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FEDERAL ELECTION COMMISSION
Washington, DC

AGENDA DOCUMENT NO. 24-25-B
AGENDA ITEM
For meeting of July 25, 2024

SUBMITTED LATE

July 23, 2024

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *NFS for LJS*
Acting General Counsel

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Associate General Counsel

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Attorney

Subject: AO 2024-08 (Bob Good and Good for Congress) – Draft B

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 12:00 pm (Eastern Time) on Wednesday, July 24, 2024.

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 2024-08

2
3 David Dolan
4 Good for Congress
5 P.O. Box 117
6 Lovington, VA 22949--117

DRAFT B

7
8 Dear Mr. Dolan:

9
10 We are responding to your advisory opinion request on behalf of Representative
11 Bob Good and Good for Congress (collectively, “Requestors”), concerning the
12 application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”),
13 and Commission regulations to Requestors’ proposal to seek contributors’ redesignations
14 of general election contributions to a recount fund established by Good for Congress.

15 The Commission concludes that Requestors may seek contributors’ redesignation of
16 general election contributions to Good for Congress’s recount fund as proposed.

17 ***Background***

18 The facts presented in this advisory opinion are based on your letter received on
19 July 2, 2024.

20 Rep. Bob Good represents Virginia’s 5th Congressional District in the United
21 States House of Representatives, and Good for Congress is his principal campaign
22 committee. Rep. Good was a candidate for the Republican nomination in the primary
23 election for that office that was held on June 18, 2024. Based on the results of the
24 primary election, Rep. Good will likely seek a recount, and because he will incur
25 expenses relating to a recount, Good for Congress is establishing a recount fund.

26 Good for Congress has spent almost all of its primary election funds, and retains
27 contributions designated for the general election. Requestors propose to ask the
28 contributors of those general election contributions to redesignate their contributions for

1 the recount fund. Requestors state that they will comply with all required procedures for
2 redesignations, including requesting redesignation from each contributor in writing,
3 informing each contributor of the contributor’s right to receive a refund instead of
4 redesignating, and completing all redesignations within 60 days of the date of the primary
5 election.

6 ***Question Presented***

7 *May Good for Congress seek permission from its general election contributors to*
8 *redesignate their contributions from the general election to its recount fund, and then*
9 *redesignate funds from those contributors who grant such permission?*

10 ***Legal Analysis***

11 Yes, Good for Congress may seek permission from its general election
12 contributors to redesignate their contributions from the general election to its recount
13 fund, and then redesignate funds from those contributors who grant such permission, as
14 proposed.

15 The Act’s limitations on contributions made to a candidate for federal office apply
16 separately with respect to each election.¹ Commission regulations provide that a
17 candidate or authorized committee may, prior to a primary election, accept contributions
18 designated by the contributor for use in connection with the general election.² But, “[i]f

¹ 52 U.S.C. § 30116(a)(1)(i); 11 C.F.R. § 110.1(b)(2).

² 11 C.F.R. §§ 102.9(e), 110.1(b)(2), 110.2(b)(2).

1 a candidate is not a candidate in the general election, any contributions made for the
2 general election shall be refunded to the contributors, redesignated . . . or reattributed.”³

3 In addition, the treasurer of an authorized committee may “request a written
4 redesignation of a contribution by the contributor for a different election” when the
5 contribution was designated for a particular election but received after that election, or
6 when the contribution is excessive on its face or when aggregated with other
7 contributions from the same contributor.⁴ A contribution is considered redesignated if
8 the authorized committee requests a written redesignation from the contributor, informs
9 the contributor of the contributor’s right to receive a refund of the contribution as an
10 alternative to redesignating it, and receives the contributor’s redesignation in writing
11 within 60 days after receiving the original contribution.⁵

12 Although Commission regulations speak in terms of redesignating contributions
13 “for a different election,”⁶ Requestors propose to request redesignations for a recount of
14 the results of an election. Election recounts are not “elections” under the Act or

³ *Id.* § 102.9(e)(3); *see also id.* § 110.1(b)(3)(i) (“If the candidate is not a candidate in the general election, all contributions made for the general election shall be either returned or refunded to the contributors or redesignated . . . , or reattributed . . . , as appropriate.”). As the Commission has explained, “where a general election is held, but the candidate does not participate in that election, no separate contribution limit for that general election is available to contributors.” Contribution and Expenditure Limitations and Prohibitions; Contributions by Persons and Multicandidate Political Committees, 52 Fed. Reg. 760, 761 (Jan. 9, 1987) (internal citations omitted).

⁴ 11 C.F.R. § 110.1(b)(3)(i), (b)(5)(i).

⁵ *Id.* § 110.1(b)(5)(ii). The Commission has concluded that a political committee may obtain redesignations of contributions more than 60 days after their receipt if the redesignations are due to a later event. *See* Advisory Opinion 2009-15 (Bill White for Texas) at 7.

