



**FEDERAL ELECTION COMMISSION**  
WASHINGTON DC 20463

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COMMISSION  
SECRETARIAT

**FEB 1 4 29 PM '95**

**February 1, 1995**

**MEMORANDUM**

**TO:** The Commission

**THROUGH:** John C. Suzina  
Staff Director

**FROM:** Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Jonathan M. Levin  
Senior Attorney

**SUBJECT: Draft Advisory Opinion 1994-38, with alternative**

Attached is a proposed draft of the subject advisory opinion. Also attached is an alternative draft identified by the hand inscribed letter A in the upper right corner of each page.

Both drafts reach the same result. The only difference in Draft A is that it omits the reasoning and legal analysis presented in the OGC proposed draft. (See first full paragraph on page 4 of Draft A.)

We request that both drafts be placed on the agenda for February 9, 1995.

**Attachments**

**AGENDA ITEM**  
**For Meeting of: FEB 9 1995**

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2  
3 **ADVISORY OPINION 1994-38**

4 **Jonathan S. Fuhrman, Treasurer**  
5 **Roybal-Allard for Congress Committee**  
6 **1127 E. Del Mar Blvd. #224**  
7 **Pasadena, CA 91106**

**DRAFT**

8 **Dear Mr. Fuhrman:**

9 **This responds to your letters dated November 23, 1994,**  
10 **and January 15, 1995, concerning application of the Federal**  
11 **Election Campaign Act of 1971, as amended ("the Act"), and**  
12 **Commission regulations to the application of California**  
13 **campaign finance statutes to a House candidate's principal**  
14 **campaign committee.**

15 **In 1994, Representative Lucille Roybal-Allard ran for**  
16 **reelection to the House of Representatives from the 33rd**  
17 **District of California. On October 31, 1994, her principal**  
18 **campaign committee, Lucille Roybal-Allard for Congress ("the**  
19 **Committee"), donated \$10,000 to Tax Payers Against 187, a**  
20 **committee opposing a state ballot proposition for**  
21 **restrictions on illegal immigrants. Subsequently, the**  
22 **California Fair Political Practices Commission ("FPPC")**  
23 **informed the Committee that, due to this contribution, the**  
24 **Committee qualified as a major donor committee under**  
25 **California law.**

26 **Under California law, a committee that makes**  
27 **contributions totaling \$10,000 or more during a calendar year**  
28 **"to or at the behest of" State or local candidates or**  
29 **committees must file campaign disclosure reports as a major**  
30 **donor committee. California Government Code §82013(c). Such**

3 committees are not required to register with the FPPC, but  
4 shall file semi-annual statements for each half of the year  
5 in which contributions have been made. CGC §§84200 and  
6 84200.5.<sup>1/</sup> A major donor committee is required to disclose  
7 payments made which are contributions to California  
8 candidates or committees, or which are independent  
9 expenditures to support or oppose California State and local  
10 candidates or ballot measures. Payments of \$100 or more per  
11 calendar year for or against each measure or candidate are to  
12 be itemized. CGC §84211. With the exception of repayments  
13 to the committee of loans made by it, a major donor committee  
14 is not required to disclose its receipts.

15 In view of the FPPC's intent to impose its own  
16 disclosure requirement on the Committee, you ask whether the  
17 Act preempts the California law in this situation. If so,  
18 the Committee would not have to file a major donor report.

19 The Act states that its provisions, and the rules  
20 prescribed thereunder, "supersede and preempt any provision  
21 of State law with respect to election to Federal office." 2  
22 U.S.C. §453. The House committee that drafted this provision  
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24 <sup>1/</sup> A committee that does not meet the \$10,000 threshold  
25 until after June 30 will file only one statement for that  
26 year, and a committee that makes qualifying contributions  
27 during the first six months of a year, but makes no  
28 contributions during the last six months of that year, will  
29 only file one statement for the year. A major donor  
30 committee may also be required to file additional special  
reports in some circumstances. See, e.g., CGC §§84202.7 and  
84203. The committee's filing obligation terminates  
automatically at the end of each year; additional filing will  
only be required if the committee again contributes \$10,000  
in a subsequent year.

3 intended "to make certain that the Federal law is construed  
4 to occupy the field with respect to elections to Federal  
5 office and that the Federal law will be the sole authority  
6 under which such elections will be regulated." H.R. Rep. No.  
7 93-1239, 93d Cong., 2d Sess. 10 (1974). According to the  
8 Conference Committee report on the 1974 Amendments to the  
9 Act, "Federal law occupies the field with respect to criminal  
10 sanctions relating to limitations on campaign expenditures,  
11 the sources of campaign funds used in Federal races, the  
12 conduct of Federal campaigns, and similar offenses, but does  
13 not affect the States' rights" as to other areas such as  
14 voter fraud and ballot theft. H.R. Rep. No. 93-1438, 93d  
15 Cong., 2d Sess. 69 (1974). The Conference report also states  
16 that Federal law occupies the field with respect to reporting  
17 and disclosure of political contributions to and expenditures  
18 by Federal candidates and political committees, but does not  
19 affect state laws as to the manner of qualifying as a  
20 candidate, or the dates and places of elections. Id. at  
21 100-101.

