



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2016-15

Christina Sirois, Esq.
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Dear Ms. Sirois:

We are responding to your advisory opinion request on behalf of Gary Johnson Victory Fund concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-30146 (the “Act”), and Commission regulations to the requestor’s proposal to solicit, accept, and hold in escrow contributions for certain joint fundraising participants that are currently seeking recognition as state committees of a political party. The Commission concludes that the requestor may solicit, accept, and hold in escrow such contributions as proposed.

Background

The facts presented in this advisory opinion are based on your letter and email received on September 19 and 23, 2016, respectively.

Gary Johnson Victory Fund (“GJVF”) is a joint fundraising committee that registered with the Commission on May 24, 2016. Advisory Opinion Request at AOR001. GJVF is comprised of 25 participant committees: Gary Johnson 2016, which is the principal campaign committee of presidential candidate Gary Johnson, and 24 Libertarian committees. *Id.* None of the Libertarian committees has been recognized by the Commission as a state party committee, but 13 of the 24 committees have submitted pending advisory opinion requests seeking such recognition (the “Pending Committees”).¹ *Id.* Eight of the remaining 11 committees have

¹ The Pending Committees are: Libertarian Party of Alabama, Libertarian Party of Arkansas, Arizona Libertarian Party, Inc., Libertarian Party of Colorado, Libertarian Party of Hawaii, Libertarian Party of Idaho, Libertarian Party of Maryland, Libertarian Party of Michigan Executive Committee, Inc., Libertarian Party of

submitted letters requesting advisory opinions regarding their status as state party committees (the “Potential Requestor Committees”), but those submissions have not yet qualified as advisory opinion requests.² *Id.*; see 11 C.F.R. § 112.1. The final three Libertarian committees have not submitted advisory opinion requests seeking Commission determination of their status.³ AOR001.

GJVF solicits and accepts funds on behalf of all of its participant committees and distributes those funds according to GJVF’s joint fundraising agreement. *Id.* GJVF accepts contributions up to the combined contribution limits for the participant committees. AOR002. The contribution limit for Gary Johnson 2016 is \$2,700 per contributor, and the current contribution limit for each Libertarian committee, as a nonconnected political committee, is \$5,000 per contributor. Thus the maximum contribution GJVF may currently accept from any single contributor is \$122,700. AOR002.

GJVF proposes to solicit and accept contributions up to the maximum amount it would be able to distribute to each participating committee if all Pending Committees and Potential Requestor Committees are recognized as state party committees. *Id.* Because the limit on an individual contribution to a state committee of a political party is \$10,000, this contribution limit would be \$227,700: \$2,700 for Gary Johnson 2016, \$10,000 for each of the 21 Pending Committees and Potential Requestor Committees, and \$5,000 for each of the other 3 participating committees.⁴

With respect to the funds it accepts on behalf of the Pending Committees, GJVF proposes to hold any funds in excess of the current contribution limits in escrow until the Commission responds to the Pending Committees’ advisory opinion requests. *Id.* GJVF will not disburse to any Pending Committee contributions in excess of \$5,000 per contributor unless the Commission recognizes that committee as a state party committee. Neither GJVF nor any of the participant

Mississippi, Missouri State Libertarian Party, Libertarian Party of New Mexico, Libertarian Party of North Dakota, and Libertarian Party of Texas. See Advisory Opinion Request 2016-14 (11 State Libertarian Committees). Libertarian Party of Arkansas, Libertarian Party of Colorado, and Libertarian Party of Michigan Executive Committee, Inc. are listed in the instant advisory opinion request as committees that had not submitted requests seeking recognition as state party committees, see AOR001, but Libertarian Party of Arkansas is one of the requestors in Advisory Opinion Request 2016-14 (11 State Libertarian Committees), and Libertarian Party of Colorado and Libertarian Party of Michigan Executive Committee, Inc. have submitted separate advisory opinion requests. See Advisory Opinion Request 2016-19 (Libertarian Party of Colorado) and Advisory Opinion Request 2016-17 (Libertarian Party of Michigan Executive Committee, Inc.).

² The Potential Requestor Committees are: Libertarian Party of West Virginia, Wyoming Libertarian Party, Alaska Libertarian Party, Libertarian Party of Georgia, Inc., Libertarian Party of Maine, Libertarian Party of Minnesota, Libertarian Party of South Dakota, and Libertarian Party of Tennessee. See AOR001 n.1.

³ These are: Libertarian Party of Illinois, Montana Libertarian Party, and Libertarian Party of North Carolina.

