



FEDERAL ELECTION COMMISSION

Washington, DC

MEMORANDUM

TO: The Commission

FROM: Office of the Commission Secretary ^{VFV}

DATE: January 10, 2024

SUBJECT: AOR 2023-09 (Cortez Masto) – Comment on Drafts A and B

Attached is a comment received from Elias Law Group on behalf of the requestor regarding AO 2023-09 (Cortez Masto) Drafts A & B. This matter is on the January 11, 2024 Open Meeting Agenda.

Attachment

RECEIVED

By Office of the Commission Secretary at 12:18 pm, Jan 10, 2024

RECEIVED

By Office of General Counsel at 11:34 am, Jan 10, 2024



250 Massachusetts Ave NW, Suite 400 | Washington, DC 20001

January 10, 2024

BY ELECTRONIC MAIL DELIVERY

Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

Re: Comments Regarding Advisory Opinion 2023-09 (Cortez Masto) – Drafts A and B

Dear Commissioners:

On behalf of Senator Catherine Cortez Masto (the “*Requestor*”), we submit this comment regarding Drafts A and B of Advisory Opinion 2023-09. We support the conclusion reached by both drafts, which is consistent with the text and purpose of the Federal Election Campaign Act, as amended (the “*Act*”), as well as Supreme Court and Federal Election Commission (the “*Commission*”) precedent.

Both drafts correctly conclude that Requestor may establish a Nevada political action committee (the “*State PAC*”) to raise and spend funds *only* in connection with Nevada *non-federal* elections, and, when accepting funds to the state PAC, Requestor need not aggregate such funds with contributions made by the same source to Requestor’s federal leadership PAC (the “*LPAC*”). Both drafts determine that Commission regulations setting an aggregate contribution limit for affiliated committees applies only to “contributions” as defined by the Act. To constitute a “contribution” under the Act, funds must be given “for the purpose of influencing an election for Federal office[.]”¹ Because all funds solicited to Requestor’s State PAC would be used exclusively for Nevada state and local elections, both drafts appropriately observe that such funds are not “contributions” under the Act and need not be aggregated with contributions made to the LPAC from the same source.

The conclusion that funds raised into the State PAC are not subject to aggregation with contributions to the LPAC is mandated by Supreme Court precedent and consistent with the Commission’s interpretation of the Act. In *McConnell v. FEC*, the Supreme Court, in analyzing the federal soft money prohibition at 52 U.S.C. § 30125(e)(1)(B), recognized that federal officeholders may raise federally permissible funds for a state committee under a separate contribution limit. The Court explained that 52 U.S.C. § 30125(e)(1)(B) “doubles the limits on what individuals can contribute to or at the behest of federal candidates and officeholders”² And

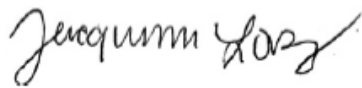
¹ 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

² *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 181 n.70 (2003).

in Advisory Opinion 2005-02 (Corzine II), the Commission concluded that a federal officeholder may solicit federally-permissible funds from donors under a separate limit to a state party's nonfederal account without regard to any contributions previously solicited by those donors to the federal account.³

Both drafts reach the right result in concluding that Requestor may solicit federally permissible funds for her State PAC without having to aggregate funds donated from the same sources to her federal LPAC. Accordingly, we urge the Commission to issue an advisory opinion adopting this conclusion.⁴

Very truly yours,



Jacquelyn Lopez
Jonathan Peterson
Kaveri Sharma

Counsel to Senator Catherine Cortez Masto

³ Fed. Election Comm'n, Adv. Op. 2005-02 (Corzine II) at 6.

⁴ Draft B concludes that "Senator Cortez Masto is not a candidate for office." Draft B at 4. For clarity, Senator Cortez Masto is a candidate for federal office but is not a candidate for state office in Nevada. Additionally, for the avoidance of any doubt regarding Requestor's proposed activities as discussed in Draft B, we do anticipate that the State PAC's major purpose will be to support the election of nonfederal candidates to state office.