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By Office of the Commission Secretary at 3:42 pm, Jan 05, 2024



FEDERAL ELECTION COMMISSION
Washington, DC

AGENDA DOCUMENT NO. 24-01-B
AGENDA ITEM
For meeting of Jan. 11, 2024

LATE SUBMITTED

January 5, 2024

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *NFS for LJS*
Acting General Counsel

Neven F. Stipanovic *NFS*
Associate General Counsel

Robert Knop *RMK*
Assistant General Counsel

Subject: AO 2023-09 (Cortez Masto) - Draft B

Attached is a proposed draft of the subject advisory opinion. We have been asked to place this draft on the Agenda by one or more Commissioners.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 p.m. (Eastern Time) on January 10, 2023.

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 <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

4 Jacquelyn Lopez, Esq.
5 Jonathan Peterson, Esq.
6 Kaveri Sharma, Esq.
7 Elias Law Group
8 250 Massachusetts Ave NW, Suite 400
9 Washington, DC 20001

10 Dear Counsel:

11 We are responding to your advisory opinion request on behalf of Senator Catherine
12 Cortez Masto (“Requestor”) concerning the application of the Federal Election Campaign Act,
13 52 U.S.C. §§ 30101–45 (the “Act”), and Commission regulations to the Requestor’s proposal to
14 establish a nonfederal committee to be active exclusively in connection with nonfederal elections
15 and that will not share a contribution limit with Requestor’s existing federal leadership PAC.
16 The Commission concludes that Requestor may establish the nonfederal committee as proposed
17 and that it would not share a contribution limit with her federal leadership PAC.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter received October 31,
20 2023, and reports filed with the Commission.

21 Requestor is the senior United States Senator from Nevada.¹ She maintains a federal
22 leadership PAC, All For Our Country Leadership PAC, that accepts contributions and makes
23 expenditures in support of candidates for federal office.²

24 Requestor proposes to personally establish a nonfederal entity in Nevada , a “committee
25 for political action” that will engage exclusively in activity in connection with state and local

¹ Advisory Opinion Request (“AOR”) at AOR001.

² *Id.* In addition to her leadership PAC, Requestor also maintains or controls two affiliated Joint Fundraising Committees, Chief Among Us and Cortez Masto Victory Fund. *See* Statement of Organization (Form 1) 5–6, All For Our Country Leadership PAC (Nov. 1, 2023).

1 elections.³ The proposed nonfederal entity will provide funds to candidates for state and local
2 office and spend funds supporting or opposing state and local ballot measures.⁴ The proposed
3 nonfederal entity will not raise or spend funds for the purpose of influencing any election for
4 federal office, nor will it engage in any other activity that would “require[] it to register as a
5 political committee under the Act.”⁵ Requestor states that her proposed nonfederal committee
6 will not raise or spend funds in excess of applicable federal contribution limits or from federally
7 prohibited sources.⁶

8 ***Question Presented***

9 *May Requestor establish a nonfederal committee, which will exclusively raise and spend*
10 *funds in connection with nonfederal elections, that does not share a contribution limit with*
11 *Requestor’s federal leadership PAC?*

12 ***Legal Analysis***

13 Yes, Requestor may establish a nonfederal committee, which will exclusively raise and
14 spend funds in connection with nonfederal elections, and such funds would not be aggregated
15 with contributions made by the same source to Requestor’s federal leadership PAC under a
16 shared contribution limit. Under the Act and Commission regulations, Requestor may solicit,
17 receive, direct, transfer, or spend funds through her proposed nonfederal committee up to the

³ AOR001. Requestor represents that the proposed nonfederal committee will operate consistent with Nevada state law governing state political committees. Nev. Rev. Stat. 294A.0055.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* See generally Nevada Revised Statutes Chapter 294A (allowing contributions in amounts and from sources prohibited by the Act).

1 Act’s contribution limits and consistent with the Act’s source prohibitions without taking into
2 account contributions made by the same source to Requestor’s federal leadership PAC.

3 Under the Act, federal candidates; officeholders; and those entities they establish,
4 finance, maintain, or control may solicit, receive, direct, transfer, or spend funds in connection
5 with a federal election only if those funds are “subject to the [Act’s] limitations, prohibitions,
6 and reporting requirements[.]”⁷ For “any election other than an election for Federal office[.]”
7 federal candidates; officeholders; and the entities they establish, finance, maintain, or control
8 may solicit, receive, direct, transfer, or spend only funds that are subject to federal amount
9 limitations and source prohibitions.⁸

10 To fall within the Act’s definition of “contribution,” funds must be given “for the purpose
11 of influencing any election for Federal office[.]”⁹

12 For the purposes of the Act’s contribution limitations, all contributions made or received
13 by more than one affiliated committee, regardless of whether they are political committees under
14 11 C.F.R. § 100.5, are treated as if they were made to a single committee.¹⁰ Any affiliated
15 committees share a common contribution limit, and contributions made to multiple such
16 committees by the same contributor are aggregated for purposes of disclosures and amount
17 limitations. Affiliated committees include committees established, financed, maintained, or

⁷ 52 U.S.C. § 30125(e)(1)(A).

⁸ 52 U.S.C. § 30125(e)(1)(B)(i) (requiring funds to be raised “not in excess of the amounts permitted” by the Act), (ii) (requiring that funds “not [come] from sources prohibited by this Act[.]”).