22 When the Commission promulgated regulations at 11 CFR  
23 108.7 on the effect of the Act on state law, it stated that  
24 the regulations follow section 453. Specifically, Federal  
25 law supersedes state law with respect to the organization and  
26 registration of political committees supporting Federal  
27 candidates, disclosure of receipts and expenditures by  
28 Federal candidates and political committees, and the  
29 limitations on contributions and expenditures regarding  
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3 Federal candidates and political committees. Federal  
4 Election Commission Regulations, Explanation and  
5 Justification, House Document No. 95-44, at 51 (1977). 11  
6 CFR 108.7(b). The regulations provide that the Act does not  
7 supersede state laws concerning the manner of qualification  
8 as a candidate or political party organization, dates and  
9 places of elections, voter registration, voting fraud and  
10 similar offenses, or candidates' personal financial  
11 disclosure. 11 CFR 108.7(c). The Commission explained that  
12 "[t]hese types of electoral matters are interests of the  
13 states and are not covered in the act." House Document  
14 95-44, at 51.

15 The asserted application of the California disclosure  
16 requirement to any Federal political committee requires close  
17 scrutiny, given the foregoing language with respect to the  
18 Act's coverage of registration and reporting requirements of  
19 political committees. The Commission has stated that the Act  
20 "does not, however, preempt state law with respect to the  
21 reporting of receipts and disbursements of funds used for  
22 non-Federal election purposes or the registration and  
23 reporting of non-Federal accounts or state committees."  
24 Advisory Opinion 1986-27. See also Advisory Opinion 1993-14  
25 acknowledging that a state may be able to impose some  
26 registration and reporting requirements on Federal committees  
27 engaged in some non-Federal activity. In view of the pointed  
28 language of the legislative history and the resultant  
29 distinctions drawn in Commission regulations and past  
30

3 advisory opinions on preemption, it is necessary to examine  
4 what is meant by non-Federal election purposes.

5 Generally, the Act and regulations permit wide  
6 discretion for a candidate and her campaign committee to use  
7 its funds for any campaign or campaign-related purpose,  
8 except that "no such amounts may be converted by any person  
9 to any personal use . . ." 2 U.S.C. §439a; 11 CFR 113.2(d).<sup>2/</sup>  
10 See Advisory Opinion 1992-32 which involved a principal  
11 campaign committees donation to a non-profit, public housing  
12 residents' council.<sup>3/</sup> See also Advisory Opinion 1992-28 which  
13 involved a principal campaign committee's loan to a  
14 charitable organization that supported housing and economic  
15 development (loan not permitted because of the source of  
16 repayment). A candidate may reasonably construe as related  
17 to her reelection effort her campaign's donation of funds to  
18 an entity advocating a political position on a ballot  
19 referendum before the electorate. From your account of the  
20 relevance of Proposition 187 to Ms. Roybal-Allard's political  
21 views and those of persons residing in her district, this  
22 appears to be true in this situation.

23  
24 <sup>2/</sup> On February 2, 1995, the Commission gave final approval  
25 to revised regulations governing the personal use of campaign  
26 funds received by Federal candidates and their authorized  
27 committees. These regulations, along with an Explanation and  
28 Justification, have [will be] been transmitted to Congress  
for a 30 legislative day review period pursuant to 2 U.S.C.  
§438(d). The effective date of the revised regulations will  
be announced by the Commission in a Federal Register notice.

29 <sup>3/</sup> In that opinion, the Commission noted that it was  
30 expressing no opinion on the application of "any other  
Federal or state law outside the Commission's jurisdiction."

3 You note that Proposition 187 was the leading issue in  
4 Ms. Roybal-Allard's community during the 1994 general  
5 election campaign. You state that "[s]he was often asked by  
6 her constituents about the measure and was expected by her  
7 community to be one of the leaders opposing the measure." In  
8 addition, even though the vehicle for expressing a position  
9 was a donation to an advocacy group dealing with the issue of  
10 illegal immigrants posed as a State ballot question, this  
11 issue is also a Federal matter that Ms. Roybal-Allard will  
12 address in her capacity as a Member of Congress. The  
13 Commission believes that the public expression of the  
14 candidate's position, through a donation made before the  
15 general election which will be publicly disclosed by the  
16 Committee, was as much a part of her campaign for reelection  
17 as would be a media advertisement with language expressly  
18 advocating her election. As stated in Buckley v. Valeo, 424  
19 U.S. 1 (1976),

20 For the distinction between discussion of issues  
21 and candidates and advocacy of election or defeat  
22 of candidates may often dissolve in practical  
23 application. Candidates, especially incumbents,  
24 are intimately tied to public issues involving  
25 legislative proposals and governmental actions.  
26 Not only do candidates campaign on the basis of  
27 their positions on various public issues, but  
28 campaigns themselves generate issues of public  
29 interest.

30 424 U.S., at 42-43.

