



FEDERAL ELECTION COMMISSION
Washington, DC

February 14, 2024

MEMORANDUM

TO: The Commission

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

Neven F. Stipanovic *NFS*
Associate General Counsel

Amy Rothstein *ALR*
Assistant General Counsel

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Attorney

Subject: Draft AO 2024-02 (Waters) Draft C

Attached is a proposed draft of the subject advisory opinion. We have been asked by one or more Commissioners to make this draft public to enable members of the public to submit written comments on it in advance of a possible tally vote. Public comments on the draft are due by 12:00 p.m. (Eastern Time) on February 15, 2024.

For more information about how to submit comments, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2024-02

2

3 Leilani Beaver, Esq.
4 Beaver Legal Corporation
5 220 S. Pine St, Suite 109
6 Sisters, OR 97759

DRAFT C

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8 Dear Ms. Beaver:

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10 We are responding to your advisory opinion request on behalf of Congresswoman
11 Maxine Waters and Citizens for Waters (collectively, “Requestors”), concerning the
12 application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”),
13 and Commission regulations to Requestors’ proposal to solicit and receive reimbursement
14 from non-federal sources of Requestors’ costs to design, print, and mail certain
15 brochures. The Commission concludes that the Act and Commission regulations would
16 not prohibit Requestors from soliciting or receiving reimbursement of funds that do not
17 exceed the applicable contribution limitations of the Act and from sources that would not
18 be prohibited under the Act from the non-federal sources as set forth in the request.

19 ***Background***

20 The facts presented in this advisory opinion are based on your letter received on
21 January 25, 2024, and your email received on February 1, 2024.

22 Congresswoman Maxine Waters represents California’s 43rd District in the
23 United States House of Representatives. Citizens for Waters is her principal campaign
24 committee.

25 Requestors intend to design, publish, and mail brochures featuring
26 Congresswoman Waters’s endorsements of federal and non-federal candidates, together
27 with her positions of support for or opposition to ballot measures to be voted on the
28 March 5, 2024, California primary ballot. Citizens for Waters will pay for the costs of

1 designing, publishing, and mailing the brochures. The brochures will use the same
2 design and layout as those described in Advisory Opinion 2004-37 (Waters). The space
3 devoted to each candidate and ballot measure and its prominence on the brochure will be
4 determined by the candidate's or ballot measure's prominence on the primary election
5 ballot. As in Advisory Opinion 2004-37 (Waters), Requestors anticipate distributing at
6 least 500 pieces of each version of their proposed brochure by U.S. Mail.

7 Requestors state that they will use only federally permissible funds to pay for the
8 design, publishing, and mailing of the brochures.¹ Requestors propose to solicit and
9 receive reimbursement from non-federal sources, however, for the portion of the
10 brochures devoted to each non-federal candidate and ballot measure, as determined by
11 the candidate's or ballot measure's pro rata share of the costs to design, publish, and mail
12 the brochure.² The non-federal sources from which Requestors propose to solicit and
13 receive funds are (1) the featured non-federal candidates' personal funds, (2) the non-
14 federal candidates' committees; (3) state independent expenditure-only political

¹ Requestors state that the term "federally permissible funds" as used in their request means "funds that do not exceed the applicable contribution limitations of the Act and from sources that would not be prohibited under the Act from contributing directly to Congresswoman Waters." Advisory Opinion Request ("AOR") at note 3. The Commission expresses no opinion as to the permissibility of using funds not subject to the Act's contribution limits and source prohibitions.

² Pro rata shares will be determined according to the "space or time" method described in 11 C.F.R. § 106.1.

³ In Advisory Opinion 2004-37 (Waters), the Commission concluded that reimbursements to Congresswoman Waters's authorized committee for costs relating to similar brochures were not contributions to the committee. During an audit of Citizens for Waters' activity during the 2020 election cycle, the Commission rejected a proposed finding of non-compliance related to costs relating to similar brochures. A21-01 (Citizens for Waters), Certification of Vote on the Audit Division Recommendation Memorandum on the Citizens for Waters at 1 (Oct. 19, 2023).

1 committees supporting or opposing the non-federal candidates; and (4) ballot measure
2 committees supporting or opposing the featured ballot measures.

