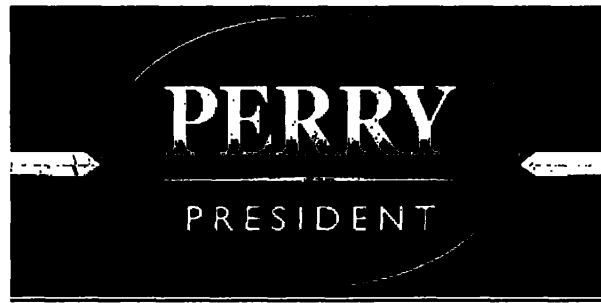


AOR 2012-06

RECEIVED  
FEDERAL ELECTION  
COMMISSION

2012 FEB 13 PM 12:38

OFFICE OF GENERAL  
COUNSEL



February 13, 2012

Anthony Herman  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: Advisory Opinion Request

Dear Mr. Herman:

Governor Rick Perry was a Republican candidate for President of the United States during the 2012 primary-election. RickPerry.org, Inc. ("the Committee") is his principal campaign committee, as defined in 2 U.S.C. § 431(5).

*Question 1*

On January 19, 2012 Governor Perry suspended his campaign and was no longer a candidate after that date, therefore the Committee would like to transition to "non-connected PAC" status by amending its Form 1 by April 30th, 2012. See 2 U.S.C. s. 441a(a)(4); FEC Adv. Op. 1978-86.

The Committee has not accepted or solicited any contributions for the Committee (nor any for the new proposed PAC) since January 19, 2012, but would like to potentially use both new contributions and residual funds in its primary-election account to finance its activities once it transitions to non-connected PAC status. The Committee has not yet determined whether it will become a multi-candidate PAC, non-multi-candidate PAC or a Super PAC, though it will happily accept any guidance from the Commission as to a preferred course of action based on the requested AOR outlined below.

The Committee received donations designated for the 2012 general-election in the amount of approximately \$270,000. These donations are kept in a separate bank account to ensure that none of these funds were used for the primary-election in accordance with 11 C.F.R. § 102.9(e). The Committee still holds these general-election funds in that segregated bank account.

On January 19, 2012 the Committee mailed out letters asking general-election contributors to redesignate their contributions so that they may remain in the Committee's account and be used for purposes consistent with the Committee's proposed new non-connected PAC status. All general-election contributions not redesignated within 60 days (not including days during which this Advisory Opinion Request is pending before the Commission) will be refunded. As of the date of this AOR the Committee has already received written redesignation requests for nearly \$30,000 and has received written refund requests for at least \$100,000 of these funds.

The Committee has a detailed tracking sheet, updated daily that denotes the following status for each donation:

1. Whether the donor has responded that they want to redesignate their funds,
2. Whether the donor would like a refund or
3. Whether the donor has not yet responded to the Committee letter.

After approval of this AOR the Committee will then, use all remaining redesignated funds for purposes consistent with its new non-connected PAC status. None of these funds will be spent until such time as the Commission has reviewed and approved our AOR. Any donors who have responded and requested a refund will be mailed their checks no later than March 19<sup>th</sup>, 2012.

(Note: If the Committee chose to do so in accordance with 11 CFR §102.3(a)(1) the Committee currently could apply to the FEC to terminate its existence as it has no net debts or obligations outstanding related to the primary-election.)

## *Question 2*

Alternatively, the Committee would like the Commission to consider whether or not Governor Rick Perry, as a former federal candidate for President of the United States, may within 60 days (not including the days that this AOR is pending before the Commission) instead redesignate donations originally earmarked for the 2012 general-election cycle on behalf of his principal campaign committee "RickPerry.org, Inc." to a state campaign committee in this case Governor Perry's gubernatorial campaign committee, *Texans for Rick Perry* which will comply with and follow all applicable Texas state laws. 2 U.S.C. 439a(a); *see also* 11 CFR 113.2.

The Committee respectfully requests a reply from the Commission if there is any objection to either of these two proposed courses of action or if the Commission believes these courses of action are not consistent with federal campaign finance rules as the Committee understands them.

