FEDERAL ELECTION COMMISSION
Washington, DC 20463

**MEMORANDUM**

**TO:** **The Commission**
**Staff Director**
**General Counsel**
**FEC Press Office**
**FEC Public Disclosure**

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

**DATE:** **November 28, 2012**

**SUBJECT:** **Comments to Draft B of AO 2012-34**
**(Freedom PAC and Friends of Mike H)**

**Transmitted herewith is a late submitted comment from Jan Witold Baran, Esq. and Caleb P. Burns, Esq. regarding the above-captioned matter.**

**Draft Advisory Opinion 2012-34 was considered at the November 15, 2012 open meeting.**

**Attachment**

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November 28, 2012

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**BY HAND DELIVERY AND FAX (202.208.3333)**

Federal Election Commission
Office of the Commission Secretary
999 E Street, NW
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Re: Comments to Draft B of Advisory Opinion 2012-34

Dear Commissioners:

We respectfully submit these comments to Draft B of Advisory Opinion 2012-34 which was considered at the Commission's November 15, 2012, open meeting. Our comments are intended to supplement those of Marc Erik Elias and Brian G. Svoboda of Perkins Coie LLP.

For the reasons stated by Messrs. Elias and Svoboda, the Commission should reject Draft B which incorrectly states that the so-called soft-money restrictions of 2 U.S.C. § 441i(e)(1) apply to donations of federal campaign committee funds. In addition, Draft B is in direct conflict with Advisory Opinion 2007-29 which is neither cited, nor addressed or distinguished by Draft B.

Advisory Opinion 2007-29 was requested by a Member of Congress who asked whether his federal campaign committee could donate funds to his wife's campaign for Committeeman of the 7th Ward in the Cook County Democratic Party. The Commission concluded that because the funds of a federal campaign committee already "comply with the amount and source restrictions of the Act and Commission regulations," the amount of money that could be donated was "not restricted by 2 U.S.C. 441i(e)(1)."

Though Advisory Opinion 2007-29 clearly states that donations of federal campaign committee funds are not subject to the restrictions of section 441i(e), Draft B says they are: "Section 441i(e) places explicit limits and restrictions on such spending," thereby imposing a "statutory contribution limit" on donations by an "authorized committee of a Federal candidate." However, Draft B fails to cite Advisory Opinion 2007-29 and does not contend with its reasoning.

Section 441i(e) serves the statutory purpose of "severing the ... link between the soft-money donor and the federal candidate." *McConnell v. FEC*, 540 U.S. 93, 182 (2003). As explained in Advisory Opinion 2007-29, federal campaign

committee funds consist entirely of those already subject to the Act's contribution limits and source restrictions. Therefore, there is no need to apply section 441i(e) to the donation of such restricted and limited funds. They are not soft-money and spending them does not result in any conceivable soft-money "link" to which section 441i(e) applies.

Absent a change in the law,[1] there is no legal justification to adopt Draft B which would require the Commission to supersede Advisory Opinion 2007-29. Accordingly, the Commission should leave the conclusion of Advisory Opinion 2007-29 undisturbed and reject Draft B.

Sincerely,

Jan Witold Baran
Caleb P. Burns

cc: Office of General Counsel (FAX 202.219.3923)

[1] Draft B recognizes there has been no such change: "Section 441i(e) and the Act's contribution limits and source prohibitions were upheld by the Supreme Court in *McConnell v. FEC*, 540 U.S. 93, 181-184 (2003), and were not disturbed by either *Citizens United* or *SpeechNow*."