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FEDERAL ELECTION COMMISSION  
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November 20, 2007

## AGENDA ITEM

For Meeting of: 11-29-07

### MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*  
General Counsel

Rosemary C. Smith *ACS*  
Associate General Counsel

Amy L. Rothstein *ARR*  
Assistant General Counsel

Stacey J. Shin *SJS*  
Attorney

Subject: Draft AO 2007-22

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for November 29, 2007.

Attachment

1 ADVISORY OPINION 2007-22

2

3 Mr. Jim Hurysz  
4 P.O. Box 5191  
5 Preston King Station  
6 Arlington, VA 22205

**DRAFT**

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8 Dear Mr. Hurysz:

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We are responding to your advisory opinion request concerning the application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to the participation of Canadian citizens in your Federal election campaign.

The Commission concludes that Canadian citizens may provide volunteer services to your campaign. Furthermore, you may use campaign funds and personal funds to obtain information from Canadian citizens, and to travel to Canada to observe third party election operations. You may also use campaign funds to hire Canadian citizens as members of your campaign staff. Your authorized committee may not accept election materials used in previous Canadian campaigns that are provided without charge by Canadian third party candidates, but you may use campaign funds and personal funds to purchase such materials.

***Background***

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The facts presented in this advisory opinion are based on your letters received on August 13, and September 20, 2007, supplemented by your e-mails received on September 27, September 28, and October 3, 2007.

1           You were an independent candidate for the Eighth Congressional District of  
2 Virginia in the 2004 and 2006 elections. Currently, you are contemplating another run  
3 for the same seat in the 2008 election.<sup>1</sup>

4           You indicate that it is extremely difficult to locate individuals who have  
5 participated in a successful third party, non-incumbent campaign for the U.S. House of  
6 Representatives. In Canada, however, you note that third party candidates are often  
7 elected, and thus, you would like to consult with Canadian citizens who have managed  
8 successful campaigns. Furthermore, you would like to use campaign funds or personal  
9 funds to purchase information from Canadians about Canada's multi-party system and  
10 how third party and independent candidates win elections in Canada. Such information  
11 would consist of "widely circulated campaign information and information from  
12 meetings and events," similar to material presented and distributed at political events in  
13 the United States, such as the annual "Take Back America Conference" held by the  
14 Campaign for America's Future. Additionally, you would like to use campaign funds or  
15 personal funds to travel to Canada to obtain such information and observe third party  
16 election operations.

17           You also would like to hire Canadian citizens as members of your campaign staff.  
18 You state that such individuals would not hold "positions involving fund-raising and  
19 other campaign finance activities." In addition, your campaign would like to accept  
20 volunteer services provided by Canadian citizens. Such volunteers would not hold  
21 supervisory or management positions, but would conduct a variety of campaign-related

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<sup>1</sup> Commission records indicate that your principal campaign committee is Jim Hurysz for Congress Campaign Committee. As of the date of issuance of this advisory opinion, you have not yet filed a statement of candidacy with the Commission.

1 activities, such as “lit drops, door to door canvassing, handing out literature at transit  
2 stations, telephone banking, and get out the vote” activities.

3 Finally, you would like to accept certain election-related items provided without  
4 charge by Canadian third party candidates who used the items in their previous  
5 campaigns. The items include flyers, advertisements, door hangers, tri-folds, signs, and  
6 other printed material.

7 ***Questions Presented***

- 8 *1. May your authorized committee accept volunteer services from Canadian citizens?*  
9  
10 *2. May your authorized committee use campaign funds to obtain certain information*  
11 *from Canadians, to pay for travel to Canada to obtain such information and observe*  
12 *third party election operations, and to pay the salaries of Canadian campaign staff?*  
13  
14 *3. May you use personal funds to obtain certain information from Canadians, and to*  
15 *travel to Canada to obtain such information and observe third party election*  
16 *operations?*  
17  
18 *4. May your authorized committee accept election materials used in previous Canadian*  
19 *campaigns that are provided without charge by Canadian third party candidates?*  
20

