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FEDERAL ELECTION COMMISSION
Washington, DC

AGENDA DOCUMENT NO. 24-01-A
AGENDA ITEM
For meeting of Jan. 11, 2024

January 4, 2024

MEMORANDUM

TO: The Commission

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

Neven F. Stipanovic *NFS*
Associate General Counsel

Robert Knop *RMK*
Assistant General Counsel

Subject: AO 2023-09 (Cortez Masto) - 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 12:00 p.m. (Eastern Time) on January 10, 2023.

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

2
3 Jacquelyn Lopez, Esq.
4 Jonathan Peterson, Esq.
5 Kaveri Sharma, Esq.
6 Elias Law Group
7 250 Massachusetts Ave NW, Suite 400
8 Washington, DC 20001
9

10 Dear Counsel:

11 We are responding to your advisory opinion request on behalf of Senator Catherine
12 Cortez Masto (“Requestor”) concerning the application of the Federal Election Campaign Act,
13 52 U.S.C. §§ 30101–45 (the “Act”), and Commission regulations to the Requestor’s proposal to
14 establish a nonfederal committee to be active exclusively in connection with nonfederal elections
15 and that will not share a contribution limit with Requestor’s existing federal leadership PAC.
16 The Commission concludes that Requestor may establish the nonfederal committee as proposed
17 and that it would not share a contribution limit with her federal leadership PAC.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter received October 31,
20 2023, and reports filed with the Commission.

21 Requestor is the senior United States Senator from Nevada.¹ She maintains a federal
22 leadership PAC, All For Our Country Leadership PAC, that accepts contributions and makes
23 expenditures in support of candidates for federal office.²

¹ Advisory Opinion Request (“AOR”) at AOR001.

² *Id.* In addition to her leadership PAC, Requestor also maintains or controls two affiliated Joint Fundraising Committees, Chief Among Us and Cortez Masto Victory Fund. *See* Statement of Organization (Form 1) 5–6, All For Our Country Leadership PAC (Nov. 1, 2023).

1 Requestor proposes to establish a nonfederal committee in Nevada that will engage
2 exclusively in activity in connection with state and local elections.³ The proposed nonfederal
3 committee will provide funds to candidates for state and local office and spend funds supporting
4 or opposing state and local ballot measures.⁴ The proposed nonfederal committee will not raise
5 or spend funds for the purpose of influencing any election for federal office, nor will it engage in
6 any other activity that would “require[] it to register as a political committee under the Act.”⁵
7 Requestor states that her proposed nonfederal committee will not raise or spend funds in excess
8 of applicable federal contribution limits or from federally prohibited sources.⁶

9 ***Question Presented***

10 *May Requestor establish a nonfederal committee, which will exclusively raise and spend*
11 *funds in connection with nonfederal elections, that does not share a contribution limit with*
12 *Requestor’s federal leadership PAC?*

13 ***Legal Analysis***

14 Yes, Requestor may establish a nonfederal committee, which will exclusively raise and
15 spend funds in connection with nonfederal elections, and such funds would not be aggregated
16 with contributions made by the same source to Requestor’s federal leadership PAC under a
17 shared contribution limit. Under the Act and Commission regulations, Requestor may solicit,
18 receive, direct, transfer, or spend funds through her proposed nonfederal committee up to the

³ AOR001. Requestor represents that the proposed nonfederal committee will operate consistent with Nevada state law governing state political committees.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* See generally Nevada Revised Statutes Chapter 294A (allowing contributions in amounts and from sources prohibited by the Act).

1 Act’s contribution limits and consistent with the Act’s source prohibitions without taking into
2 account contributions made by the same source to Requestor’s federal leadership PAC.

3 Under the Act, federal candidates; officeholders; and the entities they establish, finance,
4 maintain, or control may solicit, receive, direct, transfer, or spend funds in connection with a
5 federal election only if those funds are “subject to the [Act’s] limitations, prohibitions, and
6 reporting requirements[.]”⁷ For “any election other than an election for Federal office[.]” federal
7 candidates; officeholders; and the entities they establish, finance, maintain, or control may
8 solicit, receive, direct, transfer, or spend only funds that are subject to federal amount limitations
9 and source prohibitions.⁸

10 To fall within the Act’s definition of “contribution,” funds must be given “for the purpose
11 of influencing any election for Federal office[.]”⁹

12 For the purposes of the Act’s contribution limitations, all contributions made or received
13 by more than one affiliated committee, regardless of whether they are political committees under
14 11 C.F.R. § 100.5, are treated as if they were made to a single committee.¹⁰ Affiliated
15 committees include committees established, financed, maintained, or controlled by the same
16 person or group of persons.¹¹ Thus, affiliated committees share a common contribution limit, and

⁷ 52 U.S.C. § 30125(e)(1)(A).

