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FEDERAL ELECTION COMMISSION
Washington, DC

AGENDA DOCUMENT NO. 25-02-B
AGENDA ITEM
For meeting of March 13, 2025

March 6, 2025

MEMORANDUM

TO: The Commission

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

Neven F. Stipanovic *NFS*
Associate General Counsel

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Attorney

Subject: AO 2025-01 (Sherrill) 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 12:00pm (Eastern Time) on March 12, 2025.

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 2025-01

2
3 Jon Berkon

4 Jonathan Peterson

5 Elias Law Group

6 250 Massachusetts Ave. NW, Suite 400

7 Washington, DC 20001

8

DRAFT B

9 Dear Messrs Berkon and Peterson:

10 We are responding to your advisory opinion request on behalf of U.S.

11 Representative Mikie Sherrill (“Requestor”), concerning the application of the Federal
12 Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations
13 to proposed contributions by Requestor’s authorized committee and leadership PAC to
14 one or more organizations that may accept unlimited funds and spend them in connection
15 with an election.

16 The Commission concludes that the proposed contributions would not be a
17 prohibited use of campaign funds under the soft money and personal use provisions of the
18 Act and Commission regulations. Whether contributions from Requestor’s authorized
19 committee and leadership PAC are aggregated or analyzed separately is not relevant to
20 that analysis. However, the Commission is unable to opine whether the proposed
21 contributions would result in the Requestor Establishing, Financing, Maintaining, or
22 Controlling (“EFMC”ing) the recipient organizations for purposes of the soft money ban¹

¹ The Commission cannot opine where the written advisory opinion request does not squarely present “a specific transaction or activity.” 52 U.S.C. § 30108(a); *cf.* AO 2024-09 (“Barragán for Congress”).

1 ***Background***

2 The facts presented in this advisory opinion are based on your letter received on
3 January 17, 2025.

4 Requestor is a United States Representative from New Jersey’s 11th
5 Congressional District. Her principal federal campaign committee is Mikie Sherrill for
6 Congress (the “Campaign Committee”) and her leadership PAC is Gateway to
7 Leadership PAC (the “Leadership PAC”).

8 Requestor is also a candidate in New Jersey’s 2025 gubernatorial election.
9 Requestor proposes to contribute funds from the Campaign Committee and the
10 Leadership PAC to one or more recipient political organizations that may accept
11 unlimited contributions. These organizations will be registered as federal political
12 committees² and may also be registered as political committees with the New Jersey
13 Election Law Enforcement Commission and will spend their funds in connection with an
14 election.

15 Requestor asserts that she intends to identify recipient committees that are
16 “known to be supportive of her gubernatorial candidacy.”³ The Requestor further states
17 that the recipient committees will include “leadership, consultants, and/or staff that have
18 worked for Requestor on past campaigns (as staffers and/or consultants) or that have

² Based on this representation, the Commission refers to the proposed recipients as “political committees” or “recipient committees” throughout this advisory opinion.

³ Advisory Opinion (“AOR”) at 002.

1 worked for outside organizations supportive of her in past elections.”⁴ However,
2 Requestor and her agents “will not have the authority or ability to direct or participate in
3 the governance of the recipient political organizations,” “will not have the authority or
4 ability to hire, appoint, demote, or otherwise control the officers, or other decision-
5 making employees or members of the recipient political organizations,” and will not have
6 “play[ed] an active or significant role in the formation of the recipient political
7 organizations.”⁵ Requestor further states that the Campaign Committee and Leadership
8 PAC will not contribute to recipient committees that include current leadership,
9 consultants, or staff that overlap with the current leadership, consultants, or staff of the
10 Campaign Committee or Leadership PAC.

