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April 3, 2018

Hon. Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

RE: Advisory Opinion Request from Nancy Mace Regarding SuperPACs Created and Maintained by State Officeholders

Dear Ms. Stevenson:

Pursuant to 52 U.S.C. § 30108(a)(1), please accept this Advisory Opinion Request on behalf of South Carolina State Representative Nancy Mace, concerning whether the Bipartisan Campaign Reform Act ("BCRA") permits her to form a SuperPAC for the purpose of promoting conservative female candidates for federal office.

QUESTIONS PRESENTED

May Mace establish, maintain, and control an unauthorized, non-connected federal political committee that exclusively makes independent expenditures (hereafter, "SuperPAC") for newspaper, magazine, broadcast, cable, and/or mass mailing political communications that promote, support, attack, or oppose clearly identified candidates for federal office and, pursuant to the D.C. Circuit's ruling in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) and other applicable rulings, accepts both unlimited contributions and contributions from corporations?

1. Are expenditures by such a SuperPAC deemed to be Mace herself making the expenditures for purposes of 52 U.S.C. § 30125(f)(1)? Alternatively, would a SuperPAC established, maintained, and controlled by Mace be deemed her agent for purposes of 52 U.S.C. § 30125(f)(1)?

2. Assuming 52 U.S.C. § 30125(f)(1) applies to Mace's proposed SuperPAC for either reason, may that committee make unlimited independent expenditures for newspaper, magazine, broadcast, cable, and/or mass mailing political communications promoting, supporting, attacking, or opposing clearly identified candidates for federal office if it accepts:

   a. contributions from individuals in excess of $5,000, or

   b. contributions from corporations?

STATUTORY BACKGROUND

BCRA provides in relevant part, "[An] individual holding State or local office, or an agent of such a candidate or individual may not spend any funds for a communication described in [52 U.S.C. § 30101(20)(A)(iii)] unless the funds are subject to the limitations, prohibitions, and reporting requirements of this act." 52 U.S.C. § 30125(f)(1) (hereafter, the "State Officeholder Prohibition"); *accord* 11 C.F.R. § 300.71. Section 30101(20)(A)(iii) includes any:

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> *public communication* that refers to a *clearly identified candidate* for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate).

52 U.S.C. § 30101(20)(A)(iii) (emphasis added); *accord* 11 C.F.R. § 100.24(b)(3).[1]

The term "public communication" is defined as "a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising." 52 U.S.C. § 30101(22); *accord* 11 C.F.R. § 100.26. Additionally, a candidate is deemed to be "clearly identified" if the candidate's name, photograph, or drawing appears in a communication, or the candidate's identity is "apparent by unambiguous reference." 52 § 30101(18)(A)-(C); *accord* 11 C.F.R. § 100.17.

Based on these definitions, the State Officeholder Prohibition prohibits a state officeholder or her agent from using funds for a print, mail, or television advertisement that includes a federal candidate's name or photograph and promotes, supports, attacks, or opposes that candidate unless they were raised in compliance with federal campaign finance law. 52 U.S.C. § 30125(f)(1).

ANALYSIS

Mace wishes to create, maintain, and control an unauthorized, non-connected federal political committee that will exclusively make independent expenditures that promote, support, attack, or oppose clearly identified candidates for federal office. This SuperPAC will not make contributions to candidates for any local, state, or federal office, and will not coordinate its expenditures with any federal candidate, officeholder, or political party committee. Consistent with the D.C. Circuit's ruling in *Speechnow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010), Mace wishes to accept contributions to the SuperPAC in excess of those specified in 52 U.S.C. § 30116(a)(1)(C), (a)(2)(C), and accept contributions from entities identified in 52 U.S.C. § 30118(a). Mace wishes to fund the proposed SuperPAC by transferring the remaining funds from her federal campaign committee from her 2014 Senate run, Friends of Nancy Mace (ID #S4SC00281), and then soliciting additional contributions to the SuperPAC—including contributions in excess of $5,000 annually—from individuals and corporations.

