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June 29, 2011

Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463  
c/o Christopher Hughey  
Acting General Counsel

**RE: Keep the Press Exemption Focused on News Activity;  
Public Citizen Comment on Colbert's Advisory Opinion request [2011-11]**

Dear Commissioners:

Public Citizen urges the Federal Election Commission (FEC) to weigh the intent and scope of the long-standing and immensely valuable “press exemption” in campaign finance law and deny the request by Stephen Colbert to vastly expand the exemption by allowing Viacom Corp. to secretly finance the election activities of the Colbert Super PAC.

The press exemption has long been a staple of campaign finance laws. It is critical for the freedom of the press to allow media outlets to pay for any costs associated with “covering or carrying any news story, commentary or editorial.”<sup>1</sup> Such media expenses are exempt from reporting requirements. As always, however, this press exemption means allowing media companies to pay for expenses in the course of its “legitimate press function,”<sup>2</sup> not a blanket exemption allowing such companies to finance political campaigns generally.

Viacom Corporation owns and produces Colbert’s popular comedy show, the *Colbert Report*. Genuine media outlets have long been protected under campaign finance laws to report the news on candidates and campaigns and even endorse specific candidates for public office under the “press exemption.” Since Viacom is a genuine media outlet, Colbert is asking that the FEC substantially broaden the press exemption to allow the company to finance the election activities of the Colbert Super PAC beyond the traditionally accepted boundaries of political news reporting, editorials and endorsements within its legitimate role as news media. In essence, Colbert wants the FEC to approve that any and all corporate expenditures by Viacom in support of his Super PAC may go unreported to the public under the press exemption – whether or not the activities of the PAC are related to the media function of Viacom.

This would carve out a gaping loophole in campaign finance laws, allowing any company involved in media to foot, in secret and without limit, the electioneering expenses of political

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<sup>1</sup> 11 C.F.R. 100.73.

<sup>2</sup> See, for example, FEC Advisory Opinions 2004-7, 2005-19, 2007-20, and 2010-08.

committees. If the press exemption is so dangerously expanded by the FEC, the next request will be for media companies to directly finance unlimited candidate campaigns under the press exemption – an abuse that is already being advocated in some quarters.<sup>3</sup> Furthermore, it has become commonplace for many candidates today to double as show hosts and commentators, such as Sarah Palin, Newt Gingrich and Mike Huckabee. Loosening the press exemption as requested by Colbert is likely to have the unintended consequence of permitting media companies to fund these candidate campaigns as well as “independent” super PACs.

Though the request is largely made in jest and for showmanship, further expanding the press exemption as requested by Colbert is likely to be seen as mocking the FEC and, more importantly, gutting federal campaign finance laws and regulations.

The Supreme Court radically altered the campaign finance landscape in last year’s *Citizens United v. FEC* decision, which permits unlimited independent political expenditures by corporations. The Court stated that potential problems with this new corporate spending would be offset by full transparency regarding sources of the money spent on elections.

Approving the Colbert Advisory Opinion request will contradict the Court’s rationale in *Citizens United* and provide a massive loophole for unlimited corporate spending – even direct corporate contributions to candidates – to go entirely unreported.

For these reasons, Public Citizen encourages the FEC to deny the Colbert Advisory Opinion request.

Sincerely,



David Arkush  
Director,  
Public Citizen’s Congress Watch division



Craig Holman, Ph.D.  
Government Affairs Lobbyist,  
Public Citizen

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<sup>3</sup> See, for example, MUR 5679, in which the Scranton-Times Tribune newspaper paid for political advertising outside the newspaper that included billboards and bus advertisements with a fictitious headline promoting the election of Democratic senate candidate Bob Casey in 2005.