⁶ 11 C.F.R. § 110.1(b)(5)(i); *see also id.* § 110.1(b)(5)(ii)(A), (iii) (referring to redesignation “for another election”).

Commission regulations.⁷ Indeed, Commission regulations expressly exempt funds raised and spent for recounts from the definitions of “contribution” and “expenditure.”⁸

Neither the Act nor Commission regulations expressly provide for the redesignation of contributions for a recount of an election, and the Commission has not previously considered whether an authorized committee may obtain such redesignations. That said, nothing in the Act or Commission regulations would prohibit such redesignations. Indeed, if it is ultimately determined that Rep. Good did not win the primary election, Requestors will be required to refund any general election contributions already received or seek their redesignation or reattribution.⁹ Further, the Commission has previously concluded that authorized committees could request the redesignation of contributions in circumstances not addressed in Commission regulations, such as for use in a potential special election and special election runoff,¹⁰ and where the redesignations would not be received within 60 days after the committees’ receipt of the original contributions,¹¹ so long as the redesignations otherwise complied with the regulatory requirements for redesignations.

⁷ See 52 U.S.C. § 30101(1); 11 C.F.R. § 100.2.

⁸ 11 C.F.R. §§ 100.91, 100.151.

⁹ See Advisory Opinion 2015-16 (Niger Innis for Congress) at 3-4.

¹⁰ Advisory Opinion 2009-15 (Bill White for Texas).

¹¹ Advisory Opinion 2022-18 (Fleming *et al.*). Consistent with the Commission’s previous conclusion that “a political committee may receive redesignations of contributions more than 60 days after the committee’s receipt of the contributions, if there is a later event giving the committee notice of a reason to seek redesignation,” *id.* at 4, Requestors state that they will complete all redesignations within 60 days of the primary election.

1 In addition, any contributions redesignated for Requestors' recount fund must
2 comply with the amount limitations, source prohibitions, and reporting requirements of
3 the Act. The Commission has previously concluded that a recount of the votes cast in a
4 federal election is "in connection with an election for federal office" under the Act;¹²
5 thus, any entity directly or indirectly established, financed, maintained or controlled by,
6 or acting on behalf of, one or more federal officeholders or candidates may not solicit,
7 receive, direct, transfer, or spend funds for expenses related to a federal election recount
8 unless the funds are subject to the limitations, prohibitions, and reporting requirements of
9 the Act.¹³ Because Requestors propose to establish a fund to pay expenses related to a
10 recount of the votes cast in a federal election, any monies solicited and raised for the
11 fund, or directed, transferred, or spent by the fund, must comply with the Act's amount
12 limitations, source prohibitions, and reporting requirements. General election
13 contributions redesignated by contributors for Requestors' recount fund will comply with
14 the Act's amount limitations and source prohibitions because they were subject to the
15 Act's amount limitations and source prohibitions when originally received.¹⁴

16 Accordingly, the Commission concludes that Good for Congress may seek
17 permission from its general election contributors to redesignate their contributions from

¹² Advisory Opinion 2006-24 (Republican and Democratic Senatorial Committees) at 4.

¹³ 52 U.S.C. § 30125(e)(1)(A).

¹⁴ Because donations made in connection with a recount are not "contributions," they are subject to a separate limit and are not aggregated with contributions to the candidate from the same persons for purposes of the Act's contribution limits. Advisory Opinion 2006-24 (Republican and Democratic Senatorial Committees) at 6; *see also* Advisory Opinion 2019-02 (Bill Nelson for Senate) at 3.

1 the general election to its recount fund, and then redesignate funds from those

2 contributors who grant such permission, as proposed.

3 This response constitutes an advisory opinion concerning the application of the

4 Act and Commission regulations to the specific transaction or activity set forth in your

5 request.¹⁵ The Commission emphasizes that, if there is a change in any of the facts or

6 assumptions presented, and such facts or assumptions are material to a conclusion

7 presented in this advisory opinion, then Requestors may not rely on that conclusion as

8 support for their proposed activity. Any person involved in any specific transaction or

9 activity which is indistinguishable in all its material aspects from the transaction or

10 activity with respect to which this advisory opinion is rendered may rely on this advisory

11 opinion.¹⁶ Please note that the analysis or conclusions in this advisory opinion may be

12 affected by subsequent developments in the law including, but not limited to, statutes,

13 regulations, advisory opinions, and case law. Any advisory opinions cited herein are

14 available on the Commission's website.

15 On behalf of the Commission,

16
17 Sean J. Cooksey,

18 Chairman

¹⁵ See 52 U.S.C. § 30108.

¹⁶ See *id.* § 30108(c)(1)(B).