If Mace were not a state officeholder, there would be no question she could create, maintain, and control a SuperPAC that accepts unlimited contributions from both individuals and corporations, notwithstanding 52 U.S.C. §§ 30116(a) and 30118, pursuant to the D.C. Circuit's

[1] The State Officeholder Prohibition does not apply to a State or local candidate or officeholder based on a communication made "in connection with an election for such State or local office and refers only to such individual or to any other candidate for the State or local office held or sought by such individual, or both." 52 U.S.C. § 30125(f)(2); *see also* 11 C.F.R. § 300.72. This provision is irrelevant to the Questions Presented here, since Mace's contemplated political advertisements would reference individuals other than Mace and other candidates for District 99 State Representative. The FEC should reassess, however, whether 11 C.F.R. § 300.72 accurately reprises the exception set forth in 52 U.S.C. § 30125(f)(2).

ruling in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010). The State Officeholder Prohibition, 52 U.S.C. § 30125(f)(1), appears to present an anachronistic impediment that does not accord with the D.C. Circuit's and Supreme Court's holdings in the years since *McConnell v. FEC*, 540 U.S. 93 (2003), and repeated invalidation of overbroad legal provisions that do not prevent actual, or apparent, *quid pro quo* corruption.

Because Mace's SuperPAC would be under her direct control, it is unclear whether the Commission would treat any expenditures Mace causes the SuperPAC to make to be deemed as Mace herself spending funds for purposes of § 30125(f)(1). Alternative, it is unclear whether the Commission would consider the SuperPAC to be an agent of Mace for purposes of § 30125(f)(1), since any expenditures it makes would be the result of her direct decision and action.

Assuming § 30125(f)(1) applies to expenditures by Mace's proposed SuperPAC, the types of communications she intends to fund would fall within the scope of the statute. Specifically, she intends to use the SuperPAC to pay for newspaper, magazine, broadcast, cable, and/or mass mailing political communications that would constitute "public communications." 52 U.S.C. § 30101(22); *accord* 11 C.F.R. § 100.26. Those communications will "clearly identif[y]" federal candidates by including their name and possibly photograph. 52 § 30101(18)(A)-(C); *accord* 11 C.F.R. § 100.17. The communications will promote and support conservative female candidates for the U.S. House and U.S. Senate. 52 U.S.C. § 30125(f)(1).

It appears the Commission has continued to enforce the State Officeholder Prohibition, 52 U.S.C. § 30125(f)(1), even after the Supreme Court's ruling in *Citizens United v. FEC*, 558 U.S. 310 (2010), and *SpeechNow.org*. *See, e.g.*, General Counsel's Report, In re *Jim Tracy*, at 9, MUR 6788 (Nov. 6, 2017) (concluding the challenged communications did not reference a federal candidate). General Counsel's Report, In re *Jay Inslee for Washington*, at 7, MUR 7123 (Nov. 6, 2017) (recommending against proceeding based on reporting violation concerning state funds based on prosecutorial discretion).

Neither ruling expressly addressed the continued validity of 52 U.S.C. § 30125(f)(1), but it does not appear the FEC may prohibit a state candidate from establishing a federal SuperPAC that accepts unlimited contributions or contributions from corporations. In *SpeechNow.org*, an "unincorporated nonprofit association" sought to "operate exclusively through 'independent expenditures'" and wished to accept contributions in excess of federal limits. *SpeechNow.org*, 599 F.3d at 689. The Commission prepared a draft advisory opinion "stating that SpeechNow would be a political committee and contributions to it would be subject to the political committee contribution limits." *Id.*

The D.C. Circuit, sitting *en banc*, reached the opposite conclusion. It began by noting contribution limits are constitutionally permissible only if they are "closely drawn to serve a sufficiently important interest." *Id.* at 692 (quoting *Davis v. FEC*, 554 U.S. 724 (2008)). The only governmental interest the Supreme Court has held is sufficiently important to even potentially justify contribution limits is preventing actual or apparent *quid pro quo* corruption. *Id.* at 692, 694. The *SpeechNow* Court emphasized *Citizens United* "held that the government has no anti-corruption interest in limiting independent expenditures." *Id.* at 693. To the contrary, from the time of its seminal ruling in *Buckley v. Valeo*, 424 U.S. 1, 47 (1976) (per curiam), the Supreme Court has reiterated, "The absence of prearrangement and coordination of an expenditure with the

candidate or his agent . . . alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." *Accord SpeechNow.org*, 599 F.3d at 693 (quoting *Citizens United*, 130 S. Ct. at 908).

