FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 20, 1996

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1996-37

Kindra L. Hefner, Director
Brady for Congress Committee
P.O. Box 8277
The Woodlands, TX 77387

Dear Ms. Hefner:

This responds to your letter dated August 12, 1996, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the contribution limits that apply in the 8th Congressional District of Texas as a result of altered boundaries pursuant to a court order.

You represent Kevin Brady, who is a candidate for Congress from the 8th Congressional District of Texas, and his principal campaign committee, Brady for Congress ("the Committee"). Mr. Brady was a Republican party candidate in the March 12 primary election and in the subsequent primary run-off election on April 9 which he won. (All dates herein are 1996, unless otherwise stated.)

On August 5, a three-judge panel of the United States District Court for the Southern District of Texas issued a Memorandum Opinion on Interim Remedy and an Interim Order Regarding 1996 Special Elections. These court directives redraw the boundaries of 13 Congressional Districts in Texas, and result from an earlier judicial determination that three of those districts were "created as a product of overt racial gerrymandering." *Vera v. Bush*, Civ. Action No. H-94-0277, slip. op. at 2 (S.D. Tex. August 5, 1996). One of the 13 districts is the 8th where Mr. Brady is a candidate. Under the court's plan, voters in all 13 districts will participate in a "special election" that shall follow the Texas special election law. The election is to be held along with the presidential elections on November 5, and all qualified candidates may compete. The court's plan provides that, if no candidate obtains a majority of the votes in a district, a runoff election for the seat between the two candidates receiving the most votes will be held on December 10.[1] Mr. Brady

expects to participate and compete with all other candidates who qualify for the ballot in the 8th district.[2]

You inquire as to the effect of the court-ordered November 5 special election on "the contribution limits for those contributions already received for the [originally scheduled or regular] general election and those future contributions to be solicited for the new open election." You request an advisory opinion to verify that contributions already received for the regular general election on November 5 will be subject to a separate election limit from that which should apply to the "new open election" required by the court's order. In other words, you propose to accept contributions for the new special election from the same persons who have made contributions for the regular general election without regard to the amount of their contributions to the latter election. To illustrate, you apparently propose that an individual who has already contributed $1,000 to the Committee for the regular general election may also contribute an additional $1,000 for the *special* general election ordered by the court.

For the reasons and subject to the conditions set forth below, the Commission concludes that the *special* general election which, according to the court order, will be held on November 5, is a separate election with separate contribution limits from those originally in effect for the regular general election. In the event a special runoff election becomes necessary on December 10, a separate contribution limit will also apply for contributions to the Committee for that election, provided Mr. Brady qualifies as a candidate therein.

The Commission's conclusions are premised on the fact that the March 12 primary election and the subsequent April 9 runoff election were valid elections held under color of State law for the purpose of nominating candidates for election to Federal office. See 11 CFR 100.2(c)(1). Mr. Brady was, in fact, nominated as a direct result of these elections and conducted a general election campaign for nearly four months as his party's nominee. Significantly, the District Court, in the *Vera* case, issued an order in 1994 staying the 1996 elections in the affected districts, but the U.S. Supreme Court stayed that order, and the March primary elections (and later runoff elections) were held. See *Vera*, slip. op. at 6-7. Hence, the Federal elections in those districts went forward in accord with judicial supervision and cannot be regarded as null and void.

The Commission emphasizes that the situation of Mr. Brady is both extraordinary and a matter of first impression for the Commission. With respect to the issue of general election contributions made to the Committee before August 6, his situation is also distinguishable in material respects from that addressed in Advisory Opinion 1982-22. In that opinion, a Congressional candidate changed the district in which he had originally filed his candidacy because of a court decision that altered the boundaries of the district several months before the scheduled date of the primary elections.[3] The 1982 situation did not entail a new, court-ordered election, and the candidate still ran for the same office in the same, regularly scheduled primary election held under Texas law. He was in the same electoral position that he was in before the court's decision since no primary election had been held before he changed the district of his candidate filing. Here, the Vera court decision has nullified the results of prior elections in which Mr. Brady participated as a candidate and has ordered the holding of a new, special general election in November as a remedy.

The Commission concludes, therefore, that one limit applies to the Committee as regards contributions made for the regular general election (expected to be held on November 5), but only to the extent those contributions were made before August 6. Another separate contribution limit would apply to contributions made after August 5 for the *special* general election. Thus, any person who made lawful contributions to the Committee before August 6 with respect to the regular general election need not count those contributions towards the separate limit that will apply to the *special* general election.[4] The applicable limits are either $1,000 or $5,000 per election, depending on whether the contributor is a qualified multicandidate committee or another person who is a lawful source of contributions in a Federal election. 2 U.S.C. 441a(a)(1) and (2).[5] In addition, contributions lawfully made to the Committee for the March 12 primary election or the April 9 primary runoff election do not have to be redesignated by the contributors for the *special* general election. 11 CFR 110.3(c)(3), see 11 CFR 110.1(b)(1)--(b)(6) and 110.2(b)(1)--(b)(6).

The Commission notes that it has concurrently addressed this same question, and additional related ones, in Advisory Opinion 1996-36. Accordingly, because Mr. Brady's situation is not materially distinguishable from that presented in Advisory Opinion 1996-36, he and the Committee may rely on that opinion's responses to all the questions addressed therein to govern their activities in the special general election for the 8th Congressional District. See 2 U.S.C. 437f(c).

This response constitutes an advisory opinion concerning the application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Lee Ann Elliott
Chairman

Enclosures (AOs 1996-36, 1993-2, and 1982-22)

1 The relevant Texas State law providing for the run-off of the top two vote-getters in a special election is found at Election Code 2.021, 2.023, 203.003, and 204.021. See Advisory Opinion 1993-2.
2 The Interim Order provides that August 30 is the filing deadline for all congressional candidates in the special elections, and that September 5 is the "deadline for the Secretary of State to certify the names of candidates for the ballot for the November 1996 special elections" in the redrawn congressional districts. *Vera v. Bush*, Interim Order Regarding 1996 Special Elections, at 3.
3 In the 1982 case, a candidate for the House solicited and received contributions and made campaign expenditures to influence voters in the Fifth District of Texas, but later withdrew his candidacy for that seat and refiled as a candidate in the Third District. He made this switch several months before the primary election and after a U.S. District Court ordered a change in the

boundary lines of the Fifth District. The Commission concluded that his candidate filing change did not entail a different election for a separate Federal office. The Commission reasoned that neither the Act nor Commission regulations identify House seats as separate Federal offices, and that the Constitution and other Federal law define the office of Representative by the State represented and not by the geographic boundaries of the particular district. Thus, contributions from the same contributors, whether before or after the filing district change, had to be aggregated and could not exceed the limits of 2 U.S.C. 441a(a)(1) and (2). Advisory Opinion 1982-22.

4 A contribution is considered "made" when the contributor relinquishes control over the contribution. For contributions mailed to the Committee, the postmark date on the envelope is the date the contribution was made. 11 CFR 110.1(b)(6), 110.2(b)(6); see 11 CFR 110.1(l)(4).

5 As is more fully explained in Advisory Opinion 1996-36, all contributions by individuals to the Committee remain subject to the donor's $25,000 aggregate, annual (1996) contribution limit under 2 U.S.C. 441a(a)(3).