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October 30, 2023

BY ELECTRONIC MAIL DELIVERY

Office of General Counsel
Attn: Lisa J. Stevenson, Esq.
Acting General Counsel
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

Re: Advisory Opinion Request

Dear Ms. Stevenson:

Pursuant to 52 U.S.C. § 30108, we seek an advisory opinion on behalf of Senator Catherine Cortez Masto to confirm that she may establish a Nevada political committee exclusively to support state and local candidates running for office in Nevada without that committee sharing a contribution limit with her federal leadership PAC under the Federal Election Campaign Act of 1971, as amended (the “*Act*”), and Federal Election Commission (the “*Commission*”) regulations.

I. Background

Senator Cortez Masto is a United States Senator from Nevada. Senator Cortez Masto has a federally registered leadership PAC, All For Our Country Leadership PAC, that she uses to support federal candidates (the “*LPAC*”).¹ Senator Cortez Masto wishes to establish a separate state political committee in Nevada to provide support to state and local candidates (the “*State PAC*”). The State PAC will raise and spend funds *exclusively* for Nevada nonfederal election activities, including activities such as contributing to state and local candidates running for office in Nevada and spending in connection with state ballot initiatives. The State PAC will not raise or spend any funds to support or oppose any candidates for federal office, nor will it engage in any other activity that requires it to register as a political committee under the Act.

The State PAC will only raise and accept funds subject to federal limits and source restrictions.² The State PAC will not raise or spend corporate or labor treasury funds nor will it

¹ All For Our Country Leadership PAC, FEC Form 1 (Statement of Organization) (June 9, 2023), <https://docquery.fec.gov/pdf/004/202306099581780004/202306099581780004.pdf>. Currently, the LPAC is also registered in Nevada as a state PAC. If this request is approved, that registration will be terminated.

² 52 U.S.C. §§ 30116(a)(1), (2), (3); 30125(e)(1)(B); 11 C.F.R. §§ 300.62; 300.60.

raise funds in excess of the Act's contribution limits.³ In addition, the State PAC will deposit contributions in a separate bank account, entirely distinct from the depositories of Senator Cortez Masto's federal political committees.

II. Question Presented

May Senator Cortez Masto establish a Nevada state political committee that will exclusively raise and spend funds to engage in nonfederal, Nevada election activity without the State PAC sharing a contribution limit with the LPAC?

III. Legal Analysis

Pursuant to the Supreme Court's interpretation of the Act in *McConnell v. FEC*, Senator Cortez Masto may establish a state political committee that solely engages in nonfederal election activity and raise federally permissible funds into such a committee under a unique contribution limit not shared with her federal leadership PAC.

A. *McConnell* makes clear that the Act permits a federal officeholder to solicit federally permissible contributions to a state PAC under a separate contribution limit.

Title 52, section 30125(e) of the U.S. Code prohibits federal candidates, officeholders and entities that they directly or indirectly establish, finance, maintain, or control from soliciting, receiving, directing, transferring or spending funds in connection with a nonfederal election unless the funds are subject to the Act's contribution limits and source restrictions.⁴ This prohibition thus "limits the ability of federal candidates and officeholders *to solicit, receive, direct, transfer, or spend soft money* in connection with state and local elections" by requiring that any funds raised or spent for nonfederal election activity comply with the federal limits.⁵ Under the U.S. Supreme Court's interpretation of section 30125(e), while funds raised to influence a nonfederal election must comply with the federal limits, the nonfederal activity gets a unique contribution limit:

"Section 323(e)(1)(B) [currently codified at 52 U.S.C. § 30125(e)(1)(B)] tightly constrains the ability of federal candidates and officeholders to solicit or spend nonfederal money in connection with state or local elections. Contributions cannot exceed FECA's analogous hard-money contribution limits or come from prohibited sources. **In effect, § 323(e)(1)(B) doubles the limits on what individuals can contribute to or at the behest of federal candidates and officeholders, while restricting the use of the additional funds to activities not related to federal elections.**"⁶

Therefore, while Senator Cortez Masto may only raise federally permissible funds into the State

³ Under Nevada law, state political committees may raise unlimited funds and corporate and labor treasury funds are permitted to make contributions to state candidates in Nevada. However, as stated above, the State PAC will not accept any funds from corporate or labor treasury sources.

