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October 3, 2014

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by AN*
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Subject: AO 2014-12 (DNC and RNC) Draft B

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on October 8, 2014.

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 <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2014-12
2
3 Robert Bauer, Esq.
4 Marc Elias, Esq.
5 Graham Wilson, Esq.
6 Counsel to the Democratic National Committee
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8 Washington, DC 20005
9

10 John R. Phillippe Jr., Esq.
11 Ashley K. Stow, Esq.
12 Counsel to the Republican National Committee
13 310 First Street, SE
14 Washington, DC 20003
15

16 Dear Messrs. Bauer, Elias, Phillippe, and Wilson, and Ms. Stow:

17 We are responding to your advisory opinion request on behalf of the Democratic National
18 Committee (“DNC”) and the Republican National Committee (“RNC”) (collectively, the
19 “Committees”) concerning the application of the Federal Election Campaign Act, 52 U.S.C.
20 §§ 30101-30146 (formerly 2 U.S.C. §§ 431-457) (the “Act”), the Presidential Election Campaign
21 Fund Act, 26 U.S.C. §§ 9001-9013 (the “Funding Statute”), and Commission regulations to the
22 Committees’ proposal to raise funds under a separate contribution limit to finance expenses for
23 the Committees’ 2016 presidential nominating conventions. The Committees propose to raise
24 these funds for deposit into a segregated account or to establish convention committees to raise
25 and spend such funds.

26 The Commission concludes that the Committees may establish convention committees to
27 raise funds under a separate contribution limit because convention committees are “national
28 committees” under the Act and Commission regulations.

29 ***Background***

30 The facts presented in this advisory opinion are based on your advisory opinion request
31 received on August 15, 2014 (“AOR”).

1 The Committees are national committees within the meaning of 52 U.S.C. § 30101(14)
2 (formerly 2 U.S.C. § 431(14)). Until recently, the Funding Statute entitled the Committees to
3 receive public funds from the United States Treasury to defray expenses incurred with respect to
4 their presidential nominating conventions. 26 U.S.C. § 9008(b)(1). But effective April 3, 2014,
5 the Gabriella Miller Kids First Research Act, Pub. L. No. 113-94, 128 Stat. 1085 (2014) (the
6 “Research Act”), amended the Funding Statute by terminating the Committees’ entitlement to
7 public funds. As a result, the Committees state that they now “must identify private sources of
8 funding for their presidential nominating conventions.” AOR at 2.

9 The Committees each propose to raise convention funds for deposit into a segregated
10 account, or to establish a convention committee to raise and spend convention funds, subject to
11 “an additional, separate contribution limit.” *Id.* This separate limit would enable any contributor
12 to give to the convention account or committee the maximum amount that the Act permits the
13 contributor to contribute to a national committee, but without having these convention-specific
14 donations count against the contributor’s maximum permissible contributions to either of the
15 Committees. The Committees state that the funds raised by the separate account or convention
16 committee would be “used solely to pay for the same types of convention expenses for which
17 public funds were previously used,” and not “for candidate advocacy” or “for general party
18 building expenses.” AOR at 2.

19 ***Questions Presented***

- 20 1. *May the Committees raise federal funds into segregated accounts subject to an*
21 *additional, separate contribution limit solely to pay convention expenses?*
- 22 2. *May the Committees establish separate convention committees to raise and spend federal*
23 *funds under a separate limit solely to pay convention expenses?*

1 *Legal Analysis and Conclusions*

2 Yes, the Committees may each establish a convention committee to raise and spend
3 federal funds for convention expenses under a separate contribution limit because these
4 convention committees would be “national committees” within the meaning of the Act, and
5 Commission regulations provide that each “national committee” is subject to its own
6 contribution limits.

7 Before the Research Act, the Funding Statute entitled national committees of major and
8 minor parties to receive public funds to defray expenses incurred with respect to their
9 presidential nominating conventions. 26 U.S.C. § 9008(b); 11 C.F.R. § 9008.4. Commission
10 regulations also permitted a national committee to raise private funds for its convention
11 expenses.¹ 11 C.F.R. § 9008.6(a)(2). To qualify for public financing, the regulations required a
12 national committee to “establish a convention committee [to] be responsible for conducting the
13 day to day arrangements and operations of that party’s presidential nominating convention.” 11
14 C.F.R. § 9008.3(a)(1-2). The convention committee received all public and private funds and
15 made all expenditures on behalf of the national committee for convention expenses. 11 C.F.R.
16 § 9008.3(a)(2). A convention committee could spend funds only for expenses incurred with
17 respect to the presidential nominating convention; it could not spend funds to defray the
18 expenses of any candidate participating in the convention. 26 U.S.C. § 9008(c); 11 C.F.R.
19 § 9008.7(a)-(b)(1).