11 While Requestor states that she “hopes the recipient committees will use the funds
12 to assist her gubernatorial campaign and other Democratic campaigns in New Jersey” by,
13 for example, making or funding independent expenditures in connection with her
14 gubernatorial election or making contributions to state, county, and municipal
15 organizations (including party committees), she does not identify any “specific” recipient
16 organization she will “transact[.]” with.⁶ In addition, Requestor proposes to solicit funds
17 for the recipient committees and to aid in fundraising, subject to the limitations in the
18 Act, Commission regulations, and advisory opinions. Requestor “considers it likely” that

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*; cf. 52 U.S.C. § 30109(a)(1).

the recipient committees and the Campaign Committee and Leadership PAC will have “similar patterns of contributions or contributors.”⁷

Requestor proposes that the Campaign Committee, Leadership PAC, or both, will make one or more contributions in various amounts⁸ to such recipient political committees prior to New Jersey’s June 2025 gubernatorial primary.

Questions Presented

*1. For purposes of this analysis, are contributions made by the Campaign Committee and Leadership PAC aggregated with each other or analyzed separately?*⁹

2. Would any of the proposed contributions constitute a “significant amount” such that the recipient political committee is “financed” by Requestor if, at the time the contributions are made:

a. The amounts contributed by the Campaign Committee and Leadership PAC (combined) comprise 25% of the recipient committee’s receipts during the previous 12-month period?

b. The amounts contributed by the Campaign Committee and Leadership PAC (combined) comprise more than 25% but not more than 33% of the recipient committee’s receipts during the previous 12-month period?

⁷ AOR002.

⁸ The Request asks the Commission to opine on a series of proposed contributions in the amounts of \$100,000; \$500,000; \$1,000,000; \$2,500,000; and \$5,000,000 per recipient committee, “to assist with [the Requestor’s] planning.” AOR004.

⁹ The Commission is answering Requestor’s questions in a sequence different from that presented in the AOR and has renumbered the questions accordingly.

1 *c. The amounts contributed by the Campaign Committee and Leadership PAC*
2 *(combined) comprise more than 33% but not more than 40% of the recipient*
3 *committee's receipts during the previous 12-month period?*

4 *d. The amounts contributed by the Campaign Committee and Leadership PAC*
5 *(combined) comprise more than 40% but not more than 50% of the recipient*
6 *committee's receipts during the previous 12-month period?*

7 3. Would any of the proposed contributions constitute a "significant amount"
8 such that the recipient political committee is "financed" by Requestor if, at the time the
9 contributions are made, the recipient committee provides written assurances to
10 Requestor that:

11 *a. The amounts contributed by the Campaign Committee and Leadership PAC*
12 *(combined) will comprise 25% of the recipient committee's receipts during the*
13 *12-month period leading up to New Jersey's gubernatorial primary?*

14 *b. The amounts contributed by the Campaign Committee and Leadership PAC*
15 *(combined) will comprise more than 25% but not more than 33% of the recipient*
16 *committee's receipts during the 12-month period leading up to New Jersey's*
17 *gubernatorial primary?*

18 *c. The amounts contributed by the Campaign Committee and Leadership PAC*
19 *(combined) will comprise more than 33% but not more than 40% of the recipient*
20 *committee's receipts during the 12-month period leading up to New Jersey's*
21 *gubernatorial primary?*

1 *d. The amounts contributed by the Campaign Committee and Leadership PAC*
2 *(combined) will comprise more than 40% but not more than 50% of the recipient*
3 *committee's receipts during the 12-month period leading up to New Jersey's*
4 *gubernatorial primary?*

5 *4. Are the proposed contributions a permissible use of Campaign Committee*
6 *funds?*

7 ***Legal Analysis***

8 The Act prohibits a federal candidate or officeholder, any entity “directly or
9 indirectly established, financed, maintained, or controlled” (“EFMC”) by a federal
10 candidate or officeholder, any entity acting on behalf of a federal candidate or
11 officeholder, and their agents (collectively, “sponsors”¹⁰) from soliciting, receiving,
12 directing, transferring, or spending funds in connection with any election other than an
13 election for federal office, unless those funds comply with the contribution limits and
14 source prohibitions of the Act.¹¹

15 Thus, an entity that is directly or indirectly EFMC’d by a federal candidate may
16 receive and spend in connection with an election only funds subject to the Act’s amount
17 limitations and source prohibitions. To determine whether a federal candidate or
18 officeholder directly or indirectly EFMC’s another entity, such as the proposed recipient
19 committees here, the Commission “must” examine the factors set forth in 11 C.F.R.