⁸ 52 U.S.C. § 30125(e)(1)(B)(i) (requiring funds to be raised “not in excess of the amounts permitted” by the Act), (ii) (requiring that funds “not [come] from sources prohibited by this Act[.]”).

⁹ 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

¹⁰ 11 C.F.R. § 110.3(a). *See also Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions*, 54 FED. REG. 34,098, 34,098 (Aug. 17, 1989).

¹¹ 11 C.F.R. § 110.3(a)(1)(ii).

1 contributions made to multiple such committees by the same contributor are aggregated for
2 purposes of disclosures and amount limitations.

3 Requestor proposes to establish a committee that will engage only in activity that is not
4 for the purpose of influencing any election for federal office and for which she will raise and
5 spend solely funds that comply with the Act’s amount limitations and source prohibitions. This
6 proposal accords with the plain language of the Act. Because Requestor is a federal officeholder
7 who will establish the proposed nonfederal committee, she must solicit, receive, direct, transfer,
8 or spend funds only from those sources not prohibited by the Act and in amounts not exceeding
9 the limits the Act sets forth.¹²

10 Further, the committees would be treated as affiliated for the purposes of the Act’s
11 contribution limitations because Requestor will have established them both.¹³ However, because
12 Requestor’s proposed nonfederal committee will not raise funds for the purpose of influencing
13 any election for federal office, whatever funds Requestor does raise for her proposed nonfederal
14 committee would not be considered “contributions” under the Act and would not have to be
15 aggregated with contributions made to Requestor’s federal leadership PAC from the same
16 source. The Commission’s regulation setting forth an aggregate limit for affiliated committees
17 applies only to “*contributions* made or received by more than one affiliated committee”—not to
18 all funds affiliated committees receive.¹⁴ Therefore, while section 30125(e)(1)(B) limits
19 Requestor to raising funds in amounts not exceeding those set by the Act, which is \$5,000 for the

¹² See 52 U.S.C. § 30125(e)(1)(B).

¹³ See 11 C.F.R. § 110.3(a)(1)(ii).

¹⁴ 11 C.F.R. § 110.3(a)(1).

1 proposed nonfederal committee, those funds would not be counted against the \$5,000 in
2 contributions Requestor’s federal leadership PAC may raise from the same source.

3 This conclusion accords with the Commission’s past advisory opinions. In Advisory
4 Opinion 2005-02 (Corzine II), the Commission concluded that a federal officeholder soliciting
5 funds for a federally registered party committee’s nonfederal account “does not need to consider
6 a prospective donor’s previous contributions to a Federally registered party committee’s Federal
7 account, or any amounts [the officeholder] may have previously solicited from the donor for that
8 account, in determining the amount he may now solicit from that donor for the party committee’s
9 non-Federal account.”¹⁵

10 This response constitutes an advisory opinion concerning the application of the Act and
11 Commission regulations to the specific transactions or activities set forth in the instant advisory
12 opinion request.¹⁶ The Commission emphasizes that, if there is a change in any of the facts or
13 assumptions presented, and such facts or assumptions are material to a conclusion presented in
14 this advisory opinion, then the requestor may not rely on that conclusion as support for its
15 proposed transactions or activity. Any person involved in any specific transaction or activity
16 which is indistinguishable in all its material aspects from the transaction or activity with respect
17 to which this advisory opinion is rendered may rely on this advisory opinion.¹⁷ Please note that
18 the analysis or conclusions in this advisory opinion may be affected by subsequent developments

¹⁵ AO 2005-02 (Corzine II) at 6.

¹⁶ See 52 U.S.C. § 30108.

¹⁷ See *id.* § 30108(c)(1)(B).

1 in the law including, but not limited to, statutes, regulations, advisory opinions, and case law.

2 Any advisory opinions cited herein are available on the Commission's website.

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On behalf of the Commission,

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Sean J. Cooksey,

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Chairman