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July 27, 2021

Kevin M. Paulsen
Attorney
Federal Election Commission
1050 First Street NE
Washington, DC 20463

Re: Advisory Opinion 2021-08 (Fitzgerald) — Draft A

Dear Mr. Paulsen,

Campaign Legal Center respectfully submits this comment on Draft A of Advisory Opinion 2021-08 (Fitzgerald). Specifically, we call to the Commission's attention that Draft A's conclusion is legally impossible.

Draft A begins by finding that the requestor's state committee and his leadership PAC are affiliated because both entities are established, financed, maintained, or controlled by the requestor.[1]

Draft A then notes that the state committee, as an organization controlled by a federal candidate, cannot transfer money to the leadership PAC unless that money is subject to FECA's limits, prohibitions, and reporting requirements. 52 U.S.C. § 30125(e)(1)(A). The state committee's receipts were not reported under the Act, and the state committee does not claim that all of its funds comply with FECA's source restrictions. Draft A therefore correctly finds that the state committee cannot transfer funds directly to the leadership PAC.

The main problem arises when Draft A, as an apparent workaround to the soft-money transfer ban, suggests the state committee should "register . . . as a Federal nonconnected committee" and conduct certain reporting and accounting procedures to render its funds federally permissible.

But the registration Draft A proposes is impossible. If the state committee were to register as a federal committee, it could not be a nonconnected committee. Instead, because it is controlled by a federal candidate, the newly registered federal committee would be an *authorized* committee. *See* 11 C.F.R. § 100.5(f); *see also* FEC, *Nonconnected Committees* at 1 (May 2008) ("A nonconnected committee is a political committee that is not . . . an authorized committee of a candidate . . . .").

By definition, authorized committees are not affiliated with leadership PACs. 11 C.F.R. § 100.5(e)(6). And the type of transfer at issue in this request is permitted only among affiliated committees. *See* 11 C.F.R. § 102.6(a)(1).

[1] This finding is questionable for the reasons explained in Draft B, but even if it were correct, Draft A would fail for the reasons explained herein.

Therefore, the requestor's authorized committee, formed by the federal registration of his state committee, would not be permitted to transfer money to his leadership PAC.

In suggesting that the requestor convert his state committee to a nonconnected federal committee, Draft A refers to Advisory Opinion 1990-16 (Thompson). That opinion is irrelevant for these purposes because its requestor was not a federal candidate, and therefore he was legally able to convert his state committee to a nonconnected federal committee. Draft A also cites without explanation to "11 C.F.[R.] § 114.12," but this regulation — which permits committees to incorporate for liability purposes — has nothing to do with conversion or creation of unauthorized committees.

In sum, Draft A's proposed workaround to the soft-money ban simply cannot be. Campaign Legal Center therefore respectfully urges the Commission to reject Draft A of Advisory Opinion 2021-08.

Sincerely,

/s/ *Adav Noti*
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