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FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 14, 2014

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by RMK*
Deputy General Counsel

Adav Noti *AN*
Acting Associate General Counsel

Amy L. Rothstein *ALR*
Assistant General Counsel

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Attorney

Subject: Draft AO 2014-03 (Lindsey for Congress, Inc.)

Attached is a proposed draft of the subject advisory opinion. We have been asked to circulate this draft for tally vote on April 16, 2014.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 9:00 am (Eastern Time) on April 16, 2014.

For more information about how to submit comments, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2014-03

2

3 Douglas Chalmers, Jr., Esq.

DRAFT

4 Political Law Group

5 A Chalmers LLC

6 5805 State Bridge Road, #G77

7 Johns Creek, GA 30097

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9 Dear Mr. Chalmers:

10 We are responding to the advisory opinion request that you submitted on behalf of
11 Lindsey for Congress, Inc. (the “Committee”), concerning the Committee’s proposed use
12 of campaign funds to finance advertisements that expressly advocate the election of Mr.
13 Edward Lindsey, who is a federal candidate, and state and local candidates. The
14 Commission concludes that the Committee may spend unlimited amounts of its campaign
15 funds to finance the advertisements.

16 ***Background***

17 The facts presented in this advisory opinion are based on your advisory opinion
18 request dated March 28, 2014 (“AOR”).

19 Mr. Lindsey is a candidate for the U.S. House of Representatives from the 11th
20 Congressional District of Georgia, and the Committee is his principal campaign
21 committee. The Committee intends to spend campaign funds for television and other
22 advertisements that will expressly advocate the election of Mr. Lindsey. Some of the
23 advertisements will also expressly advocate the election of certain state and local
24 candidates who will appear on the same ballot as Mr. Lindsey. The Committee intends to
25 make these expenditures to further Mr. Lindsey’s candidacy.

26 The Committee states that it will not coordinate these expenditures with the state
27 and local candidates and will comply with applicable Georgia campaign finance laws,

1 including provisions that require registration and reporting by entities that make
2 independent expenditures. The Committee states that it will also report the expenditures
3 to the Commission as required under the Federal Election Campaign Act, 2 U.S.C.
4 §§ 431-57 (the “Act”), and Commission regulations.

5 ***Question Presented***

6 May the Committee spend unlimited amounts of its campaign funds on public
7 communications that expressly advocate the election of Mr. Lindsey and certain state and
8 local candidates, provided that the expenditures are made in compliance with state law?

9 ***Legal Analysis and Conclusions***

10 Yes, the Committee may spend unlimited amounts of its campaign funds on
11 public communications that expressly advocate the election of Mr. Lindsey and certain
12 state and local candidates, provided that the expenditures are made in compliance with
13 state law.

14 The Act and Commission regulations identify six permissible uses of
15 contributions accepted by a Federal candidate. *See* 2 U.S.C. § 439a(a); 11 C.F.R.
16 § 113.2. These permissible uses include “expenditures in connection with the campaign
17 for Federal office of the candidate.” 2 U.S.C. § 439a(a)(1); *see also* 11 C.F.R. § 113.2
18 (providing that “defraying expenses in connection with a campaign for federal office” is
19 permissible use of campaign funds).

20 The Committee proposes to make expenditures for advertisements that expressly
21 advocate Mr. Lindsey’s election and also, in some instances, the election of certain state
22 and local candidates who are on the ballot with Mr. Lindsey. Advertising that expressly
23 advocates the election of a federal candidate is clearly “in connection with” that

1 candidate's campaign within the meaning of 2 U.S.C. § 439a(a)(1) and 11 C.F.R. § 113.2.
2 The fact that the advertising at issue here will also advocate the election of state and local
3 candidates does not affect this analysis. In any event, the Commission has previously
4 found that a federal candidate's donation of campaign funds to finance advertising by
5 state committees was "in connection with" the federal candidate's campaign where the
6 state committees were dedicated to supporting or opposing ballot initiatives on issues
7 with which the candidate had "ongoing and visible involvement." Advisory Opinion
8 2004-29 (Akin) at 2-3; *see also id.* at 6-7 (discussing ballot-initiative advertising
9 sponsored directly by campaign committee). Similarly here, the Committee believes that
10 "supporting candidates who share Mr. Lindsey's policy positions and values, and . . .
11 identifying him with candidates with whom he agrees . . . will . . . further Mr. Lindsey's
12 own candidacy." AOR at 2, 3. Accordingly, the advertisements are "in connection with"
13 his campaign for federal office. The Commission therefore concludes that they are a
14 permissible use of campaign funds under the Act and Commission regulations.¹

15 In addition to asking whether it may finance the advertisements with its campaign
16 funds, the Committee also asks whether it may spend "unlimited" amounts of those funds
17 for this purpose. The advertisements, as noted above, will expressly advocate the
18 election of Mr. Lindsey. There is no limit on the amount of lawful campaign funds that a
19 candidate may spend advocating his own election. *See Buckley v. Valeo*, 424 U.S. 1, 55-

¹ Because the Committee's proposed spending is permissible under 2 U.S.C. § 439a(a)(1), the Commission need not address the Committee's alternative suggestion that the spending is permissible under 2 U.S.C. § 439a(a)(6), which permits campaign funds to be used "for any other lawful purpose" beyond those specified in section 439a so long as the funds are not converted to personal use. 2 U.S.C. § 439a(a)(6); 11 C.F.R. § 113.2(e). The Commission nonetheless notes that there is no indication that the proposed expenditures here would be converted to personal use — that is, that they would be "used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign." 2 U.S.C. § 439a(b)(2); *see also* 11 C.F.R. § 113.1(g).

1 58 (1976) (holding unconstitutional limits on expenditures by campaign committees).
2 Furthermore, the Act provides that a federal candidate's campaign committee may not
3 solicit, direct, or spend funds in connection with non-federal elections unless the funds
4 comply with the Act's source restrictions and amount limitations. 2 U.S.C.
5 § 441i(e)(1)(B); *see also* 11 C.F.R. § 300.62. Because all of the funds at issue here will
6 be spent directly by the campaign committee, the Commission assumes that the funds
7 comply with the amount and source limits of the Act and Commission regulations. Federal
8 law therefore imposes no limit on the amount of the Committee's campaign funds that the
9 Committee may spend in connection with non-federal elections where, as here, such
10 spending is lawful under section 439a.²

11 The Commission expresses no opinion regarding whether the proposed
12 expenditures would be permissible under state or local law.

13 This response constitutes an advisory opinion concerning the application of the
14 Act and Commission regulations to the specific transaction or activity set forth in your
15 request. *See* 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in
16 any of the facts or assumptions presented, and such facts or assumptions are material to a
17 conclusion presented in this advisory opinion, then the requestor may not rely on that
18 conclusion as support for its proposed activity. Any person involved in any specific
19 transaction or activity which is indistinguishable in all its material aspects from the
20 transaction or activity with respect to which this advisory opinion is rendered may rely on
21 this advisory opinion. *See* 2 U.S.C. § 437f(c)(1)(B). Please note that the analysis or

² The Committee's advertising must comply with the applicable disclaimer requirements of the Act and Commission regulations. *See* Advisory Opinion 2004-29 (Akin) at 6-7; 2 U.S.C. § 441d; 11 C.F.R. § 110.11.

1 conclusions in this advisory opinion may be affected by subsequent developments in the

2 law including, but not limited to, statutes, regulations, advisory opinions, and case law.

3 Any advisory opinions cited herein are available on the Commission's website.

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On behalf of the Commission,

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Lee E. Goodman

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Chairman

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