



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

ADVISORY OPINION 2024-08 (BOB GOOD AND GOOD FOR CONGRESS)

DISSENTING STATEMENT OF CHAIRMAN SEAN J. COOKSEY

Today, the Commission approved Advisory Opinion 2024-08, authorizing U.S. Representative Bob Good and his principal campaign committee, Good for Congress, to seek permission from donors to redesignate contributions made for the general election to a recount fund. While I agree with the ultimate decision to allow Good’s campaign to pursue redesignation, I disagree with the reasoning set forth in the final advisory opinion because it improperly and unnecessarily concludes that recount activities are “in connection with an election for Federal election,” and thus subject to the soft-money restrictions in 52 U.S.C. § 30125(e).¹

A recount is not an “election” under the Federal Election Campaign Act, as amended (the “Act”).² Similarly, Commission regulations explicitly exclude any “gift, subscription, loan, advance, or deposit of money or anything of value made with respect to a recount of the results of a Federal election” from consideration as a “contribution” or “expenditure.”³ As former Commissioner Hans von Spakovsky has previously explained in greater detail, because “[r]ecounts are not ‘elections’ under the plain and clear definition contained in the Act, ... funds solicited, received and spent in connection with a recount are not funds solicited, received or spent in connection with an election, and therefore are not subject to [52 U.S.C. § 30125(e)(1)].”⁴ His analysis on this point is correct.

In this advisory opinion, however, the Commission reaffirms an expansive and incorrect reading of the soft-money provisions to cover recounts that was first articulated in Advisory Opinion 2006-24 (Republican and Democratic Senatorial Committees).⁵ This interpretation conflicts with the plain language of the Act and Commission regulations. Moreover, it is at odds with our recent precedent in Advisory Opinion 2024-05 (Nevadans for Reproductive Freedom),

¹ Advisory Op. 2024-08 (Bob Good and Good for Congress) at 5.

² See 52 U.S.C. § 30101(1) (defining “election” to include a “general, special, primary, or runoff election,” as well as a convention or caucus of a political party, and primary elections held for the purpose of selecting delegates to national nominating conventions or to express a preference for Presidential nominations); see also 11 C.F.R. § 100.2.

³ 11 C.F.R. §§ 100.91, 100.151.

⁴ See Dissenting Opinion of Commissioner Hans von Spakovsky at 4, Advisory Opinion 2006-24 (Republican and Democratic Senatorial Committees).

⁵ See Advisory Op. 2006-24 (Republican and Democratic Senatorial Committees) at 6 (“Congress’s choice of the ‘in connection with’ standard in [52 U.S.C. § 30125(e)(1)(A)] requires the Commission to conclude that section [30125(e)(1)(A)] applies to funds raised or spent on recounts of Federal elections.”).

where the Commission found that because a ballot initiative “is not any of the types of elections enumerated in the Act’s definition of ‘election,’” solicitations by federal candidates in support of a ballot initiative “are not in connection with any election, ... and are not restricted by Section 30125(e)(1)(A) or (B).”⁶ That cannot be squared with the analysis in today’s advisory opinion.

The Commission’s reasoning is especially regrettable because it is entirely unnecessary. Requestors had already affirmed that any general election contributions they redesignated for the recount would comply with applicable contribution limits under the Act, and so whether the soft-money restrictions apply is ultimately irrelevant.⁷ The better course for the Commission would have been to avoid the issue entirely and do no further harm to the law.

For these reasons, I voted against the advisory opinion as drafted. I hope the Commission will have an opportunity to squarely revisit this issue in the near future.



Sean J. Cooksey
Chairman

July 25, 2024

Date

⁶ Advisory Op. 2024-05 (Nevadans for Reproductive Freedom) at 5.

⁷ See Advisory Op. Request at 1, Advisory Op. 2024-08 (Bob Good and Good for Congress).