20 The Research Act terminated the national committees’ entitlement to receive public funds
21 for their presidential nominating conventions. Pub. L. No. 113-94, § 2(a), 128 Stat. 1085

¹ The amount of private funds raised by a national committee to defray convention expenses resulted in a corresponding reduction in the amount of public funds to which it was entitled. 11 C.F.R. § 9008.6(a)(2).

1 (codified at 26 U.S.C. § 9008(i)). As a result, convention expenses must now be financed with
2 funds raised from private sources.

3 *The Committees' Convention Committees Are National Committees*

4 A “national committee” of a political party is an organization that, “by virtue of the
5 bylaws of a political party, is responsible for the day-to-day operation of such political party at
6 the national level, as determined by the Commission.” 52 U.S.C. § 30101(14) (formerly 2
7 U.S.C. § 431(14)); 11 C.F.R. § 100.13. The Act and Commission regulations contemplate that
8 this definition can include, at minimum, each party’s House and Senate committees, subject to
9 separate contribution limits. *See* 52 U.S.C. 30125(a)(1) (formerly 2 U.S.C. § 441i(a)(1)); 11
10 C.F.R. § 110.1(c)(2). Because the Funding Statute required the creation of political committees
11 to finance conventions, and because such committees meet the test applied by the Commission to
12 other national party committees, the Commission concludes that the convention committees
13 discussed here also qualify as national committees of a political party. This conclusion is
14 premised on the fact that the proposed convention committees would limit their spending to “the
15 same types of convention expenses for which... public funds were previously used,” and would
16 play a distinct role in the operation of the party at the national level.

17 In determining whether a political committee qualifies as a national committee of a
18 political party, the Commission has considered two questions. The first question is whether the
19 party itself qualifies as a “political party” under the Act and Commission regulations. *See, e.g.,*
20 Advisory Opinion 2006-36 (Green Senatorial Campaign Committee); Advisory Opinion 2001-13
21 (Coordinating Committee of Green Party of United States); Advisory Opinion 1998-02 (National
22 Committee of Reform Party of United States); Advisory Opinion 1995-16 (National Committee
23 of U.S. Taxpayers Party). Here, the Democratic and Republican parties both clearly qualify as

1 political parties. *See* 52 U.S.C. § 30101(16) (defining “political party” as “organization which
2 nominates a candidate for election to any Federal office whose name appears on the election
3 ballot as the candidate of such . . . organization”).

4 The second question that the Commission considers is whether the committee at issue has
5 demonstrated sufficient activity at the national level to attain national committee status. *See*,
6 *e.g.*, Advisory Opinion 2006-36 (Green Senatorial Campaign Committee); Advisory Opinion
7 2001-13 (Coordinating Committee of Green Party of United States); Advisory Opinion 1998-02
8 (National Committee of Reform Party of United States); Advisory Opinion 1995-16 (National
9 Committee of U.S. Taxpayers Party). In conducting this inquiry, the Commission generally
10 considers whether the political committee nominates candidates for various federal offices and in
11 numerous states, engages in certain activities on an ongoing basis rather than with respect to a
12 particular election, publicizes issues of importance to the party and its adherents throughout the
13 nation, holds a national convention, establishes a national office, and establishes state affiliates.
14 *See, e.g.*, Advisory Opinion 2006-36 (Green Senatorial Campaign Committee) at 4; Advisory
15 Opinion 2001-13 (Green Party of the United States) at 3. While the Commission has identified
16 as a relevant factor “the degree to which [the committee’s] successful ballot access efforts extend
17 beyond the Presidential and Vice-Presidential level to other Federal races,”² the Commission has
18 explained that this inquiry is intended to ensure that “only those committees whose activities
19 [are] broadly focused — such as . . . in more than one State or geographical area” qualify for
20 national committee status. *See* Advisory Opinion 2006-36 (Green Senatorial Campaign
21 Committee) at 4. Thus, in Advisory Opinion 2006-36 (Green Senatorial Campaign Committee),

² Advisory Opinion 2001-13 (Green Party of the United States) at 3, *see also* Advisory Opinion 2006-36 (Green Senatorial Campaign Committee) at 4-5; Advisory Opinion 1998-02 (Reform Party USA) at 3-4.