¹⁰ See 11 C.F.R. § 300.2(c).

¹¹ 52 U.S.C. § 30125(e)(1)(B). The funds must also be subject to the Act’s reporting requirements if they will be raised or spent in connection with a federal election. *Id.* § 30125(e)(1)(A).

1 § 300.2(c)(2)(i) through (x) “in the context of the overall relationship between the
2 [federal candidate or officeholder] and the entity,” as well as any other relevant factors.
3 However, because the recipient committees are neither parties to this advisory opinion
4 request, nor specifically identified by the Requestor, the Commission lacks all the facts
5 relevant to such an analysis.

6 *1. For purposes of this analysis, are contributions made by the Campaign*
7 *Committee and Leadership PAC aggregated with each other or analyzed separately?*

8 Whether contributions made by the Campaign Committee and Leadership PAC
9 are aggregated with each other or analyzed separately is not relevant to the Commission’s
10 analysis in response to Question 4 (whether the proposed contributions would be a
11 permissible use of campaign funds). Further, as explained below, the Commission does
12 not have sufficient information to conduct an analysis in response to Questions 2 and 3
13 (whether the proposed contributions would result in the Requestor EFMC’ing any of the
14 recipient organizations for purposes of the soft money ban).

15 *2. Would any of the proposed contributions constitute a “significant amount”*
16 *such that the recipient political organization is “financed” by Requestor if, at the time*
17 *the contributions are made:*

18 *a. The amounts contributed by the Campaign Committee and Leadership PAC*
19 *(combined) comprise 25% of the recipient organization’s receipts during the*
20 *previous 12-month period?*

1 *b. The amounts contributed by the Campaign Committee and Leadership PAC*
2 *(combined) comprise more than 25% but not more than 33% of the recipient*
3 *organization's receipts during the previous 12-month period?*

4 *c. The amounts contributed by the Campaign Committee and Leadership PAC*
5 *(combined) comprise more than 33% but not more than 40% of the recipient*
6 *organization's receipts during the previous 12-month period?*

7 *d. The amounts contributed by the Campaign Committee and Leadership PAC*
8 *(combined) comprise more than 40% but not more than 50% of the recipient*
9 *organization's receipts during the previous 12-month period?*

10 Here, the Commission is unable to determine whether the proposed transactions
11 would result in the Requestor EFMC'ing a recipient committee for the purposes of 52
12 U.S.C. § 30125(e) and 11 C.F.R. § 300.62, because it lacks all the relevant facts.¹²

13 Commission regulations provide that a federal candidate or officeholder directly
14 or indirectly EFMC's a political committee by examining a non-exhaustive list of ten
15 factors in the context of the overall relationship between the federal candidate or
16 officeholder and the entity.¹³ Among the ten factors are whether the federal candidate or
17 officeholder provides funds "in a significant amount or on an ongoing basis" to the
18 recipient committee¹⁴ and whether the federal candidate or officeholder "causes or

¹² 52 U.S.C. § 30109(a)(1); *see also* 11 C.F.R. § 112.1(c) ("Advisory opinion requests shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made.")

¹³ 11 C.F.R. §300.2(c)(2).

¹⁴ *Id.* §300.2(c)(2)(vii).

