, September 24, 2007.

Attachment



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September 21, 2007

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Mary W. Dove
Secretary of the Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Advisory Opinion Request 2007-14

Dear Madame Secretary:

On behalf of the Associated Builders and Contractors, the National Federation of Independent Business, and the National Restaurant Association, we write to support Alternative Draft B in which the Commission concludes that the three trade associations would be permitted to jointly sponsor a series of telephone conferences featuring presidential candidates for the Trade Associations' restricted classes.

First, the public record indicates that the proposed activity is not unique to these trade associations. Rather, other entities have already decided that they can engage in similar activity. For instance, the Federation of American Hospitals and Families USA are launching a Presidential Candidate Forum on September 24 featuring John Edwards during which he will be asked to discuss health care issues. This will be followed by additional forums featuring other candidates for President. See <http://presidentialforums.health08.org>. In addition, the Service Employees International Union (SEIU) and The Center for American Progress Action Fund co-sponsored a Presidential Forum on Health Care in March. Thus, it is incumbent on the Commission to recognize that this activity is ongoing and benefits all of the participants in the process.

Second, as is evident from the regulations, each of these trade associations could sponsor a telephone or web conference on its own that involved its own restricted class. These events could be held consecutively, with the candidate doing nothing but staying on the phone line or moving from room to room to participate in the event. Refusing to allow the entities to join forces and split the costs appropriately as is proposed in Draft A puts form over substance and does not advance any compelling policy. The fact is, each association is still communicating with its own restricted class and paying for the costs of those communications. The "general public" is not involved in these communications. Furthermore, the fact that, by regulation, the media is permitted to cover the events means that the entire substance of the calls can be in the public domain, thereby undermining any

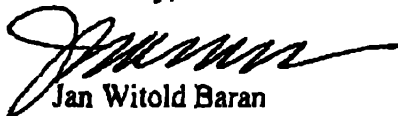
Mary W. Dove
September 21, 2007
Page 2

possible rationale for limiting the event to only one of the three restricted classes at one time.

Finally, Draft A does not distinguish Advisory Opinion 1984-13 on any rational basis. Draft A suggests that the finding in Advisory Opinion 1984-13 was that the National Association of Manufacturers and the Dallas Study Group could jointly sponsor an appearance that involved only the restricted class of the NAM. The Commission's analysis was conducted pursuant to 11 C.F.R. § 114.3, the very same regulation at issue here¹. The draft does not explain why the Commission would permit an organization to pay for a communication to another organization's restricted class, even if it was an unincorporated, nonmembership entity, yet prohibit two or more trade associations from getting together to pay for a communication to each one's own restricted class. There is no basis for prohibiting such activity.

In sum, we urge the Commission to adopt Draft B and permit the trade associations to sponsor a joint restricted class event.

Sincerely,



Jan Witold Baran
Carol A. Laham

¹ While 11 C.F.R. § 114.3 has been amended since the 1984 opinion to more fully expand on permissible activity, the underlying substance of the regulations is the same.