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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 22-35-A
AGENDA ITEM
For meeting of August 11, 2022

August 2, 2022

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by RMK*
Acting General Counsel

Neven F. Stipanovic *NFS by RMK*
Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Joseph Wenzinger *JW*
Attorney

Subject: AO 2022-13 (Dr. Alan Gross and Northern Leadership PAC) - Draft A

Attached is a proposed draft of the subject advisory opinion. We have been asked to place this draft on the Agenda by one or more Commissioners.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00pm (Eastern Time) on August 10, 2022.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

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

Attachment

1 ADVISORY OPINION 2022-13

2

3 Lindsay M. Nathan, Esq.

4 Meredith C. McCoy, Esq.

5 Venable LLP

6 Rockefeller Center

7 1270 Avenue of the Americas, 24th Floor

8 New York, NY 10020

9

10 Dear Mses. Nathan and McCoy:

DRAFT A

11 We are responding to your advisory opinion request on behalf of Dr. Alan Gross
12 and Northern Leadership PAC (the “Committee”) concerning whether, under the Federal
13 Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission
14 regulations, the Committee may convert to an authorized committee of Dr. Gross’s
15 campaign for the United States House of Representatives or, alternatively, its previous
16 designation as the principal campaign committee of Dr. Gross’s 2020 campaign for the
17 United States Senate. The Commission concludes that the Committee may choose either
18 option.

19 ***Background***

20 The facts presented in this advisory opinion request are based on your letter
21 received on June 29, 2022, and disclosure reports filed with the Commission.

22 Dr. Gross was a candidate for the United States Senate in Alaska in 2020, and his
23 principal campaign committee was Dr. Al Gross for U.S. Senate.¹ His candidacy
24 ultimately proved to be unsuccessful.²

¹ Advisory Opinion Request (“AOR”) at AOR001; Dr. Al Gross for U.S. Senate, Statement of Organization, Amend., Form 1 (Oct. 16, 2020), <https://docquery.fec.gov/pdf/267/202010169297002267/202010169297002267.pdf>.

² AOR001.

1 Following his unsuccessful Senate candidacy, his principal campaign committee
2 filed an amended Statement of Organization to convert to the Committee.³ On its form
3 effecting the conversion,⁴ the Committee identified itself as a nonconnected committee
4 that supports or opposes more than one federal candidate. At the time, the Committee did
5 not identify on its form as a leadership PAC⁵ or file a Notification for Multicandidate
6 Status.⁶

7 On April 1, 2022, Dr. Gross announced his candidacy for the United States House
8 of Representatives in Alaska.⁷ On the same day, he established a separate principal
9 campaign committee, Al Gross for Congress.⁸

10 On April 6, “[a]s a result of the candidacy” the Committee filed an amended
11 Statement of Organization to “reflect the Committee’s status as a leadership PAC”⁹ and

³ *Id.*

⁴ Northern Leadership PAC, Statement of Organization, Amend., FEC Form 1 (July 22, 2021), [202107229451953757.pdf \(fec.gov\)](https://www.fec.gov/disclosure/202107229451953757.pdf).

⁵ The Act defines a leadership PAC, with respect to a candidate for federal office or an individual holding federal office, as a political committee that is directly or indirectly established, financed, maintained, or controlled by the candidate or individual but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual, except that the term does not include a political committee of a political party. 52 U.S.C. § 30104(i)(8); *see also* 11 C.F.R. § 100.5(e)(6) (same).

⁶ A multicandidate committee is defined by the Act and Commission regulations as a political committee that has been registered with the Commission for at least six months, has received contributions from more than 50 persons, and, except for any state political party organization, has made contributions to five or more candidates for federal office. 52 U.S.C. § 30116(a)(4); 11 C.F.R. § 100.5(e)(3).

⁷ AOR002.

⁸ Al Gross for Congress, Statement of Organization, FEC Form 1 (Apr. 1, 2022), [https://docquery.fec.gov/pdf/415/202204019495930415/202204019495930415.pdf](https://www.fec.gov/disclosure/202204019495930415/202204019495930415.pdf).