1 arranges for funds in a significant amount or on an ongoing basis” to be provided to the
2 recipient committee.¹⁵ The Commission has opined that what constitutes a “significant
3 amount” must be determined on a case-by-case basis in “view of all the relevant
4 circumstances.”¹⁶ “[A]mounts that are so large or . . . that comprise such a substantial
5 percentage of the organization’s receipts would be considered ‘financing’ a committee.”¹⁷
6 The Commission considers the percentage of the sponsor’s contributions to the recipient
7 compared to the recipient’s total receipts, in the context of the overall relationship
8 between the candidate and the recipient and other relevant facts.¹⁸

9 Here, Requestor provides insufficient information for the Commission to analyze
10 that context.

11 As just one example, the Requestor states that she anticipates that her Campaign
12 Committee and Leadership PAC will have similar patterns of contributions or
13 contributors to the recipient committees, but she provides no basis for this belief or
14 indeed any explanation of what she would consider “similar patterns” of contributions or
15 contributors.

¹⁵ *Id.* §300.2(c)(2)(viii).

¹⁶ Advisory Opinion 2006-04 (Tancredo) at 3.

¹⁷ *Id.* (analyzing 11 C.F.R. § 300.2) (internal quotations omitted). *See also* Advisory Opinion 2004-29 (Akin) at n.4, Advisory Opinion 2004-25 (Corzine).

¹⁸ *See* Advisory Opinion 2006-04 (Tancredo) at 4.

1 Accordingly, the Commission is unable to determine whether the proposed
2 contributions would result in the Requestor EFMC'ing any particular recipient committee
3 for purposes of the soft money ban.¹⁹

4 3. *Would any of the proposed contributions constitute a "significant amount"*
5 *such that the recipient political committee is "financed" by Requestor if, at the time the*
6 *contributions are made, the recipient committee provides written assurances to*
7 *Requestor that:*

8 a. *The amounts contributed by the Campaign Committee and Leadership PAC*
9 *(combined) will comprise 25% of the recipient committee's receipts during the*
10 *12-month period leading up to New Jersey's gubernatorial primary?*

11 b. *The amounts contributed by the Campaign Committee and Leadership PAC*
12 *(combined) will comprise more than 25% but not more than 33% of the recipient*
13 *committee's receipts during the 12-month period leading up to New Jersey's*
14 *gubernatorial primary?*

15 c. *The amounts contributed by the Campaign Committee and Leadership PAC*
16 *(combined) will comprise more than 33% but not more than 40% of the recipient*
17 *committee's receipts during the 12-month period leading up to New Jersey's*
18 *gubernatorial primary?*

19 d. *The amounts contributed by the Campaign Committee and Leadership PAC*
20 *(combined) will comprise more than 40% but not more than 50% of the recipient*

¹⁹ 52 U.S.C. § 30108(a); cf. Advisory Opinion 2024-09 (Barragán for Congress).

1 *committee's receipts during the 12-month period leading up to New Jersey's*
2 *gubernatorial primary?*

3 Here, the Commission is unable to determine whether the proposed transactions
4 would result in the Requestor EFMC'ing any particular recipient committee for purposes
5 of 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.62 for the reasons described in response to
6 Question 2, above.²⁰

7 *4. Are the proposed contributions a permissible use of Campaign Committee*
8 *funds?*

9 Yes, the proposed contributions would be a permissible use of Campaign
10 Committee funds under both the soft money ban and the personal use prohibition in the
11 Act and Commission regulations.

12 As an entity EFMC'd by Requestor, the Campaign Committee may receive and
13 spend in connection with an election only funds subject to the Act's amount limitations
14 and source prohibitions. In determining whether the proposed contributions by the
15 Campaign Committee would be permissible, the relevant concern is whether the funds
16 used to make the contributions were subject to the Act's limitations, prohibitions, and
17 reporting requirements at the time they were received by the Campaign Committee. The
18 Commission has previously determined that funds raised by a leadership PAC were "hard

²⁰ The Commission also notes the inherently speculative nature of Requestor's proposed reliance on a written assurance that its contributions will fall within a certain percentage range of the recipient committee's total receipts at a future date.