Applying these principles to SuperPACs, the *en banc* D.C. Circuit concluded:

> In light of the Court's holding as a matter of law that independent expenditures do not corrupt or create the appearance of quid pro quo corruption, contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption. . . . Given this analysis from *Citizens United*, we must conclude that the government has no anti-corruption interest in limiting contributions to an independent expenditure group . . . .

SpeechNow.org, 599 F.3d at 694-95; *see also id.* at 696 ("[B]ecause *Citizens United* holds that independent expenditures do not corrupt or give the appearance of corruption as a matter of law, then the government can have no anti-corruption interest in limiting contributions to independent expenditure-only organizations."). The *SpeechNow.org* Court concluded 52 U.S.C. § 30116(a)(1)(C) "violate[s] the First Amendment" by preventing individuals from contributing to SuperPACs "in excess of the limits and by prohibiting [SuperPACs] from accepting donations in excess of the limits." *Id.* at 696.

Every other court to consider the issue has echoed *SpeechNow*'s conclusion that limiting contributions to independent expenditure-only SuperPACs does not further the Government's interests in combatting actual or apparent *quid pro quo* corruption. *See, e.g.*, *Wis. Right to Life State PAC v. Barland*, 664 F.3d 139, 154 (7th Cir. 2011) ("[A]fter *Citizens United* there is no valid governmental interest sufficient to justify imposing limits on fundraising by independent-expenditure organizations."); *Long Beach Area Chamber of Comm. v. City of Long Beach*, 603 F.3d 684, 696 (9th Cir. 2010) ("Nor has the City shown that contributions to the Chamber PACs for use as independent expenditures raise the specter of corruption or the appearance thereof."); *N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274, 293 (4th Cir. 2008) ("[I]t is 'implausible' that contributions to independent expenditure political committees are corrupting."); *see also N.Y. Prog. & Prot. PAC v. Walsh*, 733 F.3d 483, 487 n.1 (2d Cir. 2013) ("[T]he threat of quid pro quo corruption does not arise when individuals make contributions to groups that engage in independent spending on political speech.").

These courts, like *SpeechNow*, have accordingly concluded the First Amendment prohibits the government from applying contribution limits to local, state, or federal SuperPACs. *Wis. Right to Life State PAC*, 664 F.3d at 154 ("Wisconsin's $10,000 aggregate annual contribution limit is unconstitutional as applied to organizations . . . that engage only in independent expenditures for political speech. This is true even though the statute limits contributions, not expenditures."); *Leake*, 525 F.3d at 295 (holding contribution limits are "unconstitutional as applied to independent expenditure political committees"); *see also N.Y. Prog. & Prot. PAC*, 733 F.3d at 487 ("[A] donor to an independent expenditure committee . . . is even further removed from political candidates and may not be limited in his ability to contribute to such committees."); *Fund for Louisiana's Future v. La. Bd. of Ethics*, No. 14-0368, 2014 U.S. Dist. LEXIS 52659, at *29 (E.D. La. Apr. 16, 2014) ("Louisiana's prohibitory limit on contributions to such independent committees cannot withstand First Amendment scrutiny."); *Mich. Chamber of Comm. v. Land*, 725 F. Supp. 2d 665,

696 (W.D. Mich. 2010) ("[I]f the PAC does not coordinate the expenditure of its funds . . . with the candidate . . . *Citizens United* forbids the State from denying the corporations/unions their constitutional right to give funds to the PAC.").

Neither *SpeechNow* nor other SuperPAC-related cases expressly considered the issue of SuperPACs run by state candidates or officeholders, or the validity of the State Officeholder Prohibition, 52 U.S.C. § 30125(f)(1). Their reasoning, however, is broad enough to apply to the instant case. Neither Mace nor her SuperPAC will engage in any "prearrangement or coordination" with any federal political parties or candidate. *SpeechNow.org*, 599 F.3d at 693; *accord Citizens United*, 130 S. Ct. at 908; *Buckley*, 424 U.S. at 47. Because her SuperPAC's independent expenditures will create no possibility of corruption, contributions to that SuperPAC likewise "also cannot corrupt or create the appearance of corruption." *SpeechNow.org*, 599 F.3d at 694-95. It would violate the First Amendment, as construed in *SpeechNow.org* and *Citizens United*, to apply contribution limits or a prohibition on corporate contributions to Mace's anticipated SuperPAC.

