



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 23, 2010

CERTIFIED MAIL RETURN
RECEIPT REQUESTED

ADVISORY OPINION 2010-17

Christopher M. Marston
Election CFO
P.O. Box 26141
Alexandria, VA 22313

Dear Mr. Marston:

We are responding to your advisory opinion request on behalf of Stutzman for Congress (the “Committee”), concerning the application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to the treatment of undesignated contributions when the general election and the special election for the same Federal office are held on the same day.

The Commission concludes that, in the unusual circumstances presented in this request, the Committee may treat undesignated contributions as made with respect to the general election or the special election, or divided between the two elections, without obtaining contributor redesignations or presumptively redesignating the excessive portions.

Background

The facts presented in this advisory opinion are based on your letter received on July 23, 2010, email received on July 29, 2010, and publicly available information.

Marlin Stutzman is an Indiana State Senator and a candidate for the U.S. House of Representatives in 2010. The Committee is his principal campaign committee.

The State of Indiana held primary elections on May 4, 2010. The incumbent, Representative Mark Souder, won the Republican Party primary for the U.S. House of Representatives in Indiana’s Third Congressional District.¹ Shortly after the primary

¹ See Indiana Primary Election Results, available at http://www.in.gov/apps/sos/primary