⁴ 52 U.S.C. § 30125(e)(1)(A), (e)(1)(B); 11 C.F.R. § 300.62.

⁵ *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 181 (2003) (overruled on other grounds by *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010)) (emphasis added).

⁶ *Id.* at 181 n.70 (emphasis added).

PAC, under *McConnell*, she may raise federally permissible funds under a unique contribution limit that is not shared with the LPAC, provided the State PAC engages solely in nonfederal election activities.

B. Commission precedent also supports a unique contribution limit for the State PAC.

The Commission has not definitively addressed the exact question at issue. However, in Advisory Opinion 2005-02 (*Corzine II*) the Commission addressed a similar question in the context of solicitations for a state political party. In *Corzine II*, a federal officeholder asked the Commission whether he had to consider the amount a donor previously contributed to a party committee’s federal account in determining how much he could solicit that donor for the party committee’s nonfederal account.⁷ Relying on the Bipartisan Campaign Reform Act’s legislative history and *McConnell*, the Commission concluded that the federal officeholder may solicit contributions from donors to a state party’s nonfederal account under a separate, federally permissible limit even if the officeholder had previously solicited the maximum contributions from those same donors to the party’s federal account.⁸ In other words, the Commission correctly recognized that the Act requires only that federally permissible funds be raised in connection with a nonfederal election, but does not require aggregation of a donor’s federal and nonfederal donations for purposes of determining the federally permissible contribution limit for the nonfederal activity.

The exact same rationale applies to the facts at hand. Here, Senator Cortez Masto will only solicit contributions for the State PAC that comply with the Act’s source restrictions and amount limitations. The State PAC will focus its activities exclusively on state and local elections in Nevada. The State PAC will not engage in any activity that requires registration as a federal political committee. Under these circumstances, the Commission should follow its precedent in *Corzine II* and hold that the Act and Commission regulations do not bar Senator Cortez Masto from soliciting contributions for the State PAC under a separate contribution limit.⁹

C. The affiliation rules do not require that the State PAC share a contribution limit with the LPAC.

The Act and Commission regulations provide that entities that are established, financed, maintained, or controlled by the same person are considered affiliated.¹⁰ Contributions made to or by affiliated committees are generally considered to have been made to or by a single committee.¹¹ As stated above, the State PAC will not engage in any activity that would trigger federal committee status. Reading the Act and Commission regulations to require affiliation between the LPAC and State PAC would contradict *McConnell* and is moreover unnecessary. The State PAC will not make any contributions or expenditures in connection with any federal elections or engage in any

⁷ Fed. Election Comm’n, Adv. Op. 2005-02 (*Corzine II*) at 6.

⁸ *Id.*

⁹ Moreover, like federal law, Nevada requires that political committees disclose their receipts and expenditures. Nev. Rev. Stat. §§ 294A.140; 294A.150. As such, the State PAC’s receipts and disbursements will be disclosed, providing transparency on the State PAC’s fundraising and disbursements.

¹⁰ 52 U.S.C. § 30116(a)(5); 11 C.F.R. §§ 100.5(g)(2), 110.3(a)(1)(ii); *Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions*, 54 FED. REG. 34,098, 34,098 (Aug. 17, 1989) [*hereinafter* “Affiliated Committees Explanation & Justification (E&J)”].

¹¹ See Fed. Election Comm’n, Adv. Op. 2023-02 (*Humana*) at 5; *Affiliated Committees E&J* at 34,098.

other federal election activity that warrants subjecting it to a shared contribution limit with the LPAC.

