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By Office of General Counsel at 6:14 pm, May 18, 2022

May 18, 2022

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By Office of the Commission Secretary at 8:15 am, Jun 02, 2022

BY ELECTRONIC MAIL DELIVERY

Office of General Counsel
Attn: Lisa J. Stevenson, Esq.
Acting General Counsel
Federal Election Commission
1050 First Street NE
Washington, DC 20463

Re: Advisory Opinion Request

Dear Ms. Stevenson:

Pursuant to 52 U.S.C. § 30108, we seek an advisory opinion on behalf of the Democratic Party of Wisconsin Federal to confirm that it may establish a joint fundraising committee with a nominee fund under the Federal Election Campaign Act of 1971 (the “Act”) and Federal Election Commission (“FEC” or the “Commission”) regulations.

I. FACTUAL DISCUSSION

The Democratic Party of Wisconsin Federal (the “Committee”) is a FEC registered state political party committee dedicated to electing Democrats in Wisconsin.¹ The Committee seeks to engage in joint fundraising activity by forming a joint fundraising committee with a nominee fund that has been established for the eventual Democratic nominee for U.S. Senate in Wisconsin (the “Nominee”), who will be elected at the August 9, 2022 Wisconsin Democratic primary election.² The nominee fund will operate in accordance with the Commission’s requirements on establishing and maintaining nominee funds as set forth in Advisory Opinions 2003-23 (WE LEAD), 2014-19 (ActBlue), and 2019-01 (It Starts Today).

Before engaging in any joint fundraising activity, the Committee will open a new bank account and establish and register with the FEC a joint fundraising committee to act as a fundraising representative of the Committee and the nominee fund. The Committee and the nominee fund will enter into a written joint fundraising agreement that identifies the new joint fundraising committee as the fundraising representative and states a formula for the allocation of proceeds. Any funds received by the joint fundraising committee that are allocated to the nominee fund will be held in

¹ FEC, FEC Form 1: Statement of Organization, Democratic Party of Wisconsin Federal (Feb. 14, 2022), <https://docquery.fec.gov/pdf/361/202202149491737361/202202149491737361.pdf>.

² State of Wisconsin Elections Commission, Next Statewide Election: 2022 Partisan Primary, <https://myvote.wi.gov/en-us/>.

escrow and disbursed to the Nominee only if the Nominee, upon winning the primary election, ratifies the joint fundraising agreement. If the Nominee does not ratify the joint fundraising agreement, the funds allocated to the Nominee will be refunded. The joint fundraising committee will clearly communicate the foregoing criteria to contributors.

II. QUESTION POSED

The Committee asks the Commission to confirm that the Committee may establish a joint fundraising committee with a nominee fund under the Act and Commission regulations, where funds allocable to the Nominee will be held in escrow and disbursed to the Nominee only if (1) the nominee fund meets its own triggering condition – a candidate is elected as the Democratic nominee for U.S. Senate in Wisconsin; and (2) the Nominee ratifies the joint fundraising agreement that was entered into by the nominee fund and the Committee. If the second condition is not met within ten days of the Democratic nominee for U.S. Senate being elected, the joint fundraising committee will refund the funds that were being held in escrow for the Nominee.³

It is our understanding that the Commission has an informal policy of issuing an advisory opinion in response to an advisory opinion request within 30 days where there are exigent circumstances for expedited review. We respectfully request the Commission to issue an advisory opinion within 30 days of this request, so that the Committee may have sufficient time to start its joint fundraising activity with the nominee fund before the 2022 Wisconsin primary election on August 9, 2022.

III. LEGAL ANALYSIS

The Act and Commission regulations permit state political party committees and federal candidates to engage in joint fundraising by establishing a separate political committee to serve as their joint fundraising representative.⁴ The participants must enter into a written agreement that

³ It is our understanding that other political party committees have established joint fundraising committees with nominee funds, but we seek confirmation from the Commission on the proper procedures for doing so. *See* FEC, FEC Form 1: Statement of Organization, NC Senate Republican Nominee Victory Fund (May 11, 2021), <https://docquery.fec.gov/pdf/334/202105119446451334/202105119446451334.pdf>; NH Senate Republican Nominee Victory Fund (May 13, 2021), <https://docquery.fec.gov/pdf/692/202105139446686692/202105139446686692.pdf>; OH Senate Republican Nominee Victory Fund (May 13, 2021), <https://docquery.fec.gov/pdf/696/202105139446686696/202105139446686696.pdf>; PA Senate Republican Nominee Victory Fund (May 13, 2021), <https://docquery.fec.gov/pdf/700/202105139446686700/202105139446686700.pdf>; AL Senate Republican Nominee Victory Fund (May 11, 2021), <https://docquery.fec.gov/pdf/864/202105119446449864/202105119446449864.pdf>; AZ Senate Republican Nominee Victory Fund (May 11, 2021), <https://docquery.fec.gov/pdf/642/202105119446450642/202105119446450642.pdf>; CO Senate Republican Nominee Victory Fund (May 11, 2021), <https://docquery.fec.gov/pdf/912/202105119446450912/202105119446450912.pdf>; GA Senate Republican Nominee Victory Fund (May 11, 2021), <https://docquery.fec.gov/pdf/183/202105119446451183/202105119446451183.pdf>; MO Senate Republican Nominee Victory Fund (May 11, 2021), <https://docquery.fec.gov/pdf/284/202105119446451284/202105119446451284.pdf>.