Based on the foregoing, the Commission views the  
donation as an integral part of Ms. Roybal-Allard's  
reelection campaign, rather than as a disbursement of funds

3 for non-Federal election purposes. The Commission concludes,  
4 therefore, that the Act and Commission regulations preempt  
5 and supersede the California requirement that the Committee  
6 report the donation as a major donor committee.

7 This response constitutes an advisory opinion concerning  
8 application of the Act, or regulations prescribed by the  
9 Commission, to the specific transaction or activity set forth  
10 in your request. See 2 U.S.C. §437f.

11 Sincerely,

12  
13 Danny L. McDonald  
14 Chairman

15 Enclosures (AOs 1993-14, 1992-32, 1992-28, and 1986-27)  
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**ADVISORY OPINION 1994-38**

**Jonathan S. Fuhrman, Treasurer  
Roybal-Allard for Congress Committee  
1127 E. Del Mar Blvd. #224  
Pasadena, CA 91106**

**Dear Mr. Fuhrman:**

**This responds to your letters dated November 23, 1994, and January 15, 1995, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the application of California campaign finance statutes to a House candidate's principal campaign committee.**

**In 1994, Representative Lucille Roybal-Allard ran for reelection to the House of Representatives from the 33rd District of California. On October 31, 1994, her principal campaign committee, Lucille Roybal-Allard for Congress ("the Committee"), donated \$10,000 to Tax Payers Against 187, a committee opposing a state ballot proposition for restrictions on illegal immigrants. Subsequently, the California Fair Political Practices Commission ("FPPC") informed the Committee that, due to this contribution, the Committee qualified as a major donor committee under California law.**

**Under California law, a committee that makes contributions totaling \$10,000 or more during a calendar year "to or at the behest of" State or local candidates or committees must file campaign disclosure reports as a major donor committee. California Government Code §82013(c). Such**

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committees are not required to register with the FPFC, but shall file semi-annual statements for each half of the year in which contributions have been made. CGC §§84200 and 84200.5.<sup>1/</sup> A major donor committee is required to disclose payments made which are contributions to California candidates or committees, or which are independent expenditures to support or oppose California State and local candidates or ballot measures. Payments of \$100 or more per calendar year for or against each measure or candidate are to be itemized. CGC §84211. With the exception of repayments to the committee of loans made by it, a major donor committee is not required to disclose its receipts.

In view of the FPFC's intent to impose its own disclosure requirement on the Committee, you ask whether the Act preempts the California law in this situation. If so, the Committee would not have to file a major donor report.

The Act states that its provisions, and the rules prescribed thereunder, "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. §453. The House committee that drafted this provision

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<sup>1/</sup> A committee that does not meet the \$10,000 threshold until after June 30 will file only one statement for that year, and a committee that makes qualifying contributions during the first six months of a year, but makes no contributions during the last six months of that year, will only file one statement for the year. A major donor committee may also be required to file additional special reports in some circumstances. See, e.g., CGC §§84202.7 and 84203. The committee's filing obligation terminates automatically at the end of each year; additional filing will only be required if the committee again contributes \$10,000 in a subsequent year.

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intended "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal office and that the Federal law will be the sole authority under which such elections will be regulated." H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 10 (1974). According to the Conference Committee report on the 1974 Amendments to the Act, "Federal law occupies the field with respect to criminal sanctions relating to limitations on campaign expenditures, the sources of campaign funds used in Federal races, the conduct of Federal campaigns, and similar offenses, but does not affect the States' rights" as to other areas such as voter fraud and ballot theft. H.R. Rep. No. 93-1438, 93d Cong., 2d Sess. 69 (1974). The Conference report also states that Federal law occupies the field with respect to reporting and disclosure of political contributions to and expenditures by Federal candidates and political committees, but does not affect state laws as to the manner of qualifying as a candidate, or the dates and places of elections. Id. at 100-101.

When the Commission promulgated regulations at 11 CFR 108.7 on the effect of the Act on state law, it stated that the regulations follow section 453. Specifically, Federal law supersedes state law with respect to the organization and registration of political committees supporting Federal candidates, disclosure of receipts and expenditures by Federal candidates and political committees, and the limitations on contributions and expenditures regarding

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Federal candidates and political committees. Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 51 (1977). 11 CFR 108.7(b). The regulations provide that the Act does not supersede state laws concerning the manner of qualification as a candidate or political party organization, dates and places of elections, voter registration, voting fraud and similar offenses, or candidates' personal financial disclosure. 11 CFR 108.7(c). The Commission explained that "[t]hese types of electoral matters are interests of the states and are not covered in the act." House Document 95-44, at 51.

The asserted application of the California disclosure requirement to any Federal political committee requires close scrutiny, given the foregoing language with respect to the Act's coverage of registration and reporting requirements of political committees. Based on its review of the cited California statute, the Act and legislative history, as well as its own regulations, the Commission concludes that the Act and Commission regulations preempt and supersede the California statute to the extent it purports to require the Committee to report the described donation as a major donor committee.

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This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. §437f.

Sincerely,

Danny L. McDonald  
Chairman