1 the Commission recognized the requestor as a national committee notwithstanding its “sole focus
2 on electing U.S. Senate candidates.” *Id.* at 3. The Commission noted that the requestor had
3 participated in and supported party building activities in a number of states, established a
4 national office, held meetings, opened a bank account, and maintained a website to publicize
5 issues of importance to the party and to support its candidates. *Id.* at 4. The Commission also
6 determined that the scope of the requestor’s efforts to achieve its narrow purpose was sufficiently
7 national in character, in that the requestor had “demonstrated the requisite ability to gain ballot
8 access [for its Senate candidates] in a number of States in different geographic areas.” *Id.* at 5.

9 Applying the relevant considerations to the facts here, the Commission concludes that a
10 convention committee established by either of the Committees would be a national committee
11 under the Act and Commission regulations. Commission regulations explicitly describe the
12 national scope of convention committees: The “nominating convention” organized by a
13 convention committee is “a convention, caucus, or other meeting . . . held by a political party *at*
14 *the national level,*” 11 C.F.R. § 9008.1(g) (emphasis added), and convention committees are
15 “responsible for conducting the day to day arrangements and operations” of these conventions.
16 11 C.F.R. § 9008.3(a)(2). Although convention committees focus solely on organizing the
17 nominating convention for the party’s candidates for President and Vice President, these
18 individuals are nominated by delegates from across the nation representing their respective states
19 at the convention pursuant to party rules. *Cf.* 11 C.F.R. § 110.14. Moreover, the conventions
20 include such party-building activities as the adoption of party platforms and party rules (*see*
21 AOR at 3), and they are designed, at least in part, to give nationwide publicity to issues of
22 importance to the party. *See, e.g.,* Advisory Opinion 2001-13 (Green Party of the United States)
23 at 3 (holding of national convention and efforts to publicize party positions demonstrate

1 significant party building activity of “national scope”). Furthermore, because the parties’
2 conventions have been held quadrennially for more than 150 years, they clearly qualify as
3 “ongoing” activities.³ *See id.*

4 In sum, the convention committees the Committees propose to establish satisfy
5 essentially all of the factors that the Commission considers in determining national committee
6 status.⁴ Moreover, conventions, like the House and Senate committees, have been an integral
7 part of the national campaign finance system since well before the passage of the Act.
8 Convention committees have served an important and distinct role in the operation of the parties
9 at the national level. Indeed, the convention committees proposed here will operate in the same
10 space as publicly-financed convention committees, instead using privately-raised funds “solely
11 to pay for the same types of convention expenses for which public funds were previously used.”
12 AOR at 2. The Commission understands this representation to mean that the convention
13 committees will not transfer funds to other political committees, which do not limit their
14 spending to convention expenses. Thus, taking all of these factors into account, the Commission
15 concludes that convention committees established by the Committees qualify as national
16 committees.⁵

³ The historical practice of technically terminating and re-forming publicly financed convention committees each election cycle, *see* 11 C.F.R. § 9008.3(c), has no bearing on whether the convention committees authorized here (which would not receive public funds) would engage in “ongoing” activity. Indeed, the Commission notes that the convention committees authorized here could be national party committees on an ongoing basis. *See* 52 U.S.C. § 30101 (formerly 2 U.S.C. § 431(14)).

⁴ The one factor that is not present here — ballot access for federal candidates other than President and Vice President — is not significant because analysis of the remaining factors is sufficient to demonstrate the genuinely nationwide character of the convention committees’ proposed activities.

⁵ As national party committees, the convention committees will be required to report their receipts and disbursements on a monthly basis using Form 3X. *See* 52 U.S.C. § 30104(e)(1) (formerly 2 U.S.C § 434(e)(1)); 11 C.F.R. §§ 104.5(c)(4) and 105.4. *See, e.g.*, Advisory Opinion 2006-36 (Green Senatorial Campaign Committee) at 7. Reporting on this basis would also satisfy the requirements of 52 U.S.C. § 30105(2) (formerly 2 U.S.C. § 437(2)) regarding the filing of post-convention reports.

