

June 5, 2017

By Electronic Mail

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
999 E Street NW
Washington, D.C. 20463

RE: Comments on Advisory Opinion Request 2017-04

Dear Ms. Stevenson:

These comments are filed on behalf of the Campaign Legal Center and Democracy 21 in response to Advisory Opinion Request 2017-04, where Rory Lancman, a 2017 candidate for an undeclared New York City office, asks permission to transfer funds from his New York City campaign committee (“New York City Committee”) to his federal political committee, Lancman for Congress (“Federal Committee”).¹

Commission regulations expressly forbid the activity that the requestor seeks to undertake. Section 110.3(d) explicitly states that “[t]ransfers of funds or assets from a candidate’s campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election are prohibited.”

The history of 11 C.F.R. § 110.3(d) shows that, in adopting the current prohibition, the Commission *explicitly reversed* an earlier policy that allowed state-to-federal transfers of federally permissible funds and *expressly rejected* a proposed rule that would have continued to allow committees to make such transfers upon demonstrating that the transferred funds were solicited with and consisted of federally compliant “hard money.”²

This rejected proposal is precisely the rule that the requestor now asks the Commission to adopt through its AOR. The requestor cannot use the advisory opinion process to undo a duly enacted regulatory change. *See* 52 U.S.C. § 30108(b) (barring Commission from proposing new rule outside of statutory rulemaking procedures).

Additionally, the New York City Committee funds at issue here were not, as the requestor asserts, raised “in full compliance with federal law.”³ Instead, the New York City Committee’s account contains federally prohibited union funds and dozens of donations of up to \$4,950, almost twice the applicable \$2,500 contribution limit on individual contributions to the Federal Committee.

This request to disregard the Commission’s longstanding soft money rules should be denied.

¹ *See* AOR 2017-04 (Lancman for Congress) at 1-2.

² *See* Transfers of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474, 3475 (Jan. 8, 1993).

³ AOR 2017-04 at 2.

The Requestor Seeks to Transfer Non-Federal Funds Raised in Amounts Double the Federal Limits, and from Prohibited Sources

The Federal Committee is seeking to retire outstanding debt from a 2012 congressional primary election.⁴ Therefore the applicable limit is the per-election individual contribution limit from that election, or \$2,500.⁵ See 11 C.F.R. § 110.1(b)(iii)(C).⁶

The New York City Committee, however, is subject to a \$4,950 per-election-cycle donation limit.⁷ As of May 30, 2017, the New York City Committee has raised an estimated \$188,225 in donations above the applicable \$2,500 federal contribution limit.⁸

As a result, were the requestor permitted to transfer funds from the New York City Committee to the Federal Committee, he would be transferring contributions raised in amounts nearly double the applicable federal contribution limit. And a review of reports filed with the Commission shows that multiple individuals who donated the \$4,950 maximum to the New York City Committee also contributed the \$2,500 maximum to the Federal Committee.⁹ Transferring *any* of these individuals' donations from the New York City Committee to the Federal Committee would cause them to exceed federal contribution limits—and if the entirety of their donations were transferred, they would have contributed \$7,450 to the Federal Committee, nearly triple the relevant federal limits.

⁴ AOR 2017-04 at 1.

⁵ Fed. Election Comm'n, *Contribution Limits for 2011-2012 Federal Elections*, <http://classic.fec.gov/info/contriblimits1112.pdf> (last visited May 30, 2017).

⁶ Lancman was not a candidate in the 2012 general election, see AOR 2017-04 at 1, and therefore may not raise contributions against general election limits. 11 C.F.R. § 102.9(e)(3).

⁷ N.Y. City Campaign Fin. Bd., *Limits and Thresholds: 2017 Citywide Elections*, <http://www.nyccfb.info/candidate-services/limits-thresholds/2017> (last visited May 30, 2017). Although Lancman is currently a City Council member, he is an undeclared candidate for 2017, and is raising funds under the \$4,950 per election cycle limit that applies to candidates running for citywide office. See Gloria Pazmino, *Lancman fires top staff after tense meeting about mayoral run*, POLITICO (Feb. 3, 2017), <http://www.politico.com/states/new-york/city-hall/story/2017/02/lancman-fires-top-staff-after-mayoral-meeting-109327> (noting that “Lancman has managed to raise nearly \$409,249, thanks to being undeclared and taking in the maximum contribution limit for candidates running for city-wide office,” which “is set at \$4,950”).