21 ***Legal Analysis and Conclusions***

22  
23 *Question 1. May your authorized committee accept volunteer services from*  
24 *Canadian citizens?*

25 Yes, your authorized committee may accept certain volunteer services to your  
26 campaign as described below.

27 The Act and Commission regulations prohibit foreign nationals, directly or  
28 indirectly, from making a “contribution or a donation of money or other thing of value  
29 . . . in connection with a Federal, State, or local election.” 2 U.S.C. 441e(a)(1)(A);

1 *see also* 11 CFR 110.20(b). However, the Act and Commission regulations also provide  
2 that the term “contribution” does not include “the value of services provided without  
3 compensation by any individual who volunteers on behalf of a candidate or political  
4 committee.” 2 U.S.C. 431(8)(B)(i); *see also* 11 CFR 100.74.

5       You would like to use the volunteer services of Canadian citizens for a variety of  
6 campaign activities, such as “lit drops, door to door canvassing, handing out literature at  
7 transit stations, telephone banking, and get out the vote” activities. The Commission  
8 concludes that the performance of such campaign-related activities by Canadian citizens,  
9 without compensation, constitutes volunteer activity and, as such, is exempt from the  
10 definition of “contribution.” Thus, the value of volunteer services provided to your  
11 campaign by Canadian nationals would not constitute a prohibited in-kind contribution to  
12 your campaign.<sup>2</sup> *See* Advisory Opinions 2004-26 (Weller) (performance of campaign-  
13 related activities by a foreign national without compensation, including soliciting funds  
14 and support for a Federal candidate, would not result in the making or receipt of a  
15 prohibited contribution), and 1987-25 (Otaola) (uncompensated volunteer services  
16 provided by a foreign national student would not constitute a prohibited contribution).

17       *Question 2. May your authorized committee use campaign funds to obtain*  
18 *certain information from Canadians, to pay for travel to Canada to obtain such*  
19 *information and observe third party election operations, and to pay the salaries of*  
20 *Canadian campaign staff?*

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<sup>2</sup> The Commission notes that the foreign nationals would be prohibited from expending more than \$1,000 of their personal funds for travel in connection with their volunteer activities for the campaign. *See* 2 U.S.C. 431(8)(A)(iv); 11 CFR 100.79(a). However, any unreimbursed payment from a volunteer’s personal funds for usual and normal subsistence expenses incidental to volunteer activity is not a contribution. *See* 11 CFR 100.79(b).

1           Yes, your authorized committee may use campaign funds to obtain certain  
2 information from Canadians, to pay for travel to Canada to obtain such information and  
3 observe third party election operations, and to pay the salaries of Canadian citizens  
4 working for your campaign.

5           The Act identifies six categories of permissible uses of contributions accepted by  
6 a Federal candidate, including otherwise authorized expenditures in connection with the  
7 candidate's campaign for Federal office. *See* 2 U.S.C. 439a(a)(1); *see also*  
8 11 CFR 113.2. Contributions accepted by a candidate may not, however, be converted to  
9 "personal use" by any person. *See* 2 U.S.C 439a(b)(1); 11 CFR 113.2. Commission  
10 regulations define "personal use" as "any use of funds in a campaign account of a present  
11 or former candidate to fulfill a commitment, obligation or expense of any person that  
12 would exist irrespective of the candidate's campaign or duties as a Federal officeholder."  
13 11 CFR 113.1(g); *see also* 2 U.S.C 439a(b)(2).

14           You ask about using campaign funds to obtain information from Canadians about  
15 Canada's multi-party system and how third party and independent candidates win  
16 elections in Canada. Such use of campaign funds would be an otherwise authorized  
17 expenditure in connection with your campaign for Federal office, and is therefore a  
18 permissible use of campaign funds under the Act and Commission regulations. *See*  
19 2 U.S.C. 439a(a)(1); 11 CFR 113.2. The use of campaign funds to purchase this  
20 information would not constitute a conversion to personal use, because the expense  
21 would not exist irrespective of your campaign. *See* 11 CFR 113.1(g); *see also*  
22 2 U.S.C 439a(b)(2). Thus, you may use campaign funds to pay for this information.

