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July 19, 2010

OFFICE OF GENERAL
COUNSEL

Federal Election Commission
Office of the General Counsel
999 E St, NW
Washington, DC 20463

AOR 2010-17

Re: **Advisory Opinion Request**

Dear Commissioners:

On behalf of Stutzman for Congress, the principal campaign committee (the "Committee") for Sen. Marlin Stutzman, I respectfully request an advisory opinion from the Federal Election Commission (the "Commission") pursuant to 2 U.S.C. § 437f, regarding the redesignation of contributions that exceed the limitations for a single election from a general election to a special election to be held on the same day.

FACTS

Upon the resignation of the incumbent Member of Congress from Indiana's 3rd Congressional District, the State of Indiana called a special election to fill the remainder of the incumbent's term in the 111th Congress. The State set the special election for the same day already set for the general election—November 2, 2010—for the election of a Member of Congress for the 112th Congress.

Sen. Marlin A. Stutzman, having been nominated by the Republican Party, is a candidate in both the general election and the special election.

QUESTION PRESENTED

May the Committee use the procedure set out in 11 CFR § 110.1(b)(5)(ii)(B), commonly referred to as presumptive redesignation, to treat all or part of the amount of a contribution made with respect to the general election that would exceed the limitations for a contribution made with respect to that election as though it were made with respect to the special election? Or, more simply, may the Committee presumptively redesignate an excess general election contribution to the special election?

DISCUSSION

Under the Federal Election Campaign Act of 1971, as amended (the "Act"), contribution limitations for campaign committees are established on a per donor, per election basis. The limitation is set out in 2 U.S.C. § 441a, which provides, in relevant part, that "no person shall make contributions to any candidate and his authorized political committee with respect to any election for Federal office which, in the aggregate, exceed [\$2,400]" (2 U.S.C. § 441a(1)(A)). This limitation applies separately to each

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election (defined by the Act as, in relevant part, "a general, special, primary, or runoff election" (2 U.S.C. §431(1)(a))). In Sen. Stutzman's case, the limitation applies separately to the general election and to the special election.

Prior to 2003, Commission regulations had required that a contribution be (1) designated in writing by the contributor for a specific election, (2) designated for the next election after the contribution is made, or (3) in certain circumstances, redesignated in writing by the contributor upon request of the committee.

In order to simplify the redesignation procedures, the Commission promulgated new regulations establishing "presumptive redesignation" as it presently exists (See "Contribution Limitations and Prohibitions (Notice—Final rules)." Federal Register 67:223 (November 19,2002) p. 69,930 et seq., "Final Rule").

In proposing the new regulation, the Commission noted that the new procedure "would be designed to minimize the administrative burden on authorized committees when a contributor's intent could be reasonably inferred" ("Contribution Limitations and Prohibitions (NPRM)." Federal Register 67:163 (August 22, 2002) p. 54,371, "NPRM").

In adopting the regulation, the Commission noted its agreement "with the commenter who noted the reasonableness of a presumption that a contributor of a large contribution to a primary election campaign would also support the general election campaign of the same candidate. That commenter reasoned that the primary and general elections occur in the same year and are two stages of one process to elect a candidate to a particular office." (Final Rule, p. 69,930).

The rationale identified by the Commission in adopting the "presumptive redesignation" procedure applies even more strongly to the question presented here.

First, the administrative burden on the Committee without the availability of a presumption is substantially greater than in an ordinary primary election—general election situation. In addition to the already cumbersome information collection requirements that come with soliciting contributions, the Committee would be required to explain the need to designate all or a portion of a contribution to one election or another, despite the fact that the campaign for the two elections is the same. The Committee would be required to regularly seek written redesignations, keep extensive records on requests for redesignation and receipt of responses, as well as file amended reports and responses to requests for additional information to remedy reports of excessive contributions.

Second, the reasonableness of the presumption that a contributor supporting Sen. Stutzman in the general election would also support his special election campaign is at least as compelling as the primary election contributor-general election contributor presumption in the regulation. A contributor who believes Sen. Stutzman should be elected to the 112th Congress seems very likely to support him to fill the seat for remaining 60 days of the 111th Congress.

Additionally, the inability of the Committee to apply the most often used provision of this regulation—the designation of any contribution not designated in writing by the contributor for the next election after the contribution is made—would tremendously increase the administrative burden. As both the general and special election occur on the same day, neither can be "the next election," so the regulation

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could be read to require the Committee to seek a written designation from every contributor who fails to specifically designate their contribution at the time they make it.

CONCLUSION

In the unusual case of a general election and a special election being held on the same day, I respectfully request that the Commission allow the Committee to use the simplified method of presumptive redesignation. Such a decision would be consistent with both the contribution limitations in the Act and the Commission's regulations implementing those limitations.

Should you have any questions about this request or need any further information, please contact me by e-mail at Chris@ElectionCFO.com or by phone on 571-482-7690.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris M. Marston", with a long horizontal flourish extending to the right.

Christopher M. Marston



Chris Marston
<chris@ElectionCFO.com>
Sent by:
chris.marston@gmail.com

07/29/2010 06:38 PM

To rkноп@fec.gov

cc

bcc

Subject Stutzman for Congress Advisory Opinion Request

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Dear Mr. Knop,

Following up on our phone conversation, I write to clarify that Stutzman for Congress' request relates only to the presumptive redesignation of any excessive portion of an undesignated contribution.

For example, if the campaign were to receive a \$3,000 contribution with no designation by the donor, we hope to presumptively redesignate \$600 (the amount in excess of the \$2,400 limit for a general election contribution) to the Special Election.

If you have any additional questions about the request, please feel free to contact me by reply e-mail or by phone.

Sincerely,
Chris Marston