The Supreme Court has devoted four paragraphs of its 350 pages worth of opinions in *McConnell v. FEC*, 540 U.S. 93 (2003), to upholding § 30125(f)(1)'s facial constitutionality by a 5-4 vote. The majority concluded § 30125(f)(1), to which the Court referred as § 323(f) of the Bipartisan Campaign Reform Act ("BCRA"), "largely reinforce[s] the restrictions" on the soft money ban for national political party committees. *Id.* at 133-34 (Stevens & O'Connor, JJ., plurality op.) It "prevents circumvention of the restrictions on national, state, and local party committees by prohibiting state and local candidates from raising and spending soft money to fund advertisements and other public communications that promote or attack federal candidates." *Id.* The Court added it was upholding § 30125(f)(1) because it would "not upset Congress' eminently reasonable prediction" that, with national and state parties unable to accept unlimited soft funds, "state and local candidates and officeholders will become the next conduits for the soft-money funding of sham issue advertising." *Id.* at 185.

Justice Kennedy dissented from this holding, recognizing § 30125(f) "do[es] not further *Buckley*'s corruption interest" because it does not regulate "conduct that pose[s] a demonstrable quid pro quo danger." *Id.* at 298 (Kennedy, J., concurring in part and dissenting in part). He correctly observed the provision "burdens a substantial body of speech and expression made entirely independent of any federal candidate." *Id.* at 316-17. He pointed out § 30125(f) would limit the amount a state or local candidate could raise to fund advertisements showing them shaking hands with the President or otherwise emphasizing their ties to the President. *Id.* Such examples demonstrate § 323(f) is "not narrowly tailored," "not closely drawn," and "violate[s] the First Amendment." *Id.* at 317.

Justice Thomas, separately dissenting, concluded § 30125(f) was too far removed from any actual or apparent corruption to serve as a constitutionally permissible anticircumvention measure. He criticized the majority for "uphold[ing] a third-order anticircumvention measure based on Congress' anticipation of circumvention of these second-order anticircumvention measures that might possibly, at some point in the future, pose some problem." *Id.* at 268 (Thomas, J., concurring in part and dissenting in part). Chief Justice Rehnquist's dissent, joined by Justice Scalia, pointed out there was "scant evidence in the record to indicate that federal candidates or officeholders are corrupted or would appear corrupted" by contributions to state and local candidates or officeholders. *Id.* at 354 (Rehnquist, C.J., concurring in part and dissenting in part); *see also id.* at

248 (Scalia, J., concurring in part and dissenting in part) ("With respect to Title[] I, . . . I join in full the dissent of the Chief Justice.").

The Chief Justice confirmed § 30125(f)'s overbreadth exacerbated the constitutional infirmity. He explained the statute would impose federal limits on a gubernatorial candidate's campaign advertisement expressing his opposition to "the President's policy of increased oil and gas exploration within the State because it would harm the environment." *Id.* at 354 (Rehnquist, C.J., concurring in part and dissenting in part). Imposing federal limits on political expression of state and local candidates and officeholders their ability to associate or dissociate themselves from federal officials or candidates, and impedes the public's ability to receive important political communications, in a way that does little to prevent actual or apparent *quid pro quo* corruption.

McConnell is not dispositive of this issue because, while it upheld § 30125(f)(1)'s facial constitutionality, it did not consider the validity of § 30125(f)(1) specifically as applied to a SuperPAC created, funded, and maintained by a state or local officeholder for the exclusive purpose of making independent expenditures. Unlike most other provisions in § 30125, subsection (f)(1) is specifically a complete prohibition on expenditures for pure political speech. 52 U.S.C. § 30125(f)(1) (providing an "individual holding State or local office, or an agent of such candidate or individual ***may not spend*** any funds" for political communications supporting or opposing federal candidates "unless they funds are subject to the limitations, prohibitions, and reporting requirements" of federal law) (emphasis added). The Supreme Court, however, has invalidated limits on independent expenditures in every context in which it has considered them, including expenditures by individuals, *Buckley*, 424 U.S. at 39; political action committees, *FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 496 (1985); political parties, *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 614 (1996) ("*Colorado I*"); and certain non-profit corporations, *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 263 (1986) (same for certain non-profit corporations). *Citizens United* extended these precedents even further, holding Congress may not limit for-profit corporations' expenditures. 558 U.S. at 357 ("[I]ndependent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption."). Post-*Citizens United*, § 30125(f)(1)'s expenditure limit cannot survive constitutional scrutiny.

