

**RECEIVED**

By Commission Secretary's Office at 10:13 am, Nov 14, 2013



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 13-46-B**  
**AGENDA ITEM**  
**For meeting of November 14, 2013**  
**SUBMITTED LATE**

November 14, 2013

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS*  
Deputy General Counsel

Adav Noti *AN*  
Acting Associate General Counsel

Amy L. Rothstein *ALR by AN*  
Assistant General Counsel

Joanna Waldstreicher *JW*  
Attorney

Subject: AO 2013-13 (Freshman Hold 'em JFC) Draft C

Attached is a proposed draft of the subject advisory opinion.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2013-13

2

3 Dan Backer, Esq.  
4 DB Capitol Strategies PLLC  
5 717 King Street  
6 Suite 300  
7 Alexandria, VA 22314

**DRAFT C**

8

9 Mr. Paul D. Kamenar  
10 Coolidge Reagan Foundation  
11 1629 K Street, N.W.  
12 Suite 300  
13 Washington, D.C. 20006

14

15 Dear Messrs. Backer and Kamenar:

16

17 We are responding to your advisory opinion request on behalf of Freshman  
18 Hold'em, Stutzman for Congress, Gardner for Congress 2012, Tom Reed for Congress,  
19 Denham for Congress, Benishek for Congress, Inc., Rodney for Congress, Duffy for  
20 Congress, Chris Gibson for Congress, Friends of Joe Heck, Friends of Dave Joyce, Pat  
21 Meehan for Congress, Scott Rigell for Congress, Rothfus for Congress, Jon Runyan for  
22 Congress, Inc., VoteTipton.com, Valadao for Congress, and Walorski for Congress, Inc.  
23 Joint Fundraising Committee (the "Committee"). The Committee asks whether it may  
24 use only "Freshman Hold'em JFC" and the URL of the Committee's website to identify  
25 the Committee in its disclaimers on emails, webpages, and printed materials. The  
26 Commission concludes that the Committee may not use only "Freshman Hold'em JFC,"  
27 and its URL, [www.FreshmanHoldem.com](http://www.FreshmanHoldem.com), to identify itself in its disclaimers as  
28 explained below.

28 ***Background***

29

30 The facts presented in this advisory opinion are based on your letter received on  
August 22, 2013, and your emails dated August 29 and September 3, 2013.

1           The Committee is registered with the Commission as a joint fundraising  
2 committee.<sup>1</sup> The Committee maintains a website, [www.FreshmanHoldem.com](http://www.FreshmanHoldem.com), on which  
3 it posts its joint fundraising notice, including the names of its participating candidates.  
4 The Committee’s participants change from election cycle to election cycle based on the  
5 outcomes of elections. Currently, the Committee has 18 participating candidates; in the  
6 last election cycle, it had 30 participating candidates.

7           The Committee represents that it is commonly known as “Freshman Hold’em  
8 JFC,” and that it is referred to as such in the URL for its website, on its webpages, emails,  
9 nametags, and invitations to Committee events, and by the media. The Committee plans  
10 to send out emails and printed materials — including nametags, donor cards, playing  
11 cards, and invitations — and to create webpages for events and other Committee  
12 business. The Committee asserts that its full name cannot be conveniently printed or  
13 practicably displayed in these communications because the amount of text necessary for a  
14 disclaimer using its full name would distract the reader’s attention from the substance of  
15 the communication.

16 ***Question Presented***

17           *May the Committee use only “Freshman Hold’em JFC,” and its URL,*  
18 *[www.FreshmanHoldem.com](http://www.FreshmanHoldem.com), to identify itself in its disclaimers on emails, webpages, and*  
19 *printed materials?*

---

<sup>1</sup> The Committee’s most recent Statement of Organization, dated March 15, 2013, is available at <http://images.nictusa.com/pdf/618/13961151618/13961151618.pdf>.

1 ***Legal Analysis and Conclusion***

2 No, the Committee may not use only “Freshman Hold’em JFC,” and its URL,  
3 www.FreshmanHoldem.com, to identify itself in its disclaimers as explained below.

4 The Act and Commission regulations permit candidates and political committees  
5 to engage in joint fundraising by establishing a separate political committee to serve as  
6 their joint fundraising representative. 2 U.S.C. § 432(e)(3); 11 C.F.R. § 102.17(a). In  
7 raising funds for its participating candidates and political committees, the joint  
8 fundraising representative “shall collect contributions, pay fundraising costs from gross  
9 proceeds and from funds advanced by the participants, and disburse net proceeds to each  
10 participant,” as well as comply with applicable recordkeeping and reporting requirements  
11 11 C.F.R. § 102.17(b)(1), (c)(4), (c)(8).

12 The Act and Commission regulations require all political committees — including  
13 joint fundraising committees — to identify themselves in their (1) “public  
14 communications,” 11 C.F.R. § 100.26;<sup>2</sup> *see also* 2 U.S.C. § 431(22); (2) electronic mail  
15 of more than 500 substantially similar communications; and (3) websites available to the  
16 general public. *See* 2 U.S.C. § 441d(a)(1); 11 C.F.R. § 110.11(a). If a public  
17 communication, mass email, or website is paid for by an authorized committee of a  
18 candidate, the disclaimer must “clearly state that the communication has been paid for by  
19 the authorized political committee.” 11 C.F.R. § 110.11(b).

---

<sup>2</sup> A “public communication” is “a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising,” but not “communications over the Internet, other than those placed for a fee on another person’s Web site.” 11 C.F.R. § 100.26.