⁹ 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

¹⁰ 11 C.F.R. § 110.3(a). *See also Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions*, 54 FED. REG. 34,098, 34,098 (Aug. 17, 1989).

1 controlled by the same person or group of persons, although the term “committee” in the
2 nonfederal context applicable here is not defined in the Act or Commission regulations.¹¹ .

3 Requestor proposes to establish a Nevada entity that will engage only in activity that is
4 not for the purpose of influencing any election for federal office and for which she will raise and
5 spend solely funds that comply with the Act’s amount limitations and source prohibitions. This
6 proposal accords with the plain language of the Act. Because Requestor is a federal officeholder
7 who will establish the proposed nonfederal entity, she must solicit, receive, direct, transfer, or
8 spend funds only from those sources not prohibited by the Act and in amounts not exceeding the
9 contribution limits the Act sets forth.¹²

10 Requester’s nonfederal entity would not be treated as affiliated with her federal
11 leadership PAC because a Nevada “committee for political purposes” is not a “committee”
12 within the meaning of 11 C.F.R. § 100.3(a)(1). A “committee” need not meet the requirements of
13 11 C.F.R. § 100.5, but the term is not otherwise defined in the Commission’s regulations. The
14 Supreme Court, however, has instructed that committees must be either “under the control of a
15 candidate” or have “the major purpose” of “nominat[ing] or elect[ing]” a candidate.¹³ Because
16 Senator Cortez Mastro is not a candidate for office, and because Nevada law expressly defines
17 “committee for political action” to reach entities lacking the “primary purpose of affecting the
18 outcome” of any election,¹⁴ such entities are not “committees” for federal purposes.

¹¹ 11 C.F.R. § 110.3(a)(1)(ii).

¹² *See* 52 U.S.C. § 30125(e)(1)(B).

¹³ *Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (*per curiam*).

¹⁴ Nev. Rev. Stat. 294A.0055(1)(b).

1 Furthermore, even if Nevada law comported with *Buckley*, Senator Cortez Mastro has stated that
2 the committee will engage in activity supporting or opposing ballot initiatives, which is not
3 election activity under federal law and which is not spending for the purpose of “nominating or
4 electing” any candidate.¹⁵

5 Moreover, because Requestor’s proposed nonfederal committee will not raise funds for
6 the purpose of influencing any election for federal office, whatever funds Requestor does raise
7 for her proposed nonfederal committee would not be considered “contributions” under the Act.
8 Thus, even if the proposed Nevada entity and federal leadership PAC were considered affiliated
9 committees, the Commission’s regulation setting forth an aggregate limit for affiliated
10 committees applies only to “*contributions* made or received by more than one affiliated
11 committee”—not to all funds affiliated committees receive.¹⁶ Therefore, while the plain
12 language of 52 U.S.C. § 30125(e)(1)(B) limits Requestor to raising funds in amounts not
13 exceeding those set by the Act, which is \$5,000 for the proposed nonfederal committee, those
14 funds would not be counted against the \$5,000 in contributions Requestor’s federal leadership
15 PAC may raise from the same source.

16 This conclusion accords with the Commission’s past advisory opinions. In Advisory
17 Opinion 2005-02 (Corzine II), the Commission concluded that a federal officeholder soliciting
18 funds for a federally registered party committee’s nonfederal account “does not need to consider

¹⁵ See, e.g. MURs 7523 (Stop I-186) and 7512 (Pembina Pipeline Corp.) (holding that the otherwise-blanket prohibition on foreign national contributions to state elections does not apply to state referenda); AO 1984-62 (BAD Campaigns) at 1, n.2 (“The Commission has previously held that contributions or expenditures exclusively to influence ballot referenda issues are not subject to the Act”); *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 790 (1978) (“Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue”) (internal citation omitted).

¹⁶ 11 C.F.R. § 110.3(a).

1 a prospective donor’s previous contributions to a Federally registered party committee’s Federal
2 account, or any amounts [the officeholder] may have previously solicited from the donor for that
3 account, in determining the amount he may now solicit from that donor for the party committee’s
4 non-Federal account.”¹⁷

5 This response constitutes an advisory opinion concerning the application of the Act and
6 Commission regulations to the specific transactions or activities set forth in the instant advisory
7 opinion request.¹⁸ The Commission emphasizes that, if there is a change in any of the facts or
8 assumptions presented, and such facts or assumptions are material to a conclusion presented in
9 this advisory opinion, then the requestor may not rely on that conclusion as support for its
10 proposed transactions or activity. Any person involved in any specific transaction or activity
11 which is indistinguishable in all its material aspects from the transaction or activity with respect
12 to which this advisory opinion is rendered may rely on this advisory opinion.¹⁹ Please note that
13 the analysis or conclusions in this advisory opinion may be affected by subsequent developments
14 in the law including, but not limited to, statutes, regulations, advisory opinions, and case law.
15 Any advisory opinions cited herein are available on the Commission’s website.

16
17 On behalf of the Commission,

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19
20
21 Sean J. Cooksey,
22 Chairman

¹⁷ AO 2005-02 (Corzine II) at 6.

¹⁸ See 52 U.S.C. § 30108.

¹⁹ See *id.* § 30108(c)(1)(B).