⁴ 52 U.S.C. § 30102(e)(3)(ii); 11 C.F.R. § 102.17(a).

identifies the joint fundraising representative and states a formula for the allocation of fundraising proceeds. This allocation formula must be included with every solicitation for contributions.⁵ The joint fundraising committee must establish a separate depository account to be used solely for the receipt and disbursement of the joint fundraising proceeds and “shall collect contributions, pay fundraising costs from gross proceeds and from funds advanced by the participants, and disburse net proceeds to each participant.”⁶ Donors to a joint fundraising committee may contribute up to the total amount that the donor could contribute to all of the participants under applicable contribution limits.⁷

The joint fundraising committee must deposit all joint fundraising proceeds in its separate account within ten days of receipt.⁸ The committee may, however, “delay distribution of the fundraising proceeds to the participants until all contributions are received and all expenses are paid.”⁹ In keeping with this allowance, the FEC has determined that political committees, including joint fundraising committees, may “solicit and accept contributions that would be passed on to other committees upon the occurrence of certain conditions.”¹⁰ Specifically, the Commission has authorized a committee to accept conditional contributions where: (1) the committee specifies an objectively determinable condition that would trigger the planned disbursement of the funds, that is outside the control of the committee; (2) the committee specifies a certain date by which this condition will or will not be met; (3) the committee agrees to refund or otherwise lawfully distribute the funds if the triggering condition is not met; and (4) the committee clearly communicates the foregoing criteria to contributors.¹¹ These conditions “ensure that the contributors have ultimate control over their contributions and that the intermediary political committee exercises no discretion with regard to the disposition of the conditional funds.”¹² Accordingly, the Commission has previously authorized a joint fundraising committee to solicit, accept, and hold in escrow, contributions that would be disbursed to unregistered state political party committees only if a given condition, objectively determinable and outside of the joint fundraising committee’s control, occurred. Contributions allocable to the unregistered state political party committees would be disbursed to each such committee only if the FEC affirmatively recognized the committee as a state party committee by a set date.¹³

The Committee’s proposed joint fundraising committee meets the requirements both for joint fundraising activity and for soliciting and accepting conditional contributions. The Committee’s

⁵ 11 C.F.R. § 102.17(c)(1)-(2).

⁶ *Id.* § 102.17(b)(1).

⁷ *Id.*

⁸ *Id.* § 102.17(c)(3)(ii).

⁹ *Id.*

¹⁰ FEC, Adv. Op. 2016-15 (Gary Johnson Victory Fund) at 4.

¹¹ *Id.*; FEC, Adv. Op. 2014-19 (ActBlue) at 3-4.

¹² Adv. Op. 2016-15 (“GJVF”) at 5.

¹³ *Id.*

proposal complies with the procedures for joint fundraising under the Act and Commission regulations. The Committee will:

- establish and register with the Commission a new committee to serve as its joint fundraising representative for all fundraising it does with the nominee fund.
- enter into a written agreement with the host of the nominee fund that identifies the joint fundraising representative and states a formula for the allocation of fundraising proceeds, which will be included in a joint fundraising notice with every solicitation for contributions.
- establish a separate depository account to be used solely for the receipt and disbursement of the joint fundraising proceeds, and only accept contributions from donors up to the total amount that a donor could contribute to the Committee and the Nominee under the Commission's contribution limits (individuals who are permitted to contribute to federal candidates under the Act and Commission regulations and non-multicandidate committees will be able to contribute up to \$12,900, with up to \$2,900 allocated for the Nominee for the general election and up to \$10,000 allocated for the Committee for the current calendar year; multicandidate committees will be able to contribute up to \$10,000, with up to \$5,000 allocated to the Nominee for the general election, and up to \$5,000 allocated to the Committee for the current calendar year).
- require the Nominee to ratify the joint fundraising agreement within ten days of the Nominee being elected at the Wisconsin Democratic primary election for U.S. Senate.