⁴ The request states that the total contribution GJVF will be able to accept if all the Pending Committees and Potential Requestor Committees are recognized as state party committees will be \$242,700. AOR002. However, this appears to inadvertently include \$10,000 for each of the three committees that are not seeking recognition as state party committees.

committees will assign or obligate any funds held in escrow. *Id.* If the Commission either denies a Pending Committee's request for recognition as a state party committee or does not approve an advisory opinion by the required four affirmative votes, or if a Pending Committee withdraws its request before the Commission issues a response, GJVF will return any escrowed funds allocable to such a committee to the contributors. Advisory Opinion Request Supplement (Sept. 23, 2016) ("AOR Supp.").

With respect to the funds it accepts on behalf of Potential Requestor Committees, GJVF proposes to hold any funds in excess of the current contribution limits in escrow under largely the same conditions described above for the Pending Committees. AOR002. The only difference is that in addition to refunding contributions over \$5,000 if a committee's advisory opinion request is not approved or is withdrawn, the requestor will also refund such contributions if the Potential Requestor Committee has not submitted a qualified advisory opinion request by November 8, 2016. AOR Supp.

Question Presented

May GJVF solicit, accept, and hold in escrow contributions reflecting the increased contribution limits that the Pending Committees and the Potential Requestor Committees will be eligible for if and when the Commission recognizes them as state party committees?

Legal Analysis and Conclusions

Yes, GJVF may solicit, accept, and hold in escrow contributions reflecting the increased contribution limits that the Pending Committees and the Potential Requestor Committees will be eligible for if and when the Commission recognizes them as state party committees.

The Act and Commission regulations permit candidates and political committees to engage in joint fundraising by establishing a separate political committee to serve as their joint fundraising representative. 52 U.S.C. § 30102(e)(3)(ii); 11 C.F.R. § 102.17(a). In raising funds for its participating candidates and political committees, the joint fundraising representative "shall collect contributions, pay fundraising costs from gross proceeds and from funds advanced by the participants, and disburse net proceeds to each participant." 11 C.F.R. § 102.17(b)(1). The participants in a joint fundraising activity must enter into a written agreement that "shall state a formula for the allocation of fundraising proceeds," and the allocation formula must be included in a joint fundraising notice that must be included with every solicitation for contributions. 11 C.F.R. § 102.17(c)(1)-(2). A contributor may make a contribution to the joint fundraising representative that "represents the total amount that the contributor could contribute to all of the participants under the applicable limits of 11 C.F.R. 110.1 and 110.2." 11 C.F.R. § 102.17(c)(5). The joint fundraising committee must establish a separate account to be used solely for receipt and disbursement of joint fundraising proceeds, and each participant committee must amend its Statement of Organization to reflect the account as an additional committee account. 11 C.F.R. § 102.17(c)(3)(i). The joint fundraising committee must deposit all joint fundraising proceeds in its separate account within ten days of receipt. 11 C.F.R. § 102.17(c)(3)(i)-(ii).

The Act provides that no individual may contribute more than \$2,700 to any candidate with respect to any election. 52 U.S.C. § 30116(a)(1)(A); *see also* 11 C.F.R. § 110.1(b); Price Index Adjustments for Contribution and Expenditure Limits and Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg. 5750, 5752 (Feb. 3, 2015) (adjusting limit for inflation pursuant to 52 U.S.C. § 30116(c)). An individual may contribute up to \$10,000 to “a political committee established and maintained by a [s]tate committee of a political party,” and up to \$5,000 to a nonconnected political committee. 52 U.S.C. § 30116(a)(1)(C), (D); 11 C.F.R. § 110.1(c)(5), (d).⁵ A candidate or authorized committee of a candidate may not “solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office . . . unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act.” 52 U.S.C. § 30125(e).

A “[s]tate committee” of a political party is one that “by virtue of the bylaws of a political party or the operation of a [s]tate law is part of the official party structure and is responsible for the day-to-day operation of the political party at the [s]tate level, including an entity that is directly or indirectly established, financed, maintained, or controlled by that organization, as determined by the Commission.” 11 C.F.R. § 100.14(a). Thus, a political committee is eligible for the higher contribution limit for state party committees once it is recognized as such by the Commission.

At present, GJVF’s participating committees other than Gary Johnson 2016 are neither candidate committees nor party committees and therefore may accept contributions up to the \$5,000 limit for contributions to “other political committees” under 11 C.F.R. § 110.1(d). GJVF asks whether it may solicit and accept contributions reflecting the higher contribution limits that may apply to the Pending Committees and Potential Requestor Committees at a later date, holding any amounts in excess of the current contribution limits in escrow until that later date and returning them to the contributors if the Pending Committees and Potential Requestor Committees do not become eligible for the higher limits. AOR002-03.

