FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 30, 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2006-26

Jan Witold Baran, Esquire
D. Mark Renaud, Esquire
1776 K Street, N.W.
Washington, D.C. 20463

Dear Messrs. Baran and Renaud:

We are responding to your advisory opinion request on behalf of Texans for Henry Bonilla ("the Bonilla Committee") concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the contribution limits that apply to the 23rd congressional district after a court order altered its boundaries in the middle of a general election period. Specifically, you ask whether the contribution limits for the newly scheduled November 7, 2006, special general election are separate and distinct from the contribution limits that applied to the now-cancelled November 7 regular general election in the 23rd congressional district.

The Commission concludes that the contributions for the newly scheduled special general election are separate and distinct from the contribution limits that applied to the now-cancelled November 7 regular general election, and the Bonilla Committee may accept contributions for the newly scheduled special election, as described below.

Background

The facts presented in this advisory opinion are based on your letter received on August 17, 2006.

The Bonilla Committee is the principal campaign committee of Representative Henry Bonilla who is seeking re-election to the House of Representatives from the 23rd congressional district of Texas. He ran unopposed in the March 7, 2006, primary.

On August 4, 2006, a three-judge panel of the U.S. District Court for the Eastern District of Texas, on remand from the U.S. Supreme Court,[1] ordered new boundaries for five congressional districts in Texas, including the 23rd district. *See League of United Latin American Citizens v. Perry*, Civil No. 2:03-CV-354 (E.D. Tex Aug. 4, 2006). The court also ordered that special general elections for the House seats in these districts be held on November 7, 2006, in conjunction with the general election for other Federal and non-Federal offices in Texas.[2] These special general elections will be held instead of the previously scheduled regular general elections for the House seats in these five districts. The special general elections will be open to all who qualify for the ballot in accordance with the court-ordered filing deadlines, and will not be limited to the primary winners from earlier in 2006. If no candidate receives a majority of votes in any of the five districts, a runoff election for the seat between the two candidates receiving the most votes in that district's election will be held on a date to be determined later.

As a result of the court order, Representative Bonilla is no longer his party's nominee but will be, instead, a candidate in the special general election in the 23rd district, which may involve other candidates of his party as well as multiple candidates from other parties.

Question Presented

Are the contribution limits for the newly scheduled November 7, 2006, special general election separate and distinct from the contribution limits that applied to the now-cancelled November 7 regular general election in the 23rd congressional district?

Legal Analysis and Conclusions

Yes, the limits on contributions to the Bonilla Committee that would apply with respect to the newly scheduled special general election will be separate and distinct from the limits on contributions with respect to the now cancelled regular general election.

In Advisory Opinions 1996-36 (Representatives Sheila Jackson Lee, Martin Frost, Ken Bentsen, Gene Green, and Eddie Bernice Johnson) and 1996-37 (Kevin Brady), the Commission addressed similar requests from candidates for the House of Representatives who had been nominated in Texas primaries or primary runoffs held earlier in 1996. Both advisory opinions involved an August 5, 1996, Federal court order redrawing the boundaries of thirteen congressional districts in Texas.[3] The court order set special general elections in those districts that were open to all candidates who qualified for the ballot for the special election, and were not limited to those who had been nominated earlier in the year. If no candidate captured a majority of votes in one of these special elections, then a runoff similar to the one ordered by the district court in 2006 would have been held. Both of these 1996 advisory opinions addressed the

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[1] *See League of United Latin American Citizens v. Perry*, __U.S. __, 126 S. Ct. 2594 (2006).
[2] Although the district court's order refers to the newly scheduled election only as a "special election," the election is a "special general election" under Commission regulations. *See* 11 CFR 100.2(b)(1) and (2); *see also* 11 CFR 100.2(f).
[3] *See Vera v. Bush*, 933 F. Supp. 1341 (S.D. Tex. 1996).

question you ask here and concluded that the regular general election and the new special general election were separate elections for the purposes of the Act's limitations.[4]

