



FEDERAL ELECTION COMMISSION

Washington, DC

MEMORANDUM

TO: The Commission

FROM: Office of the Commission Secretary ^{VFV}

DATE: February 12, 2024

SUBJECT: Comments Regarding AOR 2024-02 (Waters) Drafts A & B

Attached is a comment received on Advisory Opinion Request 2024-02.

Attachment



BEAVER LEGAL CORPORATION
NONPROFIT AND CAMPAIGN FINANCE COMPLIANCE

RECEIVED

By Office of the Commission Secretary at 12:03 pm, Feb 12, 2024

February 12, 2024

VIA E-MAIL

Phone: (949) 441-5352

Federal Election Commission
1050 First Street, NE
Washington, DC 20002

Re: Comments Regarding Advisory Opinion 2024-02 (Waters) Drafts A and B

Dear Commissioners:

On behalf of Congresswoman Maxine Waters and Citizens for Waters (“Requestors”), we submit this comment regarding Drafts A and B of Advisory Opinion 2024-02. We urge the Commission to approve Draft A and disagree with the conclusion in Draft B that reimbursements from non-federal committees to Citizens for Waters are prohibited. Requestors will be limited in their ability to voice Congresswoman Waters’ endorsements if non-federal committees are prohibited from reimbursing Requestors for their pro rata share of the costs to produce and distribute the brochures.

Requestors support the conclusion in Draft A that §30125(e)(1)(A) “does not itself impose any *standalone* duty to report that would not otherwise exist under the Act.”¹ Further, imposing the reporting requirements of the Act to the non-federal committees would be unnecessarily duplicative since they are already required to publicly disclose their receipts and disbursements pursuant to state laws.

The statute imposes three separate requirements that federal candidates and their committees may not “solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the (1) [contribution] limitations, (2) [source] prohibitions and (3) reporting requirements of the Act.”² Requestors agree with both Draft A and B’s assertion that the brochures must comply with the statute’s first two requirements that the reimbursements must from sources that meet the contribution limitations and source prohibitions of the Act since the brochures constitute federal election activity.

Requestors disagree with Draft B’s assertion that the statute imputes the reporting requirements of the Act on the non-federal committees simply because the reimbursements are, incidentally, federal election activity even though the purpose of the reimbursement is to influence a *non-*

¹ See Draft A of Advisory Opinion (*Waters*) 2024-02 at 7.

² See 52 U.S.C. §30125(e)(1)(A).

federal election.³ Under the Act, Requestors are required to report the reimbursements to the Commission as receipts.

The statute's language does *not* necessarily impose the reporting requirements of the Act on the non-federal committees. Reporting to the Commission is required *only* if payments are contributions or expenditures as defined by the Act. Contributions and expenditures, in general, are defined as payments made for the purpose of influencing a candidate for *federal* election.⁴ Here, the reimbursements at issue are for the purpose of influencing a *non-federal* election and, therefore, do not meet the definitions of contributions or expenditures under the Act. Therefore, the non-federal committee, themselves, are not required to report these reimbursements to the Commission. Draft B imposes reporting requirements that do not exist. Draft A properly draws this conclusion.

In addition to imposing reporting requirements that do not exist, prohibiting non-federal committees from reimbursing Requestors to appear on these brochures severely limits their ability to benefit from Congresswoman Waters' endorsement. Congresswoman Waters' endorsement provides immeasurable value by swaying voters to support or oppose non-federal candidates and ballot measures. Without these reimbursements, Requestors must downsize the universe of published endorsements and distribution of these brochures to voters to the extent her campaign committee can afford these costs.

Reimbursements from non-federal committees would allow Requestors to supplement the high costs of printing and distributing these brochures allowing Requestors to more widely disseminate Congresswoman Waters' endorsements to voters which is valuable to these non-federal candidates and ballot measures.

Requestors strongly urge the Commission to approve Draft A as it properly concludes that these reimbursements are not subject to *additional* reporting requirements under the Act. Without these reimbursements, Requestors will be limited in their ability to distribute Congresswoman Waters' endorsements of those non-federal candidates and ballot measures that value her ability to sway voters.

We thank you for your consideration and the opportunity to comment on Drafts A and B of Advisory Opinion 2024-02.

³ The facts here are distinguishable from the enforcement cases referenced in Draft B. Here, the reimbursements at issue are for the purpose of influencing a *non-federal* election. The enforcement cases cited in Draft B addressed funds that were used for the purpose of influencing a federal election and, therefore, contributions and expenditures under the Act. Therefore, the non-federal committees were, in fact, subject to the reporting requirements under the Act. See Draft B 2004-02 (*Waters*) footnotes 14-15 at 6.

⁴ See 52 U.S.C. §§ 30101(8), (9).

Federal Elections Commission

February 12, 2024

Page 3

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Leilani'.

Leilani R. Beaver

Counsel for Citizens for Waters

cc: Congresswoman Maxine Waters
David Gould