⁹ AOR002.

1 to identify Dr. Gross as a sponsor.¹⁰ Moreover, the Committee filed a Notification of
2 Multicandidate Status,¹¹ which meant the Committee could make contributions to federal
3 candidates in higher amounts than a nonmulticandidate committee or an authorized
4 committee. Indeed, while multicandidate committees may contribute up to \$5,000 per
5 election to a federal candidate,¹² nonmulticandidate committees may only contribute up
6 to \$2,900 in the 2021-2022 election cycle,¹³ and authorized committees are limited to
7 \$2,000.¹⁴

8 According to the request, however, the Committee “has operated at all times in a
9 manner consistent with an authorized committee, despite its brief conversion on paper.”¹⁵
10 Indeed, the Committee “has not solicited or accepted any contributions” and its “only
11 disbursements” have been to satisfy remaining 2020 campaign expenses, pay for ongoing
12 compliance costs, “make a few” contributions to federal candidates within the limits for
13 an authorized committee, and pay Dr. Gross’s expenses for travel that he took to help him

¹⁰ Although the amended Statement of Organization does not check the box for “Leadership PAC,” it does identify Dr. Gross as “Leadership PAC Sponsor.” Northern Leadership PAC, Statement of Organization, Amend. (Apr. 6, 2022) at 2-3, <https://docquery.fec.gov/pdf/979/202204069495953979/202204069495953979.pdf>.

¹¹ AOR002; Northern Leadership PAC, Notification of Multicandidate Status (Apr. 6, 2022), [202204069495968871.pdf \(fec.gov\)](https://www.fec.gov/disclosure/202204069495968871.pdf). A political committee becomes a multicandidate committee at the time it meets the requirements of section 100.5(e)(3). *See* 11 C.F.R. 110.2(a)(1); *supra* n.6.

¹² *See* 52 U.S.C. § 30116(a)(2)(A) (prohibiting multicandidate committee from contributing more than \$5,000 per election to federal candidate).

¹³ *See id.* § 30116(a)(1)(A) (prohibiting nonmulticandidate committee from contributing more than \$2,000, as adjusted for inflation, per election to federal candidate); Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 86 Fed. Reg. 7867, 7869 (Feb. 2, 2021) (adjusting contribution limits for 2021-2022 election cycle).

¹⁴ *See* 52 U.S.C. § 30102(e) (prohibiting any political committee that supports more than one federal candidate with contributions in amounts aggregating more than \$2,000 from being designated authorized committee); 11 C.F.R. §§ 102.13, 102.12 (same).

¹⁵ AOR002.

1 determine the feasibility of a future federal candidacy.¹⁶ Moreover, the Committee “has
2 not supported more than one candidate with contributions of more than \$2,000 per
3 election.”¹⁷

4 Considering these facts, the Committee wishes to be able to transfer its remaining
5 funds to Al Gross for Congress, Dr. Gross’s principal campaign committee for his
6 campaign for the United States House of Representatives.¹⁸ Al Gross for Congress
7 would use these funds to wind down its campaign operations and to satisfy remaining
8 debts in connection with Dr. Gross’s congressional campaign, or for a future campaign
9 for federal office.¹⁹

10 ***Question Presented***

11 *Do the Act and Commission regulations permit the Committee to convert to an*
12 *authorized committee of Dr. Gross in his campaign for the United States House of*
13 *Representatives or, alternatively, revert to the committee’s previous designation as Dr. Al*
14 *Gross for U.S. Senate, the principal campaign committee of Dr. Gross’s 2020 campaign*
15 *for the United States Senate?*

16 ***Legal Analysis***

17 Yes, the Act and Commission regulations permit the Committee to convert to an
18 authorized committee of Dr. Gross in his campaign for the United States House of

¹⁶ AOR001.

¹⁷ AOR003.

¹⁸ Al Gross for Congress, Statement of Organization, FEC Form 1 (Apr. 1, 2022),
[202204019495930415.pdf \(fec.gov\)](#).

¹⁹ AOR002.

