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Federal Election Commission
Office of General Counsel
1050 First Street, NE
Washington, DC 20463

Dear Commissioners:

I write as a political strategist working with a federal PAC on a project that might benefit from the clarity of a FEC advisory opinion. The nonconnected PAC raises funds earmarked for a specific kind of presidential candidate, in this case a pro-life Democrat. While the Pro-Life Democratic Candidate PAC (www.prolifedem.org) follows all rules and guidance arising from previous advisory opinions concerning earmarking, “draft PACs,” and conduit fundraising, we sense that a definitive opinion would give greater clarity to our project as well as to future PACs that seek to encourage particular kinds of candidates run for president.

The Pro-Life Democratic Candidate PAC receives contributions from individuals hoping to encourage a pro-life Democrat to enter the 2020 presidential nominating contest. To that end, the PAC earmarks contributions with the intent to transfer funds to a pro-life Democrat within ten days of him or her forming a presidential campaign committee.

At the time of contribution, the donor is presented a disclaimer that specifically outlines two eventualities: Either a pro-life Democrat meeting certain criteria enters the race by a specified date or one does not. The PAC exercises no direction or control over which candidate (if any) receives the earmarked funds. If a qualified pro-life Democrat forms a presidential campaign committee, then earmarked contributions will flow directly to that candidate’s committee. If not, then the contribution defaults to Dan Lipinski for Congress, the principal campaign committee of U.S. Rep. Dan Lipinski, a prominent pro-life Democrat facing a primary challenge in Illinois’ Third Congressional District.

For the purposes of this advisory opinion, the Pro-Life Democratic Candidate PAC requests that the Commission assume “pro-life Democrat” to mean that a Democratic candidate holds positions that are significantly at odds with the party’s platform on abortion rights. Obviously, the definition of “pro-life” is contested. The PAC is satisfied that it can rely on objective criteria, such as endorsement by an outside group like the Democrats for Life of America. However, the PAC is committed to honoring the limits and eligibility established in its contribution disclaimer that sets criteria for donors: Contributions will only be earmarked for a pro-life Democrat that meets two established criteria to file a Statement of Candidacy with the FEC and form a presidential campaign committee. One is based on having some significant political or military experience (current or former Member of Congress, current or former governor, retired general or admiral, former cabinet-level administration official, or state legislator holding office as of 2019). The second is that the candidate receives the endorsement of the Democrats for Life of America, a 501(c)(4) political advocacy nonprofit that has endorsed pro-life Democrats in federal races for many years. The Pro-Life Democratic Candidate PAC has no formal relationship with the DFLA and no influence over its endorsement process. Significantly, if the DFLA endorses a candidate that does not meet one of the PAC’s experiential requirements, the PAC will not transfer earmarked funds to that candidate. The PAC wishes to “draft” a credible candidate and will not support a perennial or unqualified candidate, even if the DFLA chooses to do so. The Pro-Life Democratic Candidate will transfer its earmarked funds to the first presidential candidate to meet the experiential criterion **and** receive the DFLA’s endorsement.

All this, we believe, is in accordance with FEC rules and previous advisory opinions.

However, since the “draft” nature of the PAC introduces criteria that may not be directly addressed in FEC rules and previous advisory opinions, we are asking for guidance on three specific questions.

First, do the draft and earmarking functions of the PAC adequately specify criteria for a recipient committee such that the PAC does not exercise any direction or control over what committee (if any) receives the earmarked contributions? Many draft PACs mention a specific candidate (e.g., “Draft Beto”) or a specific kind of candidate (e.g., ActBlue’s woman-for-president draft fund referenced in AO 2014-19). This draft fund has different criteria, and the PAC is interested in making sure that all direction and control reside with the individual contributor at the time of contribution.

Second, in the event that earmarked contributions are not transferred to a qualified presidential campaign committee because no such committee is established, may the designated draft funds default to a congressional campaign rather than the presidential nominating contest? The PAC exercises no direction or control over what presidential candidate may ultimately receive earmarked funds.

However, donors are advised at the time of contribution that if the draft funds are not disbursed to a presidential campaign committee, their contribution defaults to Dan Lipinski for Congress. After a specified deadline for the presidential candidate draft, if it is unsuccessful, the PAC will want to disburse funds to aid a vulnerable pro-life Democrat in the 2019-2020 election cycle.

Third, some draft PACs do not specify a default recipient or name themselves as the default recipient. If the named candidate does not run, in some cases the PAC will offer refunds to contributors. The Pro-Life Democratic Candidate PAC clearly specifies that if earmarked funds are not eventually transferred to a qualified candidate's presidential campaign committee, then the contribution defaults to Dan Lipinski for Congress. Is the Pro-Life Democratic Candidate PAC required to offer refunds if no candidate meeting the criteria set forth in the contribution disclaimer forms a presidential campaign committee?

Given the short time in which the Pro-Life Democratic Candidate PAC is receiving contributions as a draft PAC and especially given our commitment to abide by the spirit and letter of all FEC rules (including an advisory opinion arising from this request) whether or not a pro-life Democrat enters the presidential nominating contest, we respectfully request that the Commission regard this as a time-sensitive request. Correspondence may be directed to me at the address above. For updates and requests for additional information, you may contact me by phone or email.

Thank you for your consideration.

Jacob Lupfer
Principal Strategist
The Relay Group

Enclosure: Contribution Disclaimer

Screen shot of disclaimer at <https://secure.anedot.com/prolifedem/donate>

Contribution Rules

1. I am a U.S. citizen or lawfully admitted permanent resident (i.e., green card holder).
2. This contribution is made from my own funds, and funds are not being provided to me from any other person or entity for the purpose of making this contribution.
3. I am making this contribution with my own personal credit card and not with a corporate or business credit card or a card issued to another person.
4. I am at least eighteen years old.
5. I am not a federal contractor.

You are earmarking your contribution for a pro-life Democrat's presidential campaign. Your contribution will be placed in an escrow account of the Pro-Life Democratic Candidate PAC. The PAC is simply a conduit. It exercises no direction or control over which candidate (if any) ultimately receives your earmarked contribution. Within 10 days of the first pro-life Democrat who is a current or former Member of Congress, a current or former governor, a retired general or admiral, a former cabinet-level administration official, or a state legislator and who receives the endorsement of the Democrats for Life of America filing a Statement of Candidacy with the Federal Election Commission, the Pro-Life Democratic Candidate PAC will transfer each contribution (up to \$2,800) to that candidate's presidential campaign committee. As required by law, your name, city, state, contribution amount, date of contribution, and your occupation will be shared with the presidential campaign when our PAC forwards your contribution. If no pro-life Democrat who is a current or former Member of Congress, a current or former governor, a retired general or admiral, a former cabinet-level administration official, or a state legislator files a Statement of Candidacy before September 30, 2019, your contribution will be designated as a contribution to the Dan Lipinski for Congress committee. FEC regulations prevent federal candidates from accepting contributions over \$2,800 per election, thus any contribution greater than that amount will be divided accordingly: \$2,800 to the escrow account and earmarked for a pro-life Democratic presidential candidate; the rest to the Pro-Life Democratic Candidate PAC's digital and grassroots outreach campaign to recruit and equip pro-life Democratic candidates. Note that any contributions you earmark to a presidential candidate through the Pro-Life Democratic Candidate PAC will be aggregated with any other contributions you make to that candidate's presidential campaign and will be subject to the \$2,800 per election contribution limit.