As a result of *Citizens United* and *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014), the law concerning § 30125(f)(1) now more closely reflects *McConnell*'s dissenting opinions. Like Justice Kennedy's *McConnell* dissent, *McCutcheon* recognizes contributions to entities other than a candidate do not raise a risk of *quid pro quo* corruption. *McCutcheon*, 134 S. Ct. at 1452. "When an individual contributes to a candidate, a party committee, or a PAC, the individual must by law cede control over the funds." *Id.* If the funds are used to benefit a certain candidate, "such action occurs at the initial recipient's discretion—not the donor's. As a consequence, the chain of attribution grows longer, and any credit must be shared among the various actors along the way." *Id.* (emphasis added). Any remaining risk of corruption is even further attenuated for contributions to committees that exclusively make independent expenditures, like Mace's proposed committee, because *Citizens United* reiterated "independent expenditures . . . do not give rise to corruption or the appearance of corruption." 558 U.S. at 357.

Indeed, *Citizens United* went even further, declaring the Government may not "impose restrictions on certain disfavored speakers." *Citizens United*, 558 U.S. at 341. Section 30125(f),

read in light of *SpeechNow.org*, singles out state and local candidates and officeholders as disfavored speakers, limiting their ability to fund messages supporting or opposing federal candidates while any other person, group, or even corporation may create SuperPACs able to accept unlimited contributions.

McCutcheon also adopted the reasoning of Justice Thomas' dissent rejecting "third-order anticircumvention measure[s]" such as § 30125(f)(1). *McConnell*, 540 U.S. at 268 (Thomas, J., concurring in part and dissenting in part). Emphasizing "the base limits themselves are a prophylactic measure," *McCutcheon*, 134 S. Ct. at 1458, invalidated aggregate contribution limits, which were "layered on top" of those base limits, "ostensibly to prevent circumvention." The Court declared, "This 'prophylaxis-upon-prophylaxis' approach requires that we be particularly diligent in scrutinizing the law's fit." *Id.* (quoting *Wis. Right to Life v. FEC*, 551 U.S. 449, 479 (2007) (plurality op.)). Section 30125(f)(1) is even further removed from base limits on contributions to federal candidates than the aggregate limits *McCutcheon* invalidated.

Finally, *McCutcheon* invalidated aggregate contribution limits despite the Government's speculation and conjecture they were necessary. The simple fact some court could "imagine" a need for limits on certain contributions or expenditures is insufficient to render them constitutionally permissible. *McCutcheon*, 134 S. Ct. at 1454. The Court emphasized, "[S]peculation . . . cannot justify the substantial intrusion on First Amendment rights" that either contribution or expenditure limits impose. *Id.* at 1456; *see also Citizens United*, 558 U.S. at 360 (emphasizing the "scant evidence that independent expenditures" by corporations "ingratiate" those corporations to the candidates they support); *FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 498 (1985) ("*NCPAC*") (invalidating limit on independent expenditures by PACs where the Government failed to introduce any evidence suggesting "an exchange of political favors for uncoordinated expenditures" was likely to occur, because a burden on First Amendment rights cannot rest on "a hypothetical possibility and nothing more").[2] Chief Justice Rehnquist's recognition there is "scant evidence" federal officeholders are corrupted by the First Amendment activities prohibited by § 30125(f)(1) further underscores the provision's invalidity. *McConnell*, 540 U.S. at 354 (Rehnquist, C.J., concurring in part and dissenting in part).