The Commission considers Representative Bonilla's situation to be materially indistinguishable from the situations presented by the previously nominated candidates in Advisory Opinions 1996-36 and 1996-37. Like those candidates, Mr. Bonilla was running in a general election as his party's nominee from March 8, 2006, until August 4, 2006. The August 4 district court decision, while not voiding the holding of the March primary for the purposes of the Act's contribution limitations, nullified the results of the March primary. After August 4, Representative Bonilla was placed in a new electoral situation created by the district court, whereby he was no longer his party's nominee but was, instead, a candidate in an election that could involve other candidates of the same party as well as other parties. The effect of the district court's decision, therefore, was to create a new general election contest, beginning on August 5, 2006, and running through November 7, 2006; the decision created, in effect, a different election campaign period from the one that began on March 8 and ended on August 4, 2006.

The Commission concludes, therefore, that one election limit applies to contributions made before August 5, 2006, to the Bonilla Committee for the regular general election and a separate, special general election limit applies to contributions made after August 4 to the Bonilla Committee.[5] Thus, any lawful contribution made to the Bonilla Committee before August 5, 2006, with respect to the regular general election will not count toward the separate limit that will apply to contributions for the November 7 special general election. The applicable limits are $5,000 per election for contributions from multicandidate committees and $2,100 per election for contributions from persons other than multicandidate committees. *See* 2 U.S.C. 441a(a)(1)(A) and (2)(A); 11 CFR 110.1(b)(1) and 110.2(b)(1).

With respect to the treatment of campaign debt for these elections, the Commission adopts the analysis used in Advisory Opinion 1996-36, given that the situations presented here and in that advisory opinion are materially indistinguishable. A candidate's authorized committees may determine their net debts outstanding with respect to the November 7, 2006, special general election and accept contributions after November 7 that are designated by the contributor for the special general election, so long as such contributions do not exceed the committee's net debts outstanding from that election. *See* 11 CFR 110.1(b)(3) and 110.2(b)(3). A candidate's authorized committees may not, however, determine their net debts outstanding as of August 4 and collect any contributions after that date that are designated for the regular general election. Id.

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[4] Advisory Opinion 1996-36 also addressed additional questions, including those pertaining to the application of the annual (now biennial) aggregate limits at 2 U.S.C. 441a(a)(3), the establishment of a separate account for a possible runoff election, and the application of the party coordinated expenditure limits at 2 U.S.C. 441a(d).

[5] A contribution is considered "made" when the contributor relinquishes control over the contribution. For contributions mailed to a political committee, the postmark date on the envelope is the date the contribution is made. 11 CFR 110.1(b)(6) and 110.2(b)(6); *see also* 11 CFR 110.1(l)(4).

The Commission also notes, as in Advisory Opinions 1996-36 and 1996-37, that a contribution received by the Bonilla Committee for the March primary does not have to be aggregated with any contribution received for the regular general election or the special general election, but remains subject to the limits of 2 U.S.C. 441a(a).[6] In addition, any unused contributions lawfully made to the Bonilla Committee for the March 2006 primary election, and any unused contributions lawfully made to the Bonilla Committee for the regular general election as of August 4, 2006, do not have to be redesignated by the contributors for the special general election.[7] *See* 11 CFR 110.3(c)(3).

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)

Michael E. Toner
Chairman

Enclosures (Advisory Opinions 1996-37 and 1996-36)

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[6] Contributions received for the March primary include contributions made before the March primary and not specifically designated for another election, and contributions made after the March primary and specifically designated by the contributor for primary debt retirement (if there were net debts outstanding from the primary). *See* 11 CFR 110.1(b)(2) and (3), 110.2(b)(2) and (3).

[7] You have not asked any questions pertaining to the application of the Millionaires' Amendment, which was added to the Act by the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (2002). *See* 2 U.S.C. 441a-1; 11 CFR Part 400. Thus, the Commission is not addressing the application of the Millionaires' Amendment.