1 money” and therefore the contribution of those funds to an independent expenditure-only
2 political committee did not violate the Act or Commission regulations.²¹

3 Here, Requestor proposes for her Campaign Committee to contribute funds that
4 will be raised in compliance with the Act’s source prohibitions, amount limitations, and
5 disclosure requirements. Accordingly, the proposed contribution of those funds by the
6 Campaign Committee to the recipient committees will not violate the soft money ban.

7 Nor will the proposed contributions violate the prohibition on personal use of
8 campaign funds. The Act and Commission regulations identify six categories of
9 permissible uses of contributions accepted by a federal candidate, including “for any
10 other lawful purpose.”²² Such contributions, however, may not be converted to the
11 “personal use” of any person.²³ “Personal use” is defined as “any use of funds in a
12 campaign account of a present or former candidate to fulfill a commitment, obligation or
13 expense of any person that would exist irrespective of the candidate’s campaign or duties
14 as a Federal officeholder.”²⁴

15 Among the *per se* permissible uses of contributions accepted by a federal
16 candidate, such funds may be donated “to [S]tate and local candidates subject to the
17 provisions of [S]tate law,” so long as the contributions are not converted to the personal

²¹ See Factual & Legal Analysis at 6-8, MUR 8090 (Save America) (July 8, 2024).

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

²³ 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.1(g).

²⁴ 11 C.F.R. § 113.1(g); *see also* 52 U.S.C. § 30114(b)(2).

1 use of any person.²⁵ Relying on this provision, the Commission has concluded
2 previously that a federal candidate's campaign committee may donate remaining primary
3 election funds to the candidate's own state campaign committee, subject to the provisions
4 of state law and the personal use prohibition.²⁶

5 Here, the Requestor similarly proposes to donate federal campaign funds to an
6 organization for the expected benefit of her state campaign. She also hopes that the
7 recipient committees will use the funds to assist other Democratic campaigns in New
8 Jersey by, for example, making contributions to state, county, and municipal
9 organizations (including but not limited to party committees). Accordingly, the
10 Commission concludes that the proposed transactions are not a prohibited use of the
11 Campaign Committee's funds, subject to any applicable provisions of New Jersey state
12 law.²⁷

13 This response constitutes an advisory opinion concerning the application of the
14 Act and Commission regulations to the specific transaction or activity set forth in your
15 request.²⁸ The Commission emphasizes that, if there is a change in any of the facts or

²⁵ 52 U.S.C. § 30114(a)(5); 11 C.F.R. § 113.1(g).

²⁶ Advisory Opinion 2012-06 (RickPerry.org) at 4 (citing 52 U.S.C. § 30114(a)(5), (b); 11 C.F.R. §§ 113.1(g), 113.2(d), (g); Advisory Opinion 1993-10 (Colorado) (donating campaign funds to, among other recipients, candidate's campaign for governor of Puerto Rico not personal use); Advisory Opinion 1996-52 (Andrews) (refunding contributions and resoliciting same contributors for contributions to gubernatorial campaign is permissible); Advisory Opinion 2007-29 (Jackson Jr.) (donating campaign funds to local campaign committee of candidate's spouse not personal use)).

²⁷ The Commission does not opine on the applicability of any state law.

²⁸ See 52 U.S.C. § 30108.

1 assumptions presented, and such facts or assumptions are material to a conclusion
2 presented in this advisory opinion, then Requestor may not rely on that conclusion as
3 support for her proposed activity. Any person involved in any specific transaction or
4 activity which is indistinguishable in all its material aspects from the transaction or
5 activity with respect to which this advisory opinion is rendered may rely on this advisory
6 opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or conclusions in
7 this advisory opinion may be affected by subsequent developments in the law including,
8 but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory
9 opinions cited herein are available on the Commission's website.

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11 On behalf of the Commission,

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15
16 James E. "Trey" Trainor III

17 Acting Chairman
18