Nothing about Mace's status as a state officeholder affects this constitutional analysis. The Supreme Court upheld the constitutionality of federal contribution limits in order to prevent actual or apparent *quid pro quo* corruption of federal officeholders. A SuperPAC's independent expenditures do not carry a greater risk of corruption, simply because a state officeholder controls it. Likewise, contributions from third parties to Mace's SuperPAC carry no greater risk of corruption of federal candidates than contributions to any other SuperPAC. And federal law may not properly seek to limit the amount of money a state candidate or officeholder may receive in order to preserve the integrity of state-level elections and lawmaking; such concerns are the

[2] *Citizens Against Rent Cont. / Coal. for Fair Hous. v. Berkeley*, 454 U.S. 290, 294 (1981) (invalidating contribution limit because "the record . . . [did] not support the [lower court's] conclusion that [the limit was] needed to preserve voters' confidence in the ballot measure process"); *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 789 (1978) (refusing to allow a state to restrict corporate political speech based on the ***assumption*** that such participation would exert undue influence" over the electorate" (emphasis added)).

province of the states and beyond FECA's scope.[3] *McConnell*, 549 U.S. at 306 (Kennedy, J., concurring in part and dissenting in part). Finally, compelling Equal Protection and federalism concerns would be raised were the Commission to conclude that, by becoming a state official, Mace surrendered the right enjoyed by most other Americans to form SuperPACs that may accept unlimited contributions. Especially in light of *Citizens United*, *McCutcheon*, and *SpeechNow.org*, the State Officeholder Prohibition, 52 U.S.C. § 30125(f)(1), is unconstitutional as applied to Mace's planned SuperPAC. Federal campaign finance law therefore has no enforceable prohibitions against Mace's proposed course of action.

[3] Mace's proposed SuperPAC is legal under South Carolina law which, in any event, is beyond the Commission's purview. South Carolina law provides, "Within an election cycle, no candidate or anyone acting on his behalf shall solicit or accept . . . a contribution which exceeds . . . one thousand dollars in the case of a candidate for" an office that is not "statewide." S.C. Code § 8-13-1314(A)(1)(b). Mace is a candidate for re-election to the South Carolina legislature. The term "contribution" is defined in relevant part, however, as a gift of "money or anything of value made to a candidate or committee . . . for the purpose of influencing an election." S.C. Code § 8-13-100(9). Although the term election is defined as "a general, special, primary, or runoff election," other definitions within the same section, applicable regulations, as well as FECA's preemptive provisions, together clarify the term should be treated as referring exclusively to non-federal, in-state elections. The Election Code repeatedly reiterates its focus on state and local offices and candidates. *See, e.g.*, *id.* § 8-13-100(5) (defining "candidate" as people seeking election "to a state or local office" and expressly excluding people deemed "candidates" under FECA); *id.* § 8-13-100(13) (defining "elective office" as a "state, county, municipal, or political subdivision" office"); *id.* § 8-17-100(17) (defining "governmental entity" as "the State, a county, municipality, or political subdivision"); *id.* § 8-17-100(25) (defining "public employee" as "a person employed by the State, a county, a municipality, or a political subdivision thereof"); *id.* § 8-17-200(27) defining "public official" as "an elected or appointed official of the State, a county, a municipality, or a political subdivision"). Likewise, the implementing regulations specifically exclude "members of or candidates for Federal office." S.C. Code Regs. § 52-501(A). Moreover, FECA preempts state attempts to regulate contributions for federal elections. 52 U.S.C. § 30143(a).

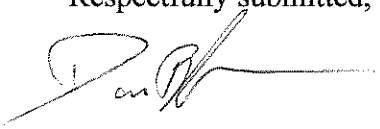
Because Mace's SuperPAC will make expenditures solely with regard to federal elections, any funds provided to that SuperPAC will not be for the purpose of influencing a state election. Consequently, any such transactions do not fall within the definition of "contribution" under South Carolina law, § 8-13-100(9), and therefore are not subject to state contribution limits, *id.* § 8-13-1314(A)(1)(b). Such "political contribution[s]" are also exempted from South Carolina's anti-gratuity laws, so long as they are not conditioned upon the recipient's "performance of specific actions." *Id.* § 8-13-705(G).

