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March 28, 2014

Lisa J. Stevenson
Deputy General Counsel
Office of General Counsel
Federal Election Commission
999 E Street N.W.
Washington, DC 20463

RE: Advisory Opinion Request of Lindsey for Congress, Inc.

Dear Ms. Stevenson:

This law firm serves as legal counsel to Lindsey for Congress, Inc. (the "Committee"), the authorized principal campaign committee of Edward Lindsey, a candidate for the House of Representatives from Georgia's 11th Congressional District.[1] Pursuant to 2 U.S.C. § 437f(a)(2), the Committee requests an Advisory Opinion from the Federal Election Commission (the "Commission" or the "FEC") on whether the Committee may make independent expenditures (as defined under state law rather than under federal law) on advertisements that will expressly advocate for the election of certain state and local candidates as well as for Mr. Lindsey.

Because this request is being submitted within the 60-day period prior to the Georgia primary election on May 20, 2014, we respectfully request that the FEC address this matter on an expedited basis, and that it issue a written advisory opinion with twenty (20) days as set out in 2 U.S.C. § 437f(a)(2).

FACTUAL BACKGROUND

The Committee intends to spend funds for television and other advertisements that will expressly advocate for Mr. Lindsey's election. The Committee intends for some of those advertisements also to identify certain state and/or local candidates, and to expressly advocate for

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[1] The Committee is incorporated for liability purposes pursuant to 11 C.F.R. § 114.12.

their election as well as Mr. Lindsey's election. The Committee will make those expenditures because it believes that encouraging support for candidates who will appear on the same ballot as Mr. Lindsey and who share Mr. Lindsey's policy positions and values will further enhance Mr. Lindsey's candidacy. The candidates may be running for state or local office within or outside of the 11th Congressional District. None of the candidates will be running for federal office.

The Committee will comply with Georgia's state campaign finance law in making these expenditures. That law is set out in the Government Transparency and Campaign Finance Act, O.C.G.A. § 21-5-1 et seq. (the "Georgia Act"), and in the rules of the Government Transparency and Campaign Finance Commission (the "Georgia Rules"). Under the Georgia Act and the Georgia Rules, it is permissible for entities such as the Committee to make unlimited independent expenditures in support of state and local candidates, so long as the expenditures are not "made with the cooperation or consent of, or in consultation with, or at the request or suggestion of any candidate or any of his or her agents or authorized committees." Georgia Commission Rule 189-3-.01(5)(f). In other words, in order to be independent under state law, an expenditure must not be coordinated with the candidate that it benefits.

The Committee intends to fully comply with these state law requirements in using its funds to make independent expenditures in support of state and local candidates in Georgia. The Committee will also fully comply with the provisions of the Georgia Act that require registration and reporting by independent committees that make such expenditures. A portion of the cost of each advertisement will be allocated as an independent expenditure to the state or local candidate(s), and will be reported as such to the Georgia Commission. The expenditures will also be reported on the Committee's disclosure reports with the FEC.

QUESTION PRESENTED

1. Is it permissible under the Federal Election Campaign Act, 2 U.S.C. 431 et seq. (the "Act") and the FEC's regulations for the Committee to spend unlimited amounts on independent expenditures (as defined under Georgia state law rather than under federal law) in support of state and local candidates in Georgia, provided that the expenditures are done in compliance with applicable state law? We respectfully submit that the answer is yes.

LEGAL ANALYSIS

Section 439a(a) of the Act outlines the permissible uses of federal candidate campaign funds. It provides in relevant part as follows:

> A contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of Federal office, may be used by the candidate or individual -- (1) for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual; . . . (5) for donations to State and local candidates subject to the provisions of State law; or (6) for any other lawful purpose unless prohibited by subsection (b) of this section [relating to personal use of campaign funds].

2 U.S.C. § 439a(a); see also 11 C.F.R. § 113.2. We respectfully submit that making independent expenditures in support of state and local candidates is permissible under subsections (1) and (6).

