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By Office of General Counsel at 11:30 am, Jun 03, 2021

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**RECEIVED**

By Office of the Commission Secretary at 3:54 pm, Jun 14, 2021

Federal Election Commission  
Office of General Counsel  
Emailed to: AO@FEC.gov

To Whom It May Concern:

I write to request an Advisory Opinion on whether a member of Congress may transfer funds from a state campaign committee to his or her leadership PAC. Following my election to the House of Representatives in 2020, I resigned from the Wisconsin State Senate on January 1, 2021. My state campaign committee, Scott Fitzgerald for Senate (hereinafter “state committee”), has not yet been terminated and is registered with the Wisconsin Ethics Commission (“WEC”), as required by state law. As it relates to this, I seek advice as to the following questions:

- Are my state committee and leadership PAC, each established and controlled by me, affiliated committees under Federal Election Commission (“Commission”) regulations?
- May the leadership PAC receive unlimited transfers of funds from the state committee, provided such funds comply with source restrictions and contribution limits under federal law?
- Is the state committee required to notify its contributors that their contributions are subject to federal limitations and prohibitions when such transfers are made?

## **BACKGROUND**

My principal campaign committee, Scott Fitzgerald for Congress, is registered with the Commission. I formed a leadership PAC, Sconnie PAC, FEC Committee ID #: C00760694 registered October 8, 2020. My state committee, registered with WEC and its predecessor agencies since 1994, has a significant cash on hand balance. The state committee may not accept contributions from foreign nationals, corporations, labor organizations, Federally-recognized Indian Tribes, cooperatives or independent expenditure committees.<sup>1</sup> Contributions during each four-year term of office,<sup>2</sup> are limited to \$2,000 from individuals, including partnerships and LLCs treated as partnerships by the IRS, political action committees and Wisconsin candidate committees.<sup>3</sup> Wisconsin political parties may make unlimited contributions to the state

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<sup>1</sup> Wis. Stat. §§ 11.1112; 11.1208(4).

<sup>2</sup> My most recent term of office began on January 7, 2019 and ended on January 1, 2021 when I resigned.

<sup>3</sup> Wis. Stat. §§ 11.0101 (1)(b), (2)(b), (3)(e), 11.1113(2), (3).

committee.<sup>4</sup> The state committee must report the name and mailing address of each contributor, regardless of amount.<sup>5</sup> It may not accept anonymous contributions in excess of \$10 and must itemize those received.<sup>6</sup>

Since I announced my candidacy for Congress on September 17, 2019, my state committee's purpose has been to support candidates for Wisconsin state office. It has contributed over \$100,000 to 19 Wisconsin candidates and committees, as permitted by state law. Upon its termination, I may use the funds for any purpose not prohibited by law.<sup>7</sup>

## APPLICABLE LAW

A principal campaign committee is designated and authorized by a federal candidate on a Statement of Candidacy and Statement of Organization.<sup>8</sup> An authorized committee means the principal campaign committee or other political committee authorized by a federal candidate to receive contributions or make expenditures on his or her behalf, or a committee that has not been disavowed.<sup>9</sup> Scott Fitzgerald for Congress is my principal campaign committee and my only authorized committee.

A leadership PAC is a nonconnected political committee that supports one or more federal candidates and that is directly or indirectly established, financed, maintained or controlled by a candidate for federal office or an individual holding federal office but that is neither (1) his or her authorized committee nor (2) affiliated with his or her authorized committee.<sup>10</sup>

Leadership PACs may contribute to federal and state candidates and party committees and pay expenses incurred by the federal office holder or candidate when he or she campaigns for other federal candidates or engages in political activities unrelated to his or her own election.<sup>11</sup>

As with other federal political committees, a leadership PAC may not receive contributions from federal contractors, foreign nationals, corporations, labor organizations or independent expenditure committees.<sup>12</sup> Contributions from individuals, multicandidate PACs, non-

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<sup>4</sup> Wis. Stat. § 11.1104(5); *see also* Wis. Stat. § 11.1104(6) which provides that while a Wisconsin political party committee may accept contributions from corporations and labor unions, it must deposit those contributions in a segregated fund and may not use those funds for candidate contributions.

<sup>5</sup> Wis. Stat. § 11.0204(1)(a)1.-3.