1 Representatives or, alternatively, revert to the committee’s previous designation as Dr.
2 Gross for U.S. Senate, the principal campaign committee of Dr. Gross’s 2020 campaign
3 for United States Senate.

4 The Act and Commission regulations identify six categories of permissible uses
5 of contributions accepted by a federal candidate, including “for any other lawful
6 purpose,”²⁰ as long as the contributions are not for “personal use.”²¹

7 The Commission “has long interpreted these provisions of the Act and
8 Commission regulations as permitting candidates to convert their authorized committees
9 to nonconnected political committees,” and to finance the nonconnected committees’
10 activities with contributions received by the candidates for elections in which they had
11 participated.²² The Commission has also determined that a non-federal committee could
12 convert to a federal committee, as long as the funds in the converting committee’s
13 account at the time of conversion excluded any funds that were impermissible under the
14 Act.²³

²⁰ 52 U.S.C. § 30114(a)(6); 11 C.F.R. § 113.2(e).

²¹ 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.1(g). “Personal use” is defined as “any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.” 11 C.F.R. § 113.1(g) (implementing the Act’s definition of “personal use,” 52 U.S.C. § 30114(b)(2)).

²² Advisory Opinion 2012-06 (RickPerry.org) at 3 (permitting principal campaign committee to convert to nonconnected committee and fund its activities with remaining primary election funds); *see also* Advisory Opinion 2004-03 (Dooley for the Valley) (permitting principal campaign committee to convert to multicandidate committee).

²³ Advisory Opinion 2018-02 (Alabama Academy of Radiology and Alabama Academy of Radiology PAC (“ALRAD PAC”)) at 10. In particular, the Commission required the converting committee’s account to exclude any funds that (1) failed to comply with the Act’s source and amount restrictions, including the fair market value of corporate in-kind contributions received by the committee pre-conversion, or (2) were solicited in a manner that did not comply with the Act and Commission regulations. *Id.* at 8-12. The Commission also required the Academy to provide past donors with notice of

1 Here, the request states that the Committee “has operated at all times in a manner
2 consistent with an authorized committee,” despite “its brief conversion on paper.”²⁴ The
3 Committee “has not supported more than one candidate with contributions of more than
4 \$2,000 per election,” the limit applicable to authorized committees;²⁵ nor has it “raised a
5 single dollar after conversion and never accepted any funds in excess of the limits and
6 restrictions on authorized committees.”²⁶ Therefore, assuming that these are the only
7 funds in the Committee’s cash-on-hand balance at the time of conversion, the
8 Committee’s cash-on-hand at the time it converts to an authorized committee would
9 consist solely of funds permissible under the Act and Commission regulations applicable
10 to authorized committees.²⁷ Under these circumstances, the Commission concludes that
11 the Committee may convert to an authorized committee of Dr. Gross in his campaign for
12 the United States House of Representatives or, alternatively, revert to the committee’s
13 previous designation as Dr. Gross for U.S. Senate, the principal campaign committee of
14 Dr. Gross’s 2020 campaign for the United States Senate.

the planned conversion and an opportunity to object and obtain a refund of their unspent donations. *Id.* at 12-13.

²⁴ AOR002.

²⁵ See 52 U.S.C. § 30102(e) (prohibiting any political committee that supports more than one federal candidate with contributions in amounts aggregating more than \$2,000 from being designated authorized committee); 11 C.F.R. §§ 102.13, 102.12 (same).

²⁶ AOR004; see also 52 U.S.C. § 30114 (prescribing limitations on contributions and expenditures). You state that, although the Committee made a single contribution in excess of the limits for authorized committees—\$5,000 to a federal candidate, which is the limit applicable to contributions by multicandidate committees, 52 U.S.C. § 30116(a)(2)(A)—the committee sought, and received, a refund of \$3,000, bringing the contribution within the limit applicable to contributions by authorized committees, *id.* § 30116(a)(1)(A). AOR002 n.2, AOR004.

²⁷ See Advisory Opinion 2018-02 (ALRAD PAC) at 10.