## LEGAL DISCUSSION

It is clear from prior FEC rulings that any principal campaign committee can at a later date transform itself into a non-connected PAC and/or multicandidate PAC. FEC Advisory Opinion 1988-41 confirms that:

The Commission has previously recognized that the principal campaign committee of an individual who is no longer a candidate may convert to multicandidate committee status. See, e.g., Advisory Opinions 1987-11 and 1985-30. The Commission notes that the converting committee must amend its Statement of Organization to redesignate itself as a nonconnected political committee 'no later than 10 days after the date of the change.' 2 U.S.C. 433(c).

The Commission has also previously provided guidance in Advisory Opinions 1992-15 and 2008-04 that speaks directly to allowing a principal campaign committee to redesignate general-election funds for an election in a future election cycle.

The FEC stated in Advisory Opinion 1992-15:

A contribution is redesignated for another election if several conditions are satisfied. The treasurer of the recipient authorized committee must request that the contributor submit a written redesignation and must inform the contributor that he or she may instead request a refund, and the contributor must provide a valid written and signed redesignation within 60 days of the treasurer's receipt of the contribution. 11 CFR 110.1(b)(5)(ii)(A) and (B) and 110.2(b)(5)(ii)(A) and (B). Redesignation to a particular election may only occur to the extent that the amount redesignated does not cause the contributor to exceed his or her limit for that election. If redesignation is for a previous election, the amounts redesignated cannot exceed the net debts outstanding from that election. 11 CFR 110.1(b)(5)(iii) and (b)(3)(i), 110.2(b)(5)(iii) and (b)(3)(i).

And the FEC declared in Advisory Opinion 2008-04:

A presidential candidate receiving general-election funds prior to becoming the party's nominee, and who does not become the party's nominee, may refund any general-election funds received from contributors. See 11 CFR 102.9(e)(3); Advisory Opinion 2007-03 (Obama). Alternatively, the presidential candidate in such a situation may obtain redesignations for a different election in accordance with 11 CFR 110.1(b)(5) or 11 CFR 110.2.

After a detailed review of prior AO requests the FEC does not seem to have specifically referenced any opinions or decisions to our current two questions:

- (1) Whether general-election donors may redesignate their contributions for use in a future election cycle directly for a non-connected PAC founded by the Committee's principal candidate or
- (2) To redesignate their contributions to a state campaign committee on behalf of the Committee's principal candidate.

Nevertheless, the Committee believes that the use of redesignated funds for non-connected PAC purposes is highly analogous to the previous instances raised in the AOs discussed above, which particularly approved by the FEC for principal candidate campaign committees' future use of redesignated funds between federal accounts. For example, the FEC should vote in favor of this AOR based on the precedent of Advisory Opinion 2008-04, where then-Senator Dodd's contributors were allowed to redesignate presidential general-election contributions to his Senate campaign, because as of this date former Senator Dodd now has surplus funds in his old Senate campaign account that he can at any time convert to a new non-connected PAC. Put differently, like cases ought to be treated alike. Senator Dodd's surplus funds began as general-election presidential contributions and now may be converted for use to a non-connected PAC should he choose to form one. The FEC should not prevent the Committee's redesignated general-election presidential contributions from being used for non-connected PAC purposes simply because it does not possess an affiliated Senate campaign to act as an intermediary in between cycles.

In conclusion, the Committee would like to pursue either of these courses of action by April 30th, 2012. The Committee therefore respectfully requests that the Commission issue an opinion letting the Committee know if its plan to use general-election contributions redesignated by contributors for non-connected PAC purposes is not permissible under federal law.

Alternatively, the Committee would also like to know if the Commission would issue an opinion letting the Committee know if it would instead be allowed to use general-election contributions redesignated by contributors for use in a state campaign committee on behalf of Governor Rick Perry.

Sincerely,



Salvatore Purpura  
Treasurer  
RickPerry.org, Inc.  
PO Box 1708  
Austin, TX 78767