3 ***Question Presented***

4 *May Citizens for Waters receive reimbursements from individuals, non-federal*
5 *candidate committees, state independent expenditure-only political committees, and*
6 *ballot measure committees to appear in the brochure using funds that do not exceed the*
7 *applicable contribution limitations of the Act and from sources that would not be*
8 *prohibited under the Act from contributing directly to Congresswoman Waters?*

9 ***Legal Analysis***

10 Citizens for Waters may solicit and receive reimbursements from non-federal
11 candidates, non-federal candidate committees, state independent expenditure-only
12 political committees, and ballot measure committees to appear in the proposed brochure
13 where the non-federal sources' funds comply with the source prohibitions, amount
14 limitations, and reporting requirements of the Act. Consistent with prior Commission
15 treatment of similar receipts of funds, including by Requestor,³ the Commission
16 concludes that funds may be treated as "Other Receipts" for reporting purposes.⁴

³ In Advisory Opinion 2004-37 (Waters), the Commission concluded that reimbursements to Congresswoman Waters's authorized committee for costs relating to similar brochures were not contributions to the committee. During an audit of Citizens for Waters' activity during the 2020 election cycle, the Commission rejected a proposed finding of non-compliance related to costs relating to similar brochures. A21-01 (Citizens for Waters), Certification of Vote on the Audit Division Recommendation Memorandum on the Citizens for Waters at 1 (Oct. 19, 2023).

⁴ Examples of reportable "Other Receipts" include bank loans, overdrafts, investment income, offsets to operating expenditures (such as returns of deposits by vendors, reimbursements for expenses shared by committees, and refunds), and legal and accounting services. *See generally* FEC Campaign Guide for Congressional Candidates and Committees (Oct. 2021) at 39-40.

1 The Commission has previously concluded that receipts from certain transactions
2 are not “contributions” or “donations” and may be deposited in a committee’s federal
3 account; for example, income from the rental of a committee’s mailing list, Advisory
4 Opinion 2002-14 (Libertarian National Committee), and income from the sale of office
5 furniture, Advisory Opinion 2003-19 (DCCC). The Commission concludes that the funds
6 invoiced and received by Citizens for Waters are similarly not inherently susceptible to
7 use for political fundraising, and more akin to offsets to operating expenses with a
8 cognizable fair market value.

9 Regarding income from list rental income in Advisory Opinion 2002-14, the
10 Commission concluded that the proposed receipts of funds from a list rental was
11 permissible because: (1) the list had an ascertainable market value, and (2) would be
12 leased at the usual and normal charge at a bona fide arm’s length transaction and would
13 be used in a commercially reasonable matter consistent with the rental agreement. Here,
14 Citizens for Waters proposes to invoice the non-federal committees for their pro-rata
15 share of the cost of the literature, based on the cost to Citizens for Waters charged by its
16 commercial vendor. The literature Citizens for Waters proposes to produce is unlike the
17 sale of advertising space in a committee’s newspaper or the licensing of a trademark,
18 which the Commission found impermissible, because it is not “inherently susceptible to
19 use for political fundraising rather than commercial purposes,” Advisory Opinion 2002-
20 14 at 5, and has an easily ascertainable fair market value set by a vendor in an arm’s
21 length transaction.

1 Regarding income from the sale of office furniture in Advisory Opinion 2003-19,
2 the Commission reasoned that because the furniture was initially purchased for the
3 committee’s ordinary use (and not for fundraising), and had a generally ascertainable
4 market value, it was “not inherently susceptible to use for political fundraising,”
5 Advisory Opinion 2003-19 at 3. The Commission concluded that the disposition of the
6 furniture in this manner was distinguishable from a scenario where a political committee
7 sells fundraising items or unique campaign swag. The proposed activity by Requestors is
8 more akin to the disposition of office furniture than fundraising.

9 The funds that Requestors propose to solicit and receive from non-federal
10 candidates and committees are intended to reimburse Requestors’ costs to produce and
11 distribute their brochures. Thus, Requestors may solicit and receive the reimbursements
12 described in the request (which comply with the Act’s source prohibitions and amount
13 limitations). The funds should be reported as “Other Receipts”.

14 The Commission does not address the potential application of any state or local
15 laws, or any potential tax ramifications, to Requestors’ proposed activities because such
16 matters do not fall within the Commission’s jurisdiction.

17 This response constitutes an advisory opinion concerning the application of the
18 Act and Commission regulations to the specific transaction or activity set forth in your
19 request.⁵ The Commission emphasizes that, if there is a change in any of the facts or
20 assumptions presented, and such facts or assumptions are material to a conclusion

⁵ See 52 U.S.C. § 30108.

1 presented in this advisory opinion, then the requestor may not rely on that conclusion as
2 support for its proposed activity. Any person involved in any specific transaction or
3 activity which is indistinguishable in all its material aspects from the transaction or
4 activity with respect to which this advisory opinion is rendered may rely on this advisory
5 opinion.⁶ Please note that the analysis or conclusions in this advisory opinion may be
6 affected by subsequent developments in the law including, but not limited to, statutes,
7 regulations, advisory opinions, and case law. Any advisory opinions cited herein are
8 available on the Commission's website.

9 On behalf of the Commission,

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11 Sean J. Cooksey,

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12 Chairman

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⁶ See *id.* § 30108(c)(1)(B).