1           You also ask about using campaign funds to travel to Canada to consult with  
2 Canadian citizens who have managed successful third party campaigns, and to observe  
3 third party campaign operations. Commission regulations specifically provide a non-  
4 exhaustive list of uses, including “travel expenses,” that are subject to a case-by-case  
5 examination to determine whether they constitute “personal use.” *See* 11 CFR  
6 113.1(g)(1)(ii)(C); *see, e.g.*, Advisory Opinion 2005-09 (Dodd) (permitting the use of  
7 campaign funds to defray the costs of travel by a Federal officeholder’s minor children to  
8 accompany their parents, provided that the parents are traveling to participate in a  
9 function directly connected to the Senator’s *bona fide* official responsibilities). The  
10 Commission concludes that the use of campaign funds to travel to Canada and consult  
11 with Canadian citizens who have managed successful third party campaigns would be an  
12 otherwise authorized expenditure in connection with your campaign for Federal office,  
13 and would therefore be a permissible use of campaign funds under the Act and  
14 Commission regulations. *See* 2 U.S.C. 439a(a)(1); 11 CFR 113.2. The use of campaign  
15 funds in this manner would not constitute a conversion to personal use because the  
16 expense would not exist irrespective of your campaign for Federal office. *See*  
17 11 CFR 113.1(g); *see also* 2 U.S.C 439a(b)(2). Therefore, you may use campaign funds  
18 for this travel to Canada.

19           You also ask about using campaign funds to hire Canadian citizens to work as  
20 campaign staff. The Commission concludes that such use of campaign funds is an  
21 otherwise authorized expenditure in connection with your campaign for Federal office,  
22 and is therefore a permissible use of campaign funds under the Act and Commission  
23 regulations. *See* 2 U.S.C. 439a(a)(1); 11 CFR 113.2. The use of campaign funds to pay

1 for campaign staff who are Canadian citizens also would not constitute a conversion to  
2 personal use because this expense would not exist irrespective of your campaign. *See*  
3 11 CFR 113.1(g); *see also* 2 U.S.C 439a(b)(2). Therefore, you may pay for such staff  
4 salaries using campaign funds.

5 *Question 3. May you use personal funds to obtain certain information from*  
6 *Canadians, and to travel to Canada to obtain such information and observe third party*  
7 *candidate operations?*

8 Yes, you may use personal funds to obtain from Canadians information identified  
9 in the response to Question 2, and to travel to Canada to obtain such information and  
10 observe third party candidate operations. Such use of personal funds would constitute an  
11 in-kind contribution to your campaign. *See* 11 CFR 100.52(d)(1) and 100.111(e)(1).

12 Individual contributions to a candidate's authorized committee are limited to  
13 \$2,300 per election. *See* 2 U.S.C. 441a(a)(1)(A). However, Commission regulations  
14 provide that "candidates for Federal office [other than presidential candidates receiving  
15 public funding] may make unlimited expenditures from personal funds."<sup>3</sup>

16 11 CFR 110.10; *see, e.g.*, Advisory Opinion 2000-08 (Harvey). Thus, you may expend  
17 your personal funds, without limitation, to obtain information from Canadian third party  
18 candidates, and travel to Canada to obtain such information and observe third party  
19 candidate operations.<sup>4</sup>

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<sup>3</sup> "Personal funds" of a candidate means the sum of "assets," "income," and "jointly owned assets" as defined in 11 CFR 100.33.

<sup>4</sup> Disbursements of such personal funds must be reported by your principal campaign committee as in-kind contributions to and expenditures made by your principal campaign committee on Schedules A and B, if the in-kind contributions aggregate in excess of \$200 in a calendar year. *See* 2 U.S.C. 434(b); *see also* 11 CFR 104.3(a)(4)(i), 104.3(b)(4)(i), 104.13(a)(1), and 104.13(a)(2).