<sup>6</sup> Wis. Stat. § 11.0204(1)(a)4.

<sup>7</sup> Wis. Stat. § 11.0105(3).

<sup>8</sup> 11 CFR §§ 100.5(e)(1), 101.1(a), 102.1(a), 102.12.

<sup>9</sup> 11 CFR §§ 100.3(a)(3), 100.5(f)(1), 102.13.

<sup>10</sup> 52 U.S.C. § 30104(i)(8)(B); 11 CFR § 100.5(e)(6).

<sup>11</sup> Federal Register, Vol. 68, No. 230, Dec. 1, 2003. If a leadership PAC pays for expenses related to the to the candidate or officeholder's own election, it is an in-kind contribution to his or her principal campaign committee.

<sup>12</sup> 52 U.S.C. §§ 30118(a), 30121(a); 11 CFR 110.20, 114.12(a), 115.2, 115.6.

multicandidate PACs, national party committees and from local, state and district party committees combined are limited to \$5,000 per year.<sup>13</sup>

Affiliated committees are those established, financed, maintained or controlled by the same corporation, labor organization, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof.<sup>14</sup> Affiliated committees may transfer unlimited amounts of federally permissible funds between them.<sup>15</sup> But they share a contribution limit and thus a single contributor may not make contributions to both committees that, in the aggregate, exceed federal contribution limits.<sup>16</sup> Two committees may be affiliated even though one of them is not a federal political committee.<sup>17</sup>

A nonfederal committee that makes transfers to a federal committee, including an affiliated committee, of \$1,000 or more in a calendar year, must register with the Commission as a political committee.<sup>18</sup> The Commission has allowed separate segregated funds, party committees and candidate committees established for the purpose of financing state and local election activities to convert to a federal political committee and to maintain federal and nonfederal accounts.<sup>19</sup> On its first report, the committee must report the cash on hand, which is assumed to be composed of those contributions most recently received by the committee.<sup>20</sup> Individual contributions of more than \$200 in the aggregate and all PAC contributions and committee transfers, regardless of amount, must be itemized.<sup>21</sup> In addition, the committee's records must identify the sources of contributions of more than \$50.<sup>22</sup>

If any contributions received by the nonfederal committee violate federal source restrictions or exceed federal contribution limits, they must be excluded from the cash on hand balance.<sup>23</sup> If prohibited contributions are identified, the committee has two options: it can either divest itself of the impermissible funds or maintain them in a separate non-federal bank account to be used only for purposes other than influencing a federal election.<sup>24</sup> Contributions may be received by a committee or deposited in a federal account if they are designated for the federal account, result

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<sup>13</sup> 11 CFR §§ 110.1(d), 110.2(e), 110.3(b)(3).

<sup>14</sup> 11 CFR § 100.5(g)(2).

<sup>15</sup> 11 CFR §§ 102.6(a)(1), 110.3(c)(1).

<sup>16</sup> 11 CFR § 110.3(a)(1), (2).

<sup>17</sup> 11 CFR 102.6(a).

<sup>18</sup> 11 CFR § 100.5(a).

<sup>19</sup> AO 1985-18, AO 1990-16, AO 2000-25. *See also*, 102.1(c).

<sup>20</sup> 11 CFR § 104.3(a)(1), 104.12.

<sup>21</sup> 11 CFR § 104.3(a)(4), (a)(4)(i).

<sup>22</sup> 11 CFR § 110.4(c)(3).

<sup>23</sup> 11 CFR 104.12.

<sup>24</sup> 11 CFR § 102.5(a)(1); *See also* AO 1988-33, AO 1990-26.

from a solicitation expressly stating the contribution will be used in connection with a federal election or are from contributors who are informed that contributions are subject to federal prohibitions and limitations.<sup>25</sup>

## ANALYSIS

Commission regulations prohibit transfers from the state committee to Scott Fitzgerald for Congress or other authorized committee for a federal election,<sup>26</sup> but there is no similar restriction on transfers from the state committee to the leadership PAC. Furthermore, transfers from the state committee to the leadership PAC are unlimited if the two committees are affiliated. A leadership PAC is a nonconnected political committee and thus may be affiliated with a federal or nonfederal committee if it meets the requirements in regulations.<sup>27</sup> The only limitation on leadership PAC affiliations is found in its definition i.e., that it is not affiliated with an authorized committee as a matter of law. My state committee is not an authorized committee since it does not receive contributions or make expenditures to support my election to federal office<sup>28</sup> nor is it a committee affiliated with my authorized committee, Scott Fitzgerald for Congress.<sup>29</sup>