⁸ See Exhibit A; see also *New York City Campaign Finance Board Searchable Database*, Rory Lancman 2017, http://nyccfb.info/searchabledb/AdvancedContributionSearchResult.aspx?ec_id=2017&ec=2017&RecTyp=Candidates+only&RecTyp_id=Can&cand_id=227&cand=Lancman%2c+Rory+I (last visited May 30, 2017). Lancman has raised twenty-nine \$4,950 contributions, as of May 30, 2017, seven of which are from unions. *Id.*

⁹ See Exhibit A; see also Fed. Election Comm'n, *Individual Contributions Over \$2,500 to Lancman for Congress (2012)*, https://www.fec.gov/data/receipts/individual-contributions/?two_year_transaction_period=2012&committee_id=C00511923&min_amount=2500&max_amount=2500&min_date=01%2F01%2F2011&max_date=12%2F31%2F2012 (accessed May 30, 2017); *New York City Campaign Finance Board Searchable Database*, Rory Lancman 2017, *supra* note 8.

Additionally, the AOR itself states that the New York City Committee received some of its donations from “union treasury funds.”¹⁰ A review of the New York City Committee filings shows that unions are among the committee’s top donors.¹¹ Under federal law, unions cannot donate funds from their general treasuries to federal candidate committees.¹²

Thus, publicly filed campaign finance reports demonstrate that the funds in Lancman’s New York City Committee account were not “*wholly raised in compliance with federal law*,” as the AOR asserts.¹³

The requestor promises to only transfer funds raised from individual donors, and offers vague assurances that “[c]are would also be taken to ensure that the sources of the transferred funds do not result in what might be construed as an excessive contribution.” But if the New York City Committee has commingled its federally permissible funds with its soft money receipts—and the AOR provides no indication that the New York City Committee has maintained these funds in segregated accounts—the requestor’s assurance is literally impossible to fulfill, as well as for the Commission to verify.¹⁴

These concerns are precisely why the Commission promulgated 11 C.F.R. § 110.3(d) in 1993 to prohibit all state/municipal candidate committee transfers to federal committees.

Prior to the current rule, the Commission had allowed state-to-federal transfers provided that the transferred funds did not contain impermissible “soft money” contributions.¹⁵ In 1992, the Commission published a Notice of Proposed Rulemaking proposing a narrower rule, which would have allowed a federal committee to transfer funds from a state or municipal account only if it could demonstrate that the funds it wished to transfer consisted of, and were raised with, hard money, and if donors to the state or municipal account authorized the transfer to the federal account.¹⁶ The Commission also proposed an alternative rule that would flatly ban state-to-federal transfers.¹⁷

The Commission and nearly all of the commenters recognized that the proposed rule permitting transfers of federally compliant funds would have raised “significant practical difficulties” for

¹⁰ AOR 2017-04 at 1. The Commission regularly consults publicly available filings with government agencies for factual information related to advisory opinion requests. *See, e.g.*, Advisory Opinion 2016-17 (Libertarian Party of Michigan) (deriving factual information from “public filings with the Michigan Secretary of State”); Advisory Opinion 2015-01 (Green-Rainbow Party) (citing “public filings with the Massachusetts Office of Campaign and Political Finance”); Advisory Opinion 2017-15 (GMAC) at 2 n.2 (citing filings with SEC).

¹¹ *See* Exhibit A; *see also* *New York City Campaign Finance Board Searchable Database*, Rory Lancman 2017, *supra* note 8. Some of the union contributions to the New York City Committee appear to be from unions’ general treasuries, while others are from the unions’ political committees, which may accept contributions from the unions’ general treasuries under New York City law.

¹² 52 U.S.C. § 30118(a)-(b)(1); *FEC v. Beaumont*, 539 U.S. 146, 153-55 (2003).

¹³ AOR at 1 (emphasis in original).

¹⁴ *Id.* at 2-3.

¹⁵ 58 Fed. Reg. at 3474-75.