No funds will be disbursed to the Nominee until they ratify said agreement so that there is a joint fundraising agreement in place between the Committee and the Nominee. If the Nominee ratifies the joint fundraising agreement within the ten-day timeframe, the joint fundraising committee will work with the Nominee to forward the funds allocated to the Nominee in accordance with 11 CFR § 102.17(b). As part of the joint fundraising agreement, the Nominee will be required to amend their Statement of Candidacy and their authorized candidate committee's Statement of Organization to add the joint fundraising committee as its joint fundraising representative and to show the joint fundraising bank account as an additional depository. If the Nominee does not ratify the joint fundraising agreement within the ten-day period, the joint fundraising committee will refund the funds that had been allocated to the Nominee.

The Committee's proposed joint fundraising committee is also analogous to the proposals for conditional fundraising previously approved by the Commission in the past.¹⁴ Any joint

¹⁴ See *id.*; Adv. Op. 2014-19 (ActBlue) at 3-4 (approving nominee fund to raise funds for an eventual nominee where the triggering condition was that the nominee be a woman, to be met by the date of nomination, and funds would be

fundraising committee that the Committee establishes with a nominee fund will adhere to the FEC's criteria for raising conditional contributions: (1) there is an objectively determinable condition that would trigger the planned disbursement of the funds to the Nominee, that is outside the control of the joint fundraising committee – funds allocable to the Nominee will be held in escrow and disbursed to the Nominee only upon Wisconsin declaring a winner of the 2022 Democratic primary election for U.S. Senate (the triggering condition of the nominee fund) and the Nominee ratifying the joint fundraising agreement entered into by the nominee fund and the Committee; (2) the joint fundraising committee will set a date by which the triggering conditions for disbursement to the Nominee must be met – ten days from the winner of the Democratic primary election for U.S. Senate in Wisconsin being declared; (3) the joint fundraising committee will refund the funds allocated to the Nominee if the triggering conditions are not met; and (4) the joint fundraising committee will clearly communicate the foregoing criteria to contributors.

For these reasons, we ask the Commission to confirm that the Committee may establish a joint fundraising committee with a nominee fund.

Very truly yours,



Jacquelyn K. Lopez
Sarah N. Mahmood
Counsel to Democratic Party of Wisconsin Federal

disbursed to a lawful non-candidate recipient if the triggering condition was not met, and the fund notified contributors of these criteria in advance); Advisory Opinion 2006-30 (ActBlue) (approving draft fund to raise funds for an eventual candidate where the triggering condition was the individual's filing of the Statement of Candidacy by specified date, funds would be disbursed to lawful non-candidate recipient if the triggering condition was not met, and the fund notified contributors of these criteria in advance); Advisory Opinion 2003-23 (WE LEAD) (approving nominee fund where the triggering condition was the presidential candidate winning a majority of pledged convention delegates, the funds would be disbursed to lawful non-candidate recipient if condition was not met, and the fund notified contributors of these criteria in advance).

From: [Sarah Mahmood](#)
To: [Heather Filemyr](#); [Jacquelyn Lopez](#)
Cc: [Amy Rothstein](#)
Subject: RE: submission on behalf of Democratic Party of Wisconsin Federal
Date: Wednesday, June 1, 2022 12:30:43 PM

Thanks, Heather. We can confirm the following:

1. The nominee fund is a separate account of an existing non-connected political committee registered with the Commission. This existing non-connected political committee is not an affiliated committee with the Democratic Party of Wisconsin Federal.
2. None of the following committees have any role in selecting the democratic party's nominee for U.S. Senate in Wisconsin: (1) the Democratic Party of Wisconsin Federal, (2) the non-connected political committee with the nominee fund account, and (3) the joint fundraising committee.
3. There are multiple candidates running in the democratic party primary.

Sarah N. Mahmood
Associate
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(she/hers)

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From: Heather Filemyr [REDACTED]
Sent: Wednesday, June 1, 2022 8:52 AM
To: Jacquelyn Lopez <jlopez@elias.law>; Sarah Mahmood <smahmood@elias.law>
Cc: Amy Rothstein [REDACTED]
Subject: submission on behalf of Democratic Party of Wisconsin Federal

Ms. Lopez and Ms. Mahmood:

Thank you for speaking with us yesterday about your submission on behalf of the Democratic Party of Wisconsin Federal. My understanding of the additional information you provided is as follows:

1. The nominee fund is a separate account of an existing non-connected political committee registered with the Commission. This existing non-connected political committee is not an affiliated committee with the Democratic Party of Wisconsin Federal.
2. None of the following committees have any role in selecting the democratic party's nominee for U.S. Senate in Wisconsin: (1) the Democratic Party of Wisconsin Federal, (2) the non-connected political committee with the nominee fund account, and (3) the joint fundraising committee.
3. The party's constitution prohibits the party from making endorsements in the U.S. Senate primary in Wisconsin, and there are multiple candidates running in the democratic party primary.

Please send me an email that either confirms the accuracy of these statements or corrects them.

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

Sincerely,

Heather Filemyr
Attorney
Federal Election Commission