The only instance in which the Act or Commission regulations expressly subject nonfederal committees to the shared contribution limit of affiliated committees is where a federal and nonfederal committee wish to make unlimited transfers. Commission regulations provide that affiliated committees may make unlimited transfers between themselves whether or not they are registered as political committees under the Act, but such transfers must be made from federally permissible funds.¹² The Commission has interpreted the requirement to ensure transfers are from “federally permissible” funds to mean that the two committees effectively share a contribution limit. In Advisory Opinion 1990-16 (Citizens for Thompson), for example, a state officeholder with a state committee devoted to supporting candidates for election to state and local office, asked the Commission whether he may make unlimited transfers of permissible funds from the state committee to his federal committee, which was used to support candidates for federal office.¹³ In permitting the transfer, the Commission noted that contributions by any person included in the transfer would have to be aggregated with contributions made by that person to the federal committee, any funds transferred would have to comply with the Act’s source and amount restrictions, and the state committee would be required to register and report as a political committee.¹⁴ Similarly, in Advisory Opinion 1982-52 (Ross), a state officeholder sought to transfer funds from his state political committee to his authorized committee for election to U.S. House.¹⁵ The Commission determined that the state committee would be regarded as affiliated with the federal committee for the purpose of making the proposed transfers. In determining which funds were permissible to include in the transfer to the federal committee, the Commission advised that “the contributions of any person included in [the state committee’s transfer] must be aggregated with any contribution previously made by such person to the Federal committee.”¹⁶

In these matters, the Commission reasoned that because the transferred funds would be used by the federal committee for federal election campaign activities, the affiliated committees were subject to a single limit for the specific purpose of nonfederal to federal committee transfers, ensuring that the funds transferred complied with the Act’s source and amount restrictions. Indeed, the Commission’s conclusion in these matters is supported by the Explanation and Justification for the affiliation rules, which make clear that aggregation extends to transfers between affiliated committees to ensure the amounts included in the transfer are permissible federal funds.¹⁷

This conclusion is also supported by the purpose of the affiliation rules, which the Commission has explained are designed to further the Act’s anti-proliferation provision. In other words, these

¹² 11 C.F.R. § 102.6(1).

¹³ See Fed. Election Comm’n, Adv. Op. 1990-16 (Citizens for Thompson) at 2-3.

¹⁴ *Id.*

¹⁵ Fed. Election Comm’n, Adv. Op. 1982-52 (Ross) at 2-3.

¹⁶ *Id.* at 3; see also Fed. Election Comm’n, Adv. Op. 1987-12 (Costello) (applying affiliation rules to nonfederal and federal committees controlled by a federal candidate for purposes of transfers between the committees); Fed. Election Comm’n, Adv. Op. 1985-02 (Shaffer) (same); Fed. Election Comm’n, Adv. Op. 1984-46 (Johnston) (same); Fed. Election Comm’n, Adv. Op. 1983-34 (Doggett) (same).

¹⁷ Affiliated Committees E&J at 34,103 (noting that “aggregation of a donor’s contributions to each [affiliated] committee is required to the extent that such contributions are transferred between committees”).

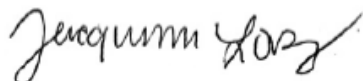
rules were established to prevent circumvention of the contribution limits.¹⁸ Allowing unlimited transfers under a separate limit would do just that, rendering the Act's contribution limits meaningless by allowing the free flow of funds between two organizations raising under separate limits.

Here, unlike the case of transfers between federally registered and unregistered committees, there is no textual support in either the Act or Commission regulations to extend the affiliation rules to cover the State PAC, nor does doing so serve any legitimate regulatory interest. As stated above, the State PAC will only raise and spend funds in connection with Nevada elections. The State PAC will make no contributions to any federal candidates or federal committees. Nor will it make any transfers to the LPAC or any other federal committee. Under these circumstances, there is no basis under the Act, Commission regulations, or Commission precedent for reading the affiliation rules to require the State PAC and the LPAC to share a single contribution limit, and doing so will certainly not further the Commission's interest in protecting the federal contribution limit. More importantly, unnecessarily reading the Act and Commission regulations to require a single contribution limit directly contradicts *McConnell*.

IV. Conclusion

For these reasons, we ask the Commission to confirm that Senator Cortez Masto may establish a Nevada political committee to solicit and accept federally permissible funds to support state and local candidates running for office in Nevada without the State PAC sharing a single contribution limit with the LPAC.

Very truly yours,



Jacquelyn Lopez
Jonathan Peterson
Kaveri Sharma

Counsel to Senator Catherine Cortez Masto

¹⁸ Fed. Election Comm'n, Adv. Op. 2022-06 (Hispanic Leadership Trust) at 5-6.