As to subsection (1), the FEC held in AO 2004-29 that contributions to state ballot initiative committees, and donations to state and local candidates (at a time before the Act had been amended to expressly permit such donations) were permissible under this subsection, "because in the situation you describe, these uses of contributions by Representative Akin will be in connection with his campaign for reelection." The Commission explained that,

> [a]s described in your request, Representative Akin's support for the Defense of Marriage Amendment and opposition to the Gambling Amendment were integral parts of his reelection campaign. Representative Akin's donating campaign funds to ballot initiative committees on the defense of marriage and on gambling are in connection with his campaign for Federal office. Thus, these donations are permissible under 2 U.S.C. 439a(a)(1).

AO 2004-29.

A similar conclusion is warranted here. Mr. Lindsey's expenditures in support of state or local candidates will be made in connection with his own campaign for federal elected office. The state and local candidates will be cited in the same advertisements that mention Mr. Lindsey, and they will be on the ballot at the same time. By supporting candidates who share Mr. Lindsey's policy positions and values, and by identifying him with candidates with whom he agrees, the Committee will be able to use these expenditures not only to further the election prospects for these state and local candidates, but also to further Mr. Lindsey's own candidacy. As such, these expenditures are "in connection with" his own campaign for Federal office, and thus permissible under 2 U.S.C. § 439a(a)(1).

With respect to subsection (6), it is axiomatic that one engages in a "lawful purpose" when making independent expenditures in support of candidates for elected office. The right to make such expenditures is protected by the First Amendment to the United States Constitution.

See, e.g., Citizens United v. Federal Election Com'n, 558 U.S. 310, 130 S.Ct. 876 (2010). The making of such expenditures by a federal candidate also would not amount to personal use of campaign funds. As such, such spending is permissible under 2 U.S.C. § 439a(a)(6).

In addition to the fact that the right to make such expenditures is protected by the Constitution, the Act itself also clearly contemplates that federal candidates may spend campaign funds in connection with state and local elections. As noted above, under the Act is is permissible for federal candidates to make "donations to" State and local candidates. 2 U.S.C. § 439a(a)(5). While we assume that this does not directly apply to independent expenditures, because independent expenditures are not funds provided "to" candidates but are instead funds spent independently of those candidates to support their election, subsection (5) does, however, clearly support the proposition that Congress intended to permit federal candidates and their authorized committees to make expenditures in connection with state and local elections.

In addition, section 441i(e)(1)(B) of the Act states that:

> A candidate, individual holding Federal office, agent of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office, shall not . . . (B) solicit, receive, direct, transfer, or spend funds in connection with any election other than an election for Federal office or disburse funds in connection with such an election unless the funds . . . (i) are not in excess of the amounts permitted with respect to contributions to candidates and political committees under paragraphs (1), (2), and (3) of section 441a(a) of this title . . . .

2 U.S.C. § 441i(e)(1)(B)(i) (emphasis added); see also 11 C.F.R. § 300.2. This provision clearly contemplates that federal candidates may spend funds "in connection with" state and local elections, provided that the expenditures come from federally-permissible funds that have been lawfully accepted by the candidate's authorized committee. That will be the case here.

It bears noting that, in AO 2007-29, the Commission held that, under the "any other lawful purpose" prong of the statute, a federal candidate may spend unlimited amounts on elections for state political party office. In addition, in AO 2012-34, the Commission authorized a federal candidate to contribute funds in unlimited amounts to a federal, nonconnected independent expenditure-only political committee ("IEOPC"). In so doing, the Commission reiterated that "[a] principal campaign committee's use of its campaign funds to make contributions to other political committees is a lawful purpose."

While these advisory opinions are not directly on point, the reasoning in them supports the conclusion that federal candidates may make unlimited independent expenditures from their authorized committees in support of state and local candidates. Quite simply, if it is permissible to spend federal funds on "donations to" state and local candidates, and it is permissible to donate federal funds in unlimited amounts to federal IEOPCs for independent expenditures in federal elections, it should be permissible to use federal funds to make unlimited direct independent expenditures in support of state and local candidates. This is particularly true given that, as the Supreme Court has repeatedly emphasized, there is a First Amendment right to make such expenditures.

We respectfully request that the Commission promptly issue an advisory opinion confirming that this is the case. If you have any questions, feel free to contact the undersigned at 770-630-5927. Thank you for your prompt consideration of this matter.

Sincerely,

Douglas Chalmers, Jr.

Cc: Jennifer McNeely