



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 13, 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2016-09

Jason Torchinsky, Esq.
Steven Donaldson, Esq.
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45 North Hill Drive, Suite 100
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Dear Messrs. Torchinsky and Donaldson:

We are responding to your advisory opinion request on behalf of Martins for Congress (the “Committee”), concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 (the “Act”), and Commission regulations to contributions raised for a primary election ordered by a federal court. You ask whether the Committee may raise contributions subject to a separate contribution limit for such a primary election. The Commission concludes that the Committee may do so.

Background

The facts presented here are based on your letter received on August 24, 2016.

Jack Martins is a candidate for the U.S. House of Representatives representing New York’s 3d Congressional District. Advisory Opinion Request at AOR001 (Aug. 23, 2016). The Committee is his principal campaign committee.¹

The date of the primary election in New York for all congressional candidates was originally set at June 28, 2016.² Prior to that election, the New York State Board of Elections (“NYSBOE”) determined that Mr. Martins’s only potential opponent in the Republican primary,

¹ Jack Martins, FEC Form 2 (Jan. 7, 2016) at 1, <http://docquery.fec.gov/pdf/087/201601079004443087/201601079004443087.pdf>.

² Supplemental Remedial Order, *United States v. New York*, No. 10-cv-01214 (N.D.N.Y. Oct. 29, 2015), ECF No. 88 at 1-2 (setting “the fourth Tuesday of June” as the election date for New York’s non-presidential primary in even-numbered years).

Philip Pidot, had failed to qualify for the ballot by not obtaining the requisite number of signatures. AOR001-002. Because the primary was uncontested, and because New York law provides that uncontested primary candidates “shall be deemed nominated . . . without balloting,” the NYSBOE certified no Republican candidate in the 3d Congressional District for the June 28 ballot.³

Mr. Pidot challenged in court the NYSBOE’s determination regarding the signatures he had submitted. AOR002. Four days before the primary election, the New York Supreme Court, Nassau County, found that Mr. Pidot had obtained the required number of signatures but that it was too late to require the state to place his name on the ballot.⁴ Thus, the election of June 28 took place without any Republican candidates for the 3d Congressional District on the ballot, and Mr. Martins became the party’s nominee for the November 8, 2016, general election. AOR001. According to the request, Mr. Martins then “began focusing his efforts on the general election by raising and spending funds accordingly,” and the Committee “ceased collecting contributions for the primary.” AOR002.

Mr. Pidot filed suit in federal court, and on August 17 the U.S. District Court for the Northern District of New York ordered the NYSBOE to hold a Republican primary for the 3d Congressional District with both Mr. Martins’s and Mr. Pidot’s names on the ballot.⁵ The court ordered this primary to take place on October 6.

Question Presented

May the Committee raise contributions, subject to a separate contribution limit, in connection with the October 6, 2016, primary ordered by the federal district court?

Legal Analysis and Conclusion

Yes, the Committee may raise primary contributions subject to a new contribution limit because, under the Act and Commission regulations, the October 6, 2016, election is a different election from the June 28, 2016, election.

The Act grants authorized committees a separate limit on contributions from individuals with respect to “any election for Federal office.” 52 U.S.C. § 30116(a)(1)(A). An “election” includes “a general, special, primary, or runoff election,” *id.* § 30101(1)(A), where an individual, “whether opposed or unopposed, seek[s] nomination for election, or election, to Federal office.” 11 C.F.R. § 100.2(a). A primary election is an election “held prior to the general election, as a

³ N.Y. Election Law § 6-160(2); *see also* NYSBOE, Certification for the June 28, 2016 Federal Primary Election, <http://www.elections.ny.gov/NYSBOE/download/law/Certification2016FedCongressionalPrimaryBallot.pdf>.

⁴ AOR002; *see also* Complaint, Ex. 2, *Pidot v. NYSBOE*, No. 16-cv-00859 (N.D.N.Y. July 13, 2016), ECF No. 1-2 (attaching June 24, 2016, order of New York Supreme Court, Nassau County).

⁵ Judgment, *Pidot v. NYSBOE*, No. 16-cv-00859 (N.D.N.Y. Aug. 17, 2016), ECF No. 66. This litigation is ongoing, as Mr. Martins has intervened and filed a Motion to Alter Judgment, *see* Motion to Alter Judgment, *Pidot v. NYSBOE*, No. 16-cv-00859 (N.D.N.Y. Aug. 19, 2016), ECF No. 68. AOR002 n.1.

direct result of which candidates are nominated, in accordance with applicable State law, for election to Federal office in a subsequent election.” 11 C.F.R. § 100.2(c)(1).

Because contribution limits “apply separately with respect to each election,” 11 C.F.R. § 110.1(j)(1), “participating in multiple distinct elections can render a candidate eligible for separate contribution limits.” Advisory Opinion 2016-03 (George Holding for Congress) at 4. As the Commission recently explained, separate contribution limits are permitted when a judicial decision “create[s] a new election under the Act and Commission regulations.” *Id.* (approving separate contribution limit where state legislature, in response to court ruling, established new primary date after voting in primary had already begun); *see also* Advisory Opinion 2006-26 (Texans for Henry Bonilla) (following judicial nullification of earlier primary election results, Commission approved separate contribution limit for newly scheduled special election); Advisory Opinion 1996-37 (Brady for Congress) (same); Advisory Opinion 1996-36 (Frost *et al.*) (same).

Here, Mr. Martins ran for his party’s nomination in the June 28 primary and, according to applicable state law, was deemed the party’s nominee as of that date. Nearly two months later, a federal court essentially nullified the June 28 election and compelled the state to hold a new election. As a result, Mr. Martins is no longer the party’s nominee. The October 6 primary is therefore a new primary election for the Republican nomination for the 3d Congressional District, and the Committee may accordingly accept contributions for that election under a new contribution limit. *See* Advisory Opinion 2006-26 (Texans for Henry Bonilla).

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* 52 U.S.C. § 30108. 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. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission’s website.

On behalf of the Commission,



Matthew S. Petersen
Chairman