Mace's proposed SuperPAC also does not violate S.C. Code § 8-13-1340(A), which provides that a public official may not "make an independent expenditure on behalf of another candidate or public official . . . through a committee." Notwithstanding this prohibition, a public official may "establish[], finance[], maintain[], or control[] . . . one committee" in addition to her campaign committee to which § 8-13-1340(A)'s prohibitions don't apply. *Id.* § 8-13-1340(E). As an initial matter, § 8-13-1340(A) would not apply to Mace's proposed SuperPAC because she intends to use it for the sole purpose of making independent expenditures in support of conservative female federal candidates. Section 8-13-1340(A), in contrast, prohibits independent expenditures only in support of a "candidate" or "official" as those terms are defined in South Carolina law. A "candidate" is a person seeking "election to state or local office," and specifically excludes people who fall within FECA's definition of the term. *Id.* § 8-13-100(5). Likewise, a "public official" is an elected or appointed official of a state or municipal government and does not refer to federal officials. *Id.* § 8-13-100(27). Consequently, the independent expenditures Mace's proposed SuperPAC would make do not fall within the scope of § 8-13-1340(A)'s prohibition. Even if they did, § 8-13-1340(E) would still permit Mace to create it (although she could create only one such SuperPAC). Particularly since Mace's proposed SuperPAC is valid under state law—a question this Commission need not reach—federal campaign finance law should not stand as a barrier.

CONCLUSION

For these reasons, the Commission should conclude Mace may establish, maintain, and control a SuperPAC that makes public communications promoting, supporting, attacking, or opposing clearly identified federal candidates and accepts both unlimited contributions and contributions from corporations.

Respectfully submitted,



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From:	Neven Stipanovic
To:	Anthony Bell
Cc:	Esther Gyory
Subject:	FW: Request for an Advisory Opinion - Representative Nancy Mace
Date:	Thursday, May 10, 2018 4:22:49 PM
Importance:	High

From: Dan Backer [mailto:Dan@political.law]
Sent: Thursday, May 10, 2018 3:08 PM
To: Esther Gyory <EGyory@fec.gov>
Cc: Neven Stipanovic <NStipanovic@fec.gov>
Subject: RE: Request for an Advisory Opinion - Representative Nancy Mace
Importance: High

I am circling back on this as it's been several weeks, the AOR is not yet public that I saw, and you've not asked additional questions. Please advise, thanks.

Regards,

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From: Dan Backer
Sent: Monday, April 16, 2018 3:03 PM
To: 'Esther Gyory' <EGyory@fec.gov>
Cc: Neven Stipanovic <NStipanovic@fec.gov>
Subject: RE: Request for an Advisory Opinion - Representative Nancy Mace

Counselors,

Per your request below, with respect to the plans for initial formation:

1. Correct.
2. That is the source of initial funding but, once formed, Rep. Mace will, if not prohibited under FECA, begin soliciting contributions not limited to $5,000 from individuals and from small businesses (including incorporated entities).
3. Correct.

Thank you for your attention to this request.

Regards,

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From: Esther Gyory [mailto:EGyory@fec.gov]
Sent: Monday, April 16, 2018 2:30 PM
To: Dan Backer <Dan@political.law>
Cc: Neven Stipanovic <NStipanovic@fec.gov>
Subject: Request for an Advisory Opinion - Representative Nancy Mace

Mr. Backer,

Thank you for taking the time to speak with us today about the advisory opinion request you submitted on behalf of South Carolina State Representative Nancy Mace. I have set out below our understanding of some of the information that you provided in that conversation.

As we discussed, please confirm by return email the accuracy of the following statements or correct them if they are not accurate as written:

1. Representative Mace will exercise exclusive decision-making authority over the proposed political committee, including: determining which candidates are the beneficiaries of independent expenditures and endorsements; making managerial decisions, such as hiring; and approving all political committee communications. Representative Mace may engage vendors who will have limited authority to make routine decisions relating to the services they provide, but she will retain all substantive decision-making authority.

2. Initially, Representative Mace will finance the political committee solely with funds from her former federal authorized committee.

3. Representative Mace may invite other individuals to join the political committee's board in the future, but she has no current plans to do so.

Your response may be considered part of your advisory opinion request; if so, it will be posted as such on the Commission's website.

Thank you,

Esther Gyory
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