The Commission has concluded previously that committees may solicit and accept contributions that would be passed on to other committees upon the occurrence of certain conditions. For example, the Commission has concluded that a political committee may accept contributions designated for an as-yet-unnamed nominee (a “nominee fund”) or for a specific individual who has not yet become a candidate (a “draft fund”). In such scenarios, the Commission has approved a committee’s acceptance of conditional contributions where: (1) the condition that would trigger the planned disbursement of the funds was objectively determinable and outside the control of the committee; (2) the committee specified a date certain by which the condition would or would not be met; (3) the committee would refund or otherwise lawfully distribute the funds if the triggering condition was not met; and (4) all of the foregoing was clearly communicated to contributors. *See* Advisory Opinion 2014-19 (ActBlue) at 3-4

⁵ This advisory opinion does not address contributions to the requestor from multicandidate committees, because a multicandidate committee may not contribute more than \$5,000 per year to a participating committee regardless of whether the participating committee is a state party committee. *See* 52 U.S.C. § 30116(a)(2); *see also* 11 C.F.R. § 110.2(b)(1), (d).

(approving nominee fund where triggering condition was gender of nominee on date of nomination, funds would be disbursed to lawful non-candidate recipient if condition was not met, and committee notified contributors in advance); *id.* at 4-5 (approving draft fund “so long as the deadline is established in advance, objectively verifiable, not subject to change . . . , and clearly communicated to contributors before they make their contributions”); Advisory Opinion 2006-30 (ActBlue) (approving draft fund where triggering condition was individual’s filing of Statement of Candidacy by specified date, funds would be disbursed to lawful non-candidate recipient if condition was not met, and committee notified contributors in advance); Advisory Opinion 2003-23 (WE LEAD) (approving nominee fund where triggering condition was presidential candidate winning majority of pledged convention delegates, funds would be disbursed to lawful non-candidate recipient if condition was not met, and committee notified contributors in advance); *see also* Advisory Opinion 1982-23 (Westchester Citizens for Good Government) (approving nominee fund). These requirements ensure that the contributors have ultimate control over their contributions and that the intermediary political committee exercises no discretion with regard to the disposition of the conditional funds. *See* Advisory Opinion 2014-19 (ActBlue).

GJVF’s proposal is analogous to the proposals approved in these previous advisory opinions. GJVF proposes to solicit, accept, and hold in escrow contributions that will be disbursed to a Pending Committee or Potential Requestor Committee only if a given condition, objectively determinable and outside of GJVF’s control, occurs: Any contribution over \$5,000 allocable to a Pending Committee or Potential Requestor Committee will be disbursed to that committee only if the Commission affirmatively recognizes the Pending Committee or Potential Requestor Committee as a state party committee by a set date. For the Pending Committees, that date is the date on which the Commission responds to their advisory opinion request (or the date on which that request is withdrawn).⁶ For the Potential Requestor Committees, the date is either the date the Commission responds to the request or November 8, 2016, if no complete request has been submitted by then. If the condition of receiving state party status is not met by the set date, the funds will be refunded to the contributors. GJVF will notify contributors of these conditions, the dates by which they must be satisfied, and the disposition of the funds if they are not satisfied, before accepting any of the proposed contributions. The proposal therefore ensures that the contributors will be informed of and have complete control over the disposition of their contributions.

Accordingly, the Commission concludes that GJVF may, consistent with 52 U.S.C. §§ 30116(a) and 30125(e): (1) solicit and accept contributions up to \$227,700; (2) hold any amounts in excess of \$5,000 per Pending Committee in escrow unless and until the Commission recognizes such Pending Committee as a state party committee, refunding such amounts to the contributors if the Commission does not recognize a given Pending Committee as a state party committee; and (3) hold any amounts in excess of \$5,000 per Potential Requestor Committee in

⁶ The Commission must issue an advisory opinion not later than 60 days after receiving a complete advisory opinion request. 52 U.S.C. § 30108(a)(1). The complete request for Advisory Opinion 2016-14 (11 State Libertarian Committees) was received on September 19, 2016; the complete request for Advisory Opinion 2016-17 (Libertarian Party of Michigan Executive Committee, Inc.) was received on September 28, 2016; and the complete request for Advisory Opinion 2016-19 (Libertarian Party of Colorado) was received on October 3, 2016.

escrow unless and until the Commission recognizes such Potential Requestor Committee as a state party committee, refunding such amounts to the contributors if the Commission does not recognize a given Potential Requestor Committee as a state party committee or if the Potential Requestor Committee has not submitted a complete advisory opinion request by November 8, 2016. As discussed above, GJVF must clearly communicate to potential contributors how it will distribute their contributions. 11 C.F.R. § 102.17(c)(2); *see also* Advisory Opinion 2014-19 (ActBlue).⁷

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

⁷ When reporting contributions to be held in escrow, GJVF may include a memo text notation on Schedule A explaining that the contributions are being held pursuant to this Advisory Opinion, and referring to a Form 99 ("Miscellaneous Document") or other statement attached to the report that identifies the participating committees for which a higher contribution limit is pending based on their anticipated recognition as state party committees.