

February 10, 2016

Federal Election Commission  
c/o Office of the General Counsel  
999 E Street, NW  
Washington, D.C. 20463

**RE: Petition for Rulemaking to Amend 11 C.F.R. § 112.3**

Dear Federal Election Commission:

The undersigned respectfully submit this petition for rulemaking pursuant to 11 C.F.R. § 200.2. We ask the Commission amend the rules in 11 C.F.R. § 112.3 to allow for public comments on draft advisory opinions and ensure adequate time for the public<sup>1</sup> to make such comments before the Commission votes on such advisory opinions.

Under 11 C.F.R. § 112.3, any interested person may submit written comments concerning advisory opinion requests made public by the Commission. The spirit of the rule is to encourage the public to participate in the Commission's decision-making process. However, without the corresponding draft opinions, requests alone may not enable the public to fully appreciate the impact of such requests or to make fully informed comments.

Although the Commission has allowed the public some opportunity to review and respond to drafts of advisory opinions as well, the Commission has not formally adopted this practice under 11. C.F.R. § 112.3.

The Commission limits informal opportunities for the public to comment on drafts. The Commission restricted the public to a notice period of 17 hours — mostly overnight — to assess

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<sup>1</sup> See 52 U.S. Code §§ 30101(11) and 30108(d).

and respond to 30 page drafts of AO 2015-09, released on October 28, 2015, for each of Draft A and Draft B. From October 28 through October 29 of 2015, the Commission released AO 2015-09 Draft A at approximately 4 PM and Draft B at approximately 7 PM, with a request for public comments due by 9 AM the next morning, and scheduled a meeting to discuss AO 2015-09 at 10 AM. The public had no adequate notice or opportunity to engage in meaningful discussion and debate regarding the merits of the drafts under this extremely short time period. Subsequently, the Commission allowed no public comment on AO 2015-09 Drafts C, D, E and F, stripping the public of any notice or discussion.

The Commission has constrained even its commissioners' abilities to comment on drafts. On October 29, 2015, the Commission publicly issued drafts of AO 2015-08 at 10:57 AM and 3:38 PM — *during* the meeting. The Commissioners' colloquy during the meeting indicated even some Commissioners did not receive the drafts or did not have adequate time to read the drafts, despite being asked to vote on their adoption.

The Commission has consistently suspended its internal rules regarding the timely submission of documents to the detriment of the public. In nearly every AOR meeting, drafts are issued days or hours before the meeting. Even practitioners who regularly monitor the Commission's activities, and seek to engage in AOR proceedings, have found it difficult to meaningfully comment under such limited timeframes.

Therefore, we request the Commission amend 11 C.F.R. § 112.3 to allow for public comments on draft advisory opinions and ensure adequate time for the public to comment on drafts of advisory opinions before they come to a vote.

### Proposed amendments to 11 C.F.R. § 112.3

We propose 11 C.F.R. § 112.3 be amended as follows. Additions are in ***bold italic***; deletions in ~~strikeout~~.

#### 11 C.F.R. § 112.3 - Written comments on requests

(a) Any interested person may submit written comments concerning advisory opinion requests, ***and drafts of advisory opinions***, made public at the Commission.

(b)

(1) The written comments ***concerning advisory opinion requests*** shall be submitted within 10 calendar days following the date the request is made public at the Commission.

(2) ***The written comments concerning drafts of advisory opinions shall be submitted within 7 calendar days following the date the draft of public opinion is made public at the Commission, or within 3 calendar days in the case of a request expedited under 11 C.F.R. § 112.4(b).***

(3) However, if ***any of the foregoing dates*** ~~the 10th calendar day~~ falls on a Saturday, Sunday, or Federal holiday, ***such*** period ends at the close of the business day next following the weekend or holiday. Additional time for submission of written comments may be granted upon written request for an extension by the person who wishes to submit comments or may be granted by the Commission without an extension request, ***provided***

*that any extension that would exceed the statutory period within which the Commission must act may only be granted if the requester consents to such extension.*

*(4) The Commission shall publish draft advisory opinions, together with “redlines” of the differences between alternative draft advisory opinions, reasonably in advance of the meeting during which the Commission is scheduled to vote on the request as is necessary to ensure the time for the public comment described above.*

- (c) Comments on advisory opinion requests *and drafts of advisory opinions* should refer to the AOR number of the request, and statutory references should be to the United States Code citations, rather than to Public Law citations.
- (d) *Advisory opinion requests*, written comments, and requests for additional time to comment shall be sent to the Federal Election Commission, Office of General Counsel, *by email to [ao@fec.gov](mailto:ao@fec.gov), such other email address the Commission may designate, or by mail to 999 E Street, NW, Washington, DC 20463.*
- (e) Before it issues an advisory opinion, the Commission shall accept and consider all written comments submitted within the ~~10-day~~ comment period (or any extension thereof), *as set forth above.*

## **Public Engagement is Necessary**

The amendments to 11 C.F.R. § 112.3 are necessary to ensure adequate opportunity for the public to engage with the Commission on its regulatory interpretations that potentially create substantive changes to election law.

While adequate time exists to comment on advisory opinion requests, the substance of potential impacts cannot be known until a draft advisory opinion is available. Adequate time to comment on such drafts is important. The proposed amendments would benefit the general public by providing adequate notice and opportunity to review and comment on draft advisory opinions.

This comment period is essential, as it directly impacts the public's ability to engage in the political process, and draft advisory opinions may quickly become actual advisory opinions. The Commission should strive to include the public in this important decision making process and would be able to do so through these proposed changes.

The undersigned each request to appear before the Commission in any hearing on this matter.

Respectfully submitted,

/s/  
Sai  
*on behalf of:*  
Make Your Laws PAC, Inc.,  
Make Your Laws Advocacy, Inc., *and*  
Make Your Laws, Inc.  
500 Westover Dr #8458  
Sanford, NC 27330  
[sai@makeyourlaws.org](mailto:sai@makeyourlaws.org)

/s/  
Dan Backer, Esq.  
DB Capitol Strategies PLLC  
203 South Union Street, Suite 300  
Alexandria VA 22314  
202-210-5431 office  
202-478-0750 fax  
[dbacker@DBCapitolStrategies.com](mailto:dbacker@DBCapitolStrategies.com)