



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

January 11, 2024

ADVISORY OPINION 2023-09

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Dear Counsel:

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

Background

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

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

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).

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

Question Presented

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

Legal Analysis

Yes, Requestor may establish a nonfederal committee, which will exclusively raise and spend funds in connection with nonfederal elections, and such funds would not be aggregated with contributions made by the same source to Requestor’s federal leadership PAC under a shared contribution limit. Under the Act and Commission regulations, Requestor may solicit, receive, direct, transfer, or spend funds through her proposed nonfederal committee up to the Act’s contribution limits and consistent with the Act’s source prohibitions without taking into account contributions made by the same source to Requestor’s federal leadership PAC.

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

³ AOR001. Requestor represents that the proposed nonfederal committee will operate consistent with Nevada state law governing state political committees.

⁴ *Id.*

⁵ *Id.*

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

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[.]”).

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

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

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

Further, the committees would be treated as affiliated for the purposes of the Act’s contribution limitations because Requestor will have established them both.¹³ However, because Requestor’s proposed nonfederal committee will not raise funds for the purpose of influencing any election for federal office, whatever funds Requestor does raise for her proposed nonfederal committee would not be considered “contributions” under the Act and would not have to be aggregated with contributions made to Requestor’s federal leadership PAC from the same source. The Commission’s regulation setting forth an aggregate limit for affiliated committees applies only to “*contributions* made or received by more than one affiliated committee” — not to all funds affiliated committees receive.¹⁴ Therefore, while section 30125(e)(1)(B) limits Requestor to raising funds in amounts not exceeding those set by the Act, which is \$5,000 for the proposed nonfederal committee, those funds would not be counted against the \$5,000 in contributions Requestor’s federal leadership PAC may raise from the same source.

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

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 (Aug. 17, 1989).

¹¹ 11 C.F.R. § 110.3(a)(1)(ii).

¹² *See* 52 U.S.C. § 30125(e)(1)(B).

¹³ *See* 11 C.F.R. § 110.3(a)(1)(ii).

¹⁴ 11 C.F.R. § 110.3(a)(1) (emphasis added).

a prospective donor's previous contributions to a Federally registered party committee's Federal account, or any amounts [the officeholder] may have previously solicited from the donor for that account, in determining the amount he may now solicit from that donor for the party committee's non-Federal account."¹⁵

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transactions or activities set forth in the instant advisory opinion request.¹⁶ The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed transactions or activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion.¹⁷ Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,



Sean J. Cooksey,
Chairman

¹⁵ AO 2005-02 (Corzine II) at 6.

¹⁶ See 52 U.S.C. § 30108.

¹⁷ See *id.* § 30108(c)(1)(B).