¹⁶ 57 Fed. Reg. 13054-55 (Apr. 15, 1992).

¹⁷ *Id.* at 13056.

committees and would have been “difficult for the Commission to monitor and enforce.”¹⁸ Specifically, the Commission noted that a committee cannot segregate federal and non-federal funds once they are intermingled in a state/municipal account—as they are in almost all state and local committee accounts—and the Commission explained it did not wish to engage in “federal regulation of state campaign activity” by mandating such segregation.¹⁹ The Commission therefore instead prohibited state/municipal transfers to federal committees to “more effectively prevent the indirect use of impermissible funds in federal elections.”²⁰

Those concerns are particularly salient here.

As noted above, the AOR does not explain how Lancman could transfer funds from the New York City Committee to the Federal Committee without including the excessive and prohibited contributions intermingled within the municipal account. Nor does the AOR explain how contributors who gave to both the Federal Committee and New York City Committee would remain within federal contribution limits were their municipal donations transferred to the Federal Committee.²¹ And even if the New York City Committee had verifiably segregated the donations it received within federal limits, the AOR does not offer any means of preventing donors to the New York City Committee from exceeding the federal limits by making additional contributions to the Federal Committee after their funds are transferred, or for the Commission to identify any such contributions.²²

And the AOR does not address whether hard money funds were used to *solicit* the donations that will be transferred to the Federal Committee. Concerns about candidates using soft money to raise hard money are one of the issues that led the Commission to adopt the 11 C.F.R. § 110.3(d) prohibition in the first place.²³

Finally, in seeking to change Commission regulations through the advisory opinion process, the AOR points to Advisory Opinion 2002-08 (Vitter), where the Commission allowed a state committee to refund to a federal committee federal funds that had been maintained in a segregated account.²⁴ AO 2002-08 dealt with “unique facts” not even remotely applicable here.²⁵

Unlike Lancman’s New York City Committee funds, which were raised under New York City law from sources and in amounts impermissible under federal law, in AO 2002-08 “the funds in question . . . were raised in their entirety by a Federal committee under the limits and

¹⁸ See 58 Fed. Reg. at 3474-75.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Several individuals who have given to both the Federal Committee and the New York Committee would exceed federal limits if their New York Committee donations were transferred to the Federal Committee. See Exhibit B.

²² It is not relevant that the AOR states an intent to close down the Federal Committee when the debt is retired. For example, a contributor could simply give before the debt is retired or the Federal Committee closed.

²³ See 58 Fed. Reg. at 3474.

²⁴ Advisory Opinion 2002-08 (Vitter) at 2.

²⁵ See *id.* at 2-3.

prohibitions of” FECA.²⁶ The candidate in AO 2002-08 then transferred those federal funds to his state committee, which placed them in “a segregated bank account . . . never commingled with non-Federal funds.” The account was “open for only a few months, [and] was never used for the State campaign,” before the funds were transferred back to the federal committee.²⁷

None of the “unique facts”²⁸ of AO 2002-08 are present here. The New York City Committee’s funds were not raised by a federal committee, they were not raised using hard money, they do not consist of federally permissibly funds, they have not been segregated from impermissible funds, and they have been used by the nonfederal committee. Thus, far from being unique, the current AOR presents the sort of run-of-the-mill fact pattern that the state-to-federal transfer ban was specifically designed to prevent.

For the foregoing reasons, the Commission should find that 11 C.F.R. § 110.3(d) bars the proposed conduct in this AOR, and that the requestor may not transfer funds from his New York City Committee to his Federal Committee.²⁹

Respectfully,

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²⁶ *Id.* at 2.

²⁷ *Id.*

²⁸ *Id.*

²⁹ That Lancman seeks to transfer state funds in order to pay down debt owed by his federal committee does not alter the foregoing analysis. The transfer prohibition is based on the source and recipient of the funds, not the purposes for which the funds are to be used. *See* 11 C.F.R. § 110.3(d). Moreover, funds used to the pay campaign debt are subject to the same limitations as other contributions. *See id.* § 110.1(b)(3).