1           The Committee’s proposal to identify itself only as Freshman Hold’em JFC and  
2 www.freshmanholdem.com, without more, on its public communications, website, and  
3 mass emails would not be consistent with the Act and Commission regulations because it  
4 would not “give the reader . . . adequate notice of the identity of the person or political  
5 committee that paid for . . . the communication.” 11 C.F.R. § 110.11(c)(1). By  
6 definition, a joint fundraising committee is not an independent committee; rather, it is  
7 “established *solely* for the purpose of joint fundraising by” the candidates who form it.  
8 *See* 2 U.S.C. § 432(e)(3)(A)(ii) (emphasis added). In other words, a political committee  
9 such as the requestor here exists only to raise funds for its participants. A disclaimer  
10 identifying “Freshman Hold’em” as the source of the communications without further  
11 elaboration could potentially be misleading: It would suggest to recipients that a political  
12 committee with that name bore ultimate responsibility for them, when in reality it is the  
13 committee’s participants who sponsor and authorize those communications.<sup>3</sup>

14           The requestor also analogizes its proposal to a Commission regulation that allows  
15 a separate segregated fund (“SSF”) to include in its name a “clearly recognized  
16 abbreviation or acronym by which the [SSF’s] connected organization is commonly  
17 known.” 11 C.F.R. § 102.14(c). But even an SSF that adopts a shortened name must  
18 nonetheless include both its full name and its shortened name in any disclaimers required  
19 by section 110.11. 11 C.F.R. § 102.14(c); *see* Advisory Opinion 2007-15 (GMAC) at 3,  
20 Advisory Opinion 2004-04 (AirPAC) at 2, Advisory Opinion 2000-34 (SAPPI PAC) at 2,  
21 Advisory Opinion 1999-20 (EQUI-PAC) at 2, Advisory Opinion 1980-23 (Agricultural

---

<sup>3</sup> This concern is particularly acute in this case, given that there is a “Freshman Hold’em” joint fundraising committee and a “Freshman Hold’em” political committee. *See* <http://images.nictusa.com/cgi-bin/fecimg/?C00523746>.

1 and Dairy Educational Political Trust) at 2. Thus, the SSF-naming provision in 11 C.F.R.  
2 § 102.14(c) does not support the Committee’s request to omit its participating candidates’  
3 names from its disclaimers.

4 The requestor asserts that including its full name in disclaimers on its emails,  
5 webpages, and printed materials is both inconvenient and impracticable. With regard to  
6 electronic communications such as emails and webpages, however, the Commission has  
7 explained that “the interests served by prompt public disclosure warrant application of the  
8 disclaimer provisions” to such communications “in light of the widespread use of this  
9 technology in modern campaigning, and the relatively non-intrusive nature of disclaimer  
10 requirements.”<sup>4</sup>

11 Regarding printed materials, a political committee need not include a disclaimer  
12 unless the materials are “public communications” as defined in the Act and Commission  
13 regulations.<sup>5</sup> For such communications, the Commission has promulgated a regulation to  
14 address situations in which issues of convenience and practicability warrant an exception  
15 from section 110.11’s disclaimer requirements: A political committee need not include  
16 *any* disclaimers (1) on items that are too small for the convenient printing of a disclaimer,  
17 such as bumper stickers, pins, buttons, or pens; or (2) on means of communication that by

---

<sup>4</sup> Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,964 (Dec. 13, 2002); *see also* Internet Communications, 71 Fed. Reg. 18,589, 18,601 (Apr. 12, 2006) (“[T]he inclusion of a disclaimer statement [on emails] poses only a minimal burden for political committees.”). The emails and webpages at issue in this request are not electronic communications in which the inclusion of disclaimers may be inherently impracticable. *See, e.g.*, Advisory Opinion 2010-19 (Google) (concurring statement of Chairman Matthew S. Petersen), <http://saos.nictusa.com/aodocs/1160122.pdf>.

<sup>5</sup> The requestor states that including its full name in disclaimers on nametags and playing cards is burdensome. Because the definition of “public communication” generally would not include nametags and playing cards, *see* 11 C.F.R. § 100.26, these items would not need disclaimers.

1 their nature make including a disclaimer impracticable, such as skywriting and water  
2 towers.<sup>6</sup> The printed materials presented in this request — such as invitations and donor  
3 cards — are not inherently limited in size or of a nature that would render disclaimers  
4 impracticable.

5 Furthermore, to the extent that any of the materials at issue are solicitations, they  
6 must include a joint fundraising notice “[i]n addition to any [disclaimer] notice required  
7 under 11 C.F.R. § 110.11.” 11 C.F.R. § 102.17(c)(2). The joint fundraising notice sets  
8 out the names of all committees participating in the joint fundraising activity, as well as  
9 certain other information. 11 C.F.R. § 102.17(c)(2). Given that the names of all  
10 participating candidates already appear in the joint fundraising notice, the only additional  
11 information that a joint fundraising committee would have to include in its solicitations to  
12 satisfy the applicable disclaimer requirement would be a statement that the participating  
13 candidates listed in the joint fundraising notice paid for the communication. Adding that  
14 brief statement to invitations or donor cards (assuming that they are solicitations) would  
15 not be unduly burdensome.

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

---

<sup>6</sup> 11 C.F.R. § 110.11(f)(1)(i)-(ii). The Committee does not ask whether any of its planned materials would qualify for this exemption.

1 transaction or activity that is indistinguishable in all its material aspects from the  
2 transaction or activity with respect to which this advisory opinion is rendered may rely on  
3 this advisory opinion. *See* 2 U.S.C. § 437f(c)(1)(B). Please note that the analysis or  
4 conclusions in this advisory opinion may be affected by subsequent developments in the  
5 law including, but not limited to, statutes, regulations, advisory opinions, and case law.

6

7

On behalf of the Commission,

8

9

10

Ellen L. Weintraub

11

12

Chair