Commission advisory opinions have not addressed the specific leadership PAC affiliation questions presented here, but one addressed a similar scenario. The Commission previously advised that the state campaign committee of former Illinois Governor Thompson and a federal nonconnected political committee formed by the governor to support candidates for federal office were affiliated.<sup>30</sup> Upon announcing his decision not to seek reelection, Governor Thompson revised his state committee's purpose to support other state and local candidates. The following year, the governor established a federal nonconnected committee to support candidates for federal office and sought Commission approval to transfer funds to it from the state committee. The Commission concluded that because both committees were controlled by the former governor, they were affiliated committees and the state committee could make unlimited transfers, subject to source restrictions and contribution limits.

The scenario related to Governor Thompson is nearly indistinguishable from what is presented here for advice. Governor Thompson established a multicandidate PAC and I established a leadership PAC, both of which are nonconnected political committees formed to support federal candidates and subject to the same reporting requirements, source restrictions and contribution limits. Governor Thompson modified the purpose of his state committee to support state and

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<sup>25</sup> 11 CFR § 102.5(a)(2).

<sup>26</sup> 11 CFR § 110.3(d).

<sup>27</sup> Leadership PACs, 68 Fed. Reg. 67013 (December 1, 2003).

<sup>28</sup> 11 CFR § 102.13(a)(1).

<sup>29</sup> 11 CFR § 100.5(g)(1), (5).

<sup>30</sup> AO 1990-16, pg. 2.

local candidates rather than his own reelection campaign. Since announcing my candidacy for Congress, I have done the same, although Wisconsin law requires no such declaration on the state committee's registration statement.<sup>31</sup> Therefore, the only difference between the two scenarios is that Illinois required this change, while Wisconsin does not. For Thompson, the Commission noted no barriers to registering the governor's state committee as a federal political committee but did note that the situation "essentially involves the proposed transfer of funds from a state campaign committee supporting a number of non-Federal candidates and committees to a political committee that wishes to support a number of Federal candidates."<sup>32</sup> Likewise, my state committee has provided significant support to state candidates over the last year and may register with the Commission as a political committee in order to make transfers of more than \$1,000 annually to the leadership PAC.

Wisconsin's source restrictions mirror federal restrictions, with the exception of federal contractors, and its contribution limits are lower than federal limits; Wisconsin also allows with greater contributions from political parties. Since I established the leadership PAC, I have not and will not take any contributions to the state committee from donors that also will make a contribution to the leadership PAC during the year. It is therefore likely that the vast majority of funds in the state committee are federally permissible and may be transferred to the leadership PAC. However, any prohibited contributions would either be segregated in a nonfederal account and used for purposes allowed by Wisconsin law or divested prior to registering the state committee with the Commission. It appears that regardless of the option chosen, the committee is required to notify contributors who are the source of the cash on hand that their contributions are subject to federal limitations and prohibitions. Since the state committee must report the name and mailing address of each contributor, regardless of amount, this notification is unproblematic. If the state committee is lacking contact information for a specific contributor, that amount would be omitted from the cash on hand balance and would not be used to support federal candidates.

We believe that federal laws and regulations recognized my state committee and leadership PAC as affiliated committees that may make unlimited transfers, subject to source restrictions and contribution limits and request an advisory opinion to this effect. If I can provide additional information, please contact my attorney, whose contact information is listed below. Thank you for your consideration.

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<sup>31</sup> See Wis. Stat. § 11.0203. A Wisconsin candidate committee must include on its registration statement the name and mailing address of the candidate committee, of its treasurer or other custodian of books and accounts, and of the depository account and any other institution where funds of the committee are kept.

<sup>32</sup> *Id.*

Federal Election Commission  
Advisory Opinion Request  
March 28, 2021

Sincerely,

A handwritten signature in black ink that reads "Scott Fitzgerald". The signature is written in a cursive style with a large, stylized initial "S".

Congressman Scott Fitzgerald

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