EXHIBIT A

DONATIONS TO NEW YORK COMMITTEE IN EXCESS OF FEDERAL LIMITS			
Donor	Date of New York Donation	Donation to New York Committee	Contribution to Federal Committee
ADJMI, ALEX	1/10/2017	\$4,950.00	\$2,500
Adjmi, Harry	1/11/2017	\$4,950.00	
Bricklayers & Allied Craftwork	1/10/2017	\$4,950.00	
Dushey, Jack	1/9/2017	\$4,950.00	\$1,000
Dushey, Sonia	1/9/2017	\$4,950.00	
Gianotti, Marie	11/7/2016	\$4,950.00	
Goldstein, Abbey F	8/22/2016	\$4,950.00	\$2,500
Hadar, Eric	9/20/2016	\$4,950.00	\$2,500
Harounian, Maurice	9/20/2016	\$4,950.00	
Intl Union of Operating Engine	1/6/2017	\$4,950.00	
IUOE Local 15, 15A, 15B, 15C &	1/11/2017	\$4,950.00	
IUOE Local 891	1/11/2017	\$4,950.00	
Kariyez, Joshua	1/11/2017	\$4,950.00	
Kariyez, Joshua	1/11/2017	\$4,950.00	
Landa, Ben	1/9/2017	\$4,950.00	\$1,500
Local 94-94A-94B IUOE PAC	10/24/2016	\$4,950.00	
Mazel, Arnold	3/6/2017	\$4,950.00	\$500
Neuman, Steven	11/28/2016	\$4,950.00	
Nisanov, Gabriel	1/11/2017	\$4,950.00	
Povman, Morton	8/11/2016	\$4,950.00	\$500
Schron, Avi	12/7/2016	\$4,950.00	
Schwartz, Aaron	12/16/2016	\$4,950.00	
Schwartz, Henry	1/11/2017	\$4,950.00	
Srour, Faraj	10/20/2016	\$4,950.00	
Stationary Engineers Education	1/6/2017	\$4,950.00	
Teitz, Elijohu A	11/2/2016	\$4,950.00	
TWU Local 100	1/2/2017	\$4,950.00	
Umland, Jeanne	3/9/2017	\$4,950.00	\$2,500
Umland, John	9/2/2016	\$4,950.00	\$2,500
tubridy, terence	3/2/2017	\$4,775.00	
IBEW Local 3	10/13/2016	\$4,100.00	
Steamfitters Local 638 PAC	11/9/2016	\$4,000.00	
levy, paul	6/9/2016	\$3,850.00	
Haque, Ahasan	1/6/2017	\$3,000.00	
Keller, Mark	9/30/2016	\$3,000.00	\$800
Correction Officers Benevolent	3/1/2017	\$2,750.00	
CSA PAC	12/12/2016	\$2,750.00	
Goldstein, Claire	2/10/2017	\$2,750.00	
IUPAT	11/5/2016	\$2,750.00	
Martin, Geller	3/8/2017	\$2,750.00	
Mason Tenders DC of NY PAC	1/9/2017	\$2,750.00	
METALLIC LATHERS LOCAL 46 PAC	12/6/2016	\$2,750.00	
Mysorekar, Uma	1/2/2017	\$2,700.00	

EXHIBIT B

ADDITIONAL DONORS WHO WOULD EXCEED FEDERAL LIMITS IF DONATIONS WERE TRANSFERRED

Donor	Date of New York Donation	Donation to New York Committee	Contribution to Federal Committee
Aronov, Robert	8/18/2016	\$2,500.00	\$500
Hakimian, Mehran	11/19/2016	\$2,500.00	\$1,000
Jain, Neeta	9/22/2016	\$2,500.00	\$1,500
Litwack, Lawrence	9/15/2016	\$2,500.00	\$1,000
Radin, Stephen	11/30/2016	\$2,500.00	\$1,250
Rosen, Judith	1/2/2017	\$2,500.00	\$1,000
Vatch, Michael S.	12/19/2016	\$1,500.00	\$2,500
Kushlefsky, Noah	3/8/2017	\$1,000.00	\$2,500
Darnley, Stewart	1/6/2017	\$500.00	\$2,500
Schneur, Eugene	12/24/2016	\$400.00	\$2,500
Bennett, Robert J.	12/24/2016	\$400.00	\$2,500