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April 24, 2017

**Via electronic mail: [LegalRequestProgram@fec.gov](mailto:LegalRequestProgram@fec.gov)**

Federal Election Commission  
999 E Street NW  
Washington, DC 20463

ATTN: Secretary to the Commission

Re: Friends of Mike Lee, C00473827, Request for Legal  
Determination

To the Commissioners of the Federal Election Commission:

The undersigned serves as counsel to Friends of Mike Lee, the principal authorized campaign committee of Mike Lee, United States Senator from Utah, FEC ID #C00473827 (“the Committee”).

The Committee received a Request for Additional Information (“RFAI”) from the Reports Analysis Division (“RAD”) on October 11, 2016, with regard to the Committee’s July 2016 Quarterly Report. RAD directed the Committee to return all contributions received by the Committee designated for the Utah primary in June 2016. The Committee provided a response to RAD on December 2, 2016, in which the Committee pointed out that the 2016 Utah primary election and the 2016 Utah GOP nominating convention were separate elections under Utah state law and, pursuant to the Commission’s regulations and prior legal precedent, the Committee was permitted to raise and spend funds for both the primary election and the state party nominating convention, up to the time when the convention was concluded and Sen. Lee was officially nominated as the Republican candidate for the United States Senate to appear on the November 2016 General Election ballot in Utah.

RAD advised the Committee on April 20, 2017 that it had been informally advised by the Office of General Counsel to reject the Committee’s submission. No information regarding the basis on which the OGC rendered such advise has been provided to the Committee.

The request from RAD to refund all primary contributions received by the Committee is contrary to and otherwise inconsistent with prior Commission matters and advisory opinions dealing with the same issue.

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Please consider this a request for legal determination by the Commission with regard to the question of whether funds raised for both a primary election and a state nominating convention are separate elections, allowing the Committee to solicit funds for both. This request for legal determination is warranted under the Commission's Legal Request Program. See Federal Election Commission Notice 2016-02, 81 Fed. Reg. No. 93 39861, Friday, May 13, 2016.

The facts of this matter are not disputed and are described more specifically in the Committee's submission to RAD. See Attached Exhibit, December 2, 2016 Letter to RAD from the Committee.

Prior to the GOP Nominating Convention, the Committee raised and spent substantial funds both for the Nominating Convention as well as gathering signatures to qualify for the 2016 Utah Primary ballot, which followed the advice rendered by the Utah Lieutenant Governor's office to all prospective candidates in January 2016. The Committee treated the Nominating Convention and the primary election signature gathering as two separate elections which, under Utah state law, they were. The Committee was not certain until April 23, 2016, at the conclusion of the GOP Nominating Convention, whether there was or was not going to be a contested primary election. After that date, the Committee accepted no further contributions designated for the 2016 primary.

The scenario that unfolded in Utah in 2016 is identical to the situation in Connecticut described in FEC Advisory Opinion 2004-20.

The Committee returned any / all contributions for the Utah 2016 primary received *after* the GOP Nominating Convention. However, it is contrary to law and Commission precedent to require the Committee to return primary contributions received before the convention during the time when a primary election was still a real possibility. Only after the GOP Nominating convention did it become clear that the primary election would not take place with regard to nominating the GOP candidate for the United States Senate.

The Committee requests that any legal analysis provided to RAD and to the Commission in this matter be disclosed to the Committee with the opportunity for our formal response prior to the Commission's consideration of this matter. We have no idea what legal authority can possibly exist for RAD's directive that the Committee refund primary contributions received before the date when a primary election was still scheduled to occur.

Accordingly, the Committee requests the Commission issue its legal decision directing RAD to withdraw its prior notice to the Committee requiring the return of primary contributions received prior to the 2016 GOP nominating convention.

Please contact me at (202) 431-1950 or [cmitchell@foley.com](mailto:cmitchell@foley.com) should the Commission need additional information.



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Thank you for your consideration of this Request for Legal Determination.

Sincerely,

*/c/ Cleta Mitchell*

Cleta Mitchell, Esq., Counsel  
Friends of Mike Lee

Attachment – December 2, 2016 Committee Submission to RAD