1           *Question 4. May your authorized committee accept election materials used in*  
2 *previous Canadian campaigns that are provided without charge by Canadian third party*  
3 *candidates?*

4           No, your authorized committee may not accept election materials used in previous  
5 Canadian campaigns that are provided without charge by Canadian third party candidates.  
6 Your authorized committee may, however, expend campaign funds to purchase the  
7 materials. You may also use personal funds to purchase such materials.

8           As noted above, the Act and Commission regulations prohibit foreign nationals,  
9 directly or indirectly, from making a “contribution or donation of money or other thing of  
10 value, or to make an express or implied promise to make a contribution or donation, in  
11 connection with a Federal State, or local election.” 2 U.S.C. 441e(a)(1)(A); *see also*  
12 11 CFR 110.20(b). “Anything of value” includes all in-kind contributions, including the  
13 provision of goods or services without charge or at a charge that is less than the usual and  
14 normal charge. *See* 11 CFR 100.52(d)(1). “Usual and normal charge” is defined as the  
15 price of goods in the market from which they ordinarily would have been purchased at  
16 the time of the contribution, or the commercially reasonable rate prevailing at the time  
17 the services were rendered. *See* 11 CFR 100.52(d)(2).

18           Here, you propose accepting without charge, from Canadian third party and  
19 independent candidates, certain printed materials used in previous Canadian campaigns.  
20 The materials would include flyers, advertisements, door hangers, tri-folds, signs, and  
21 other printed material. You plan to use these items to assist you in your own campaign.  
22 Although the value of these materials may be nominal or difficult to ascertain, they have  
23 some value. The provision of these items without charge would relieve your campaign of

1 the expense that it would otherwise incur to obtain such materials. Thus, the provision of  
2 such items without charge would constitute a contribution and, as such, would be  
3 prohibited, particularly in light of the broad scope of the prohibition on contributions  
4 from foreign nationals. *See, e.g.*, 120 Cong. Rec. 8782 (Mar. 28, 1974) (statement of  
5 Sen. Bentsen, author of the amendment prohibiting foreign national contributions) (“I am  
6 saying that contributions by foreign nationals are wrong, and they have no place in the  
7 American political system.”); *see also Explanation and Justification for Regulations on*  
8 *Contribution Limitations and Prohibitions*, 67 Fed. Reg. 69940 (Nov. 19, 2002) (“As  
9 indicated by the title of section 303 of BCRA, “Strengthening Foreign Money Ban,”  
10 Congress amended 2 U.S.C. 441e to further delineate and expand the ban on  
11 contributions, donations, and other things of value by foreign nationals.”).

12 The situation presented here is similar to that considered by the Commission in  
13 Advisory Opinion 1981-51 (Metzenbaum). In that opinion, the Commission concluded  
14 that the provision of an original work of art by a foreign national artist to a political  
15 committee for use by the committee in fundraising was a contribution and, hence,  
16 prohibited by 2 U.S.C. 441e. Similarly here, you plan to use the printed materials from  
17 previous Canadian campaigns to assist you in your own campaign. As such, their  
18 provision without charge by foreign nationals would constitute a prohibited in-kind  
19 contribution to your campaign. Nor may you solicit, accept, or receive such goods from  
20 foreign nationals. *See* 2 U.S.C. 441e(a)(2); 11 CFR 110.20(g) and (h). Your committee  
21 may, however, expend campaign funds to purchase such materials because such use of  
22 campaign funds would be an otherwise authorized expenditure in connection with your  
23 campaign for Federal office and would not constitute a conversion to personal use. *See*

1 2 U.S.C. 439a(a)(1); 11 CFR 113.2. You may also use personal funds to purchase such  
2 materials. *See* 11 CFR 110.10.

3           This response constitutes an advisory opinion concerning the application of the  
4 Act and Commission regulations to the specific transaction or activity set forth in your  
5 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any  
6 of the facts or assumptions presented and such facts or assumptions are material to a  
7 conclusion presented in this advisory opinion, then the requester may not rely on that  
8 conclusion as support for its proposed activity. All cited advisory opinions are available  
9 on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

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Sincerely,

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Robert D. Lenhard  
Chairman

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