1 *National Committees Have Separate Contribution Limits*

2 Commission regulations provide that funds raised by national committees to defray
3 “convention expenses” are “contributions.” *See* 11 C.F.R. §§ 9008.3(a)(2) (governing receipt of
4 “contributions made for the purpose of defraying convention expenses”), 9008.3(b)(2)(i)
5 (requiring reporting of “contributions” to convention committee), 9008.6(a)(2)-(3).
6 “‘Convention expenses’ include all expenses incurred by or on behalf of a political party’s
7 national committee or convention committee with respect to and for the purpose of conducting a
8 presidential nominating convention or convention-related activities.” 11 C.F.R. § 9008.7(a)(4).
9 Moreover, “[a]ll private contributions received by the national committee to defray convention
10 expenses shall be subject to all reporting requirements, limitations and prohibitions of [the Act].”
11 11 C.F.R. § 9008.6(a)(3); *see also* 11 C.F.R. § 9008.8(a)(3). The Act and Commission
12 regulations limit the amount of contributions that a multicandidate political committee may make
13 to a national committee to \$15,000 per calendar year, and the amount that any other person may
14 make to \$32,400 (adjusted for inflation) per calendar year. 52 U.S.C. § 30116(a)(1)(B), (2)(B)
15 (formerly 2 U.S.C. § 441a(a)(1)(B), (2)(B)); 11 C.F.R. §§ 110.1(c)(1), 110.2(c)(1).

16 In general, for purposes of the contribution limits, “all contributions made by [or to]
17 political committees established, financed, maintained, or controlled by any . . . person” are
18 considered to have been made by or to a single political committee. 52 U.S.C. § 30116(a)(5)
19 (formerly 2 U.S.C. § 441a(a)(5)); 11 C.F.R. § 110.3(a). Commission regulations explicitly
20 provide, however, that contributions made or received by a “national committee of a political
21 party and any political committee established, financed, maintained, or controlled by the same
22 national committee” are “considered to be made or received by separate political committees.”
23 11 C.F.R. § 110.3(b)(i). Accordingly, the Commission’s regulations state that “[a]pplication of

1 [this section] means that... [t]he House campaign committee and the national committee of a
2 political party shall have separate limitations on contributions” and “[t]he Senate campaign
3 committee and the national committee of a political party shall have separate limitation on
4 contributions.” *See* 11 C.F.R. § 110.3(b)(2)(i)-(ii); *see also* 11 C.F.R. §§ 110.1(c)(2)-(3),
5 110.2(c)(2)-(3); Advisory Opinion 2006-36 (Green Senatorial Campaign Committee) at 3 (noting
6 that “[a] senatorial campaign committee is one type of national party committee”).

7 As the Commission concludes above, convention committees are also national
8 committees. This status renders convention committees equivalent to the parties’ House and
9 Senate campaign committees for purposes of the Act’s contribution limits. *See* 11 C.F.R.
10 § 110.3(b)(2). Thus, “all contributions made or received” by the convention committees “shall
11 be considered to be made or received . . . separate[ly]” from contributions made or received by
12 the DNC, the RNC, and these parties’ other national committees. *Id.*⁶ The Committees’
13 proposal here to solicit contributions into convention committees under a separate contribution
14 limit “to pay for the same types of convention expenses for which public funds were previously
15 used,” and not “for candidate advocacy” or “for general party building expenses” is therefore
16 consistent with the Act and Commission regulations.

17 Because the Commission concludes that the Committees may engage in their proposed
18 activity through the creation of convention committees, the Commission does not address the
19 Committees’ alternative proposal to receive and solicit funds through segregated accounts.

20 This response constitutes an advisory opinion concerning the application of the Act and
21 Commission regulations to the specific transaction or activity set forth in your request. *See* 52

⁶ Advisory Opinion 1994-25 (Libertarian National Committee), which concluded that a convention committee was affiliated with and shared a contribution limit with its party’s national committee, is superseded to the extent that it is inconsistent with the Commission’s determination here.

1 U.S.C. § 30108 (formerly 2 U.S.C. § 437f). The Commission emphasizes that, if there is a
2 change in any of the facts or assumptions presented, and such facts or assumptions are material
3 to a conclusion presented in this advisory opinion, then the requestors may not rely on that
4 conclusion as support for their proposed activity. Any person involved in any specific
5 transaction or activity which is indistinguishable in all its material aspects from the transaction or
6 activity with respect to which this advisory opinion is rendered may rely on this advisory
7 opinion. *See* 52 U.S.C. § 30108(c)(1)(B) (formerly 2 U.S.C. § 437f(c)(1)(B)). Please note that
8 the analysis or conclusions in this advisory opinion may be affected by subsequent developments
9 in the law including, but not limited to, statutes, regulations, advisory opinions, and case law.
10 Any advisory opinions cited herein are available on the Commission's website.

11 On behalf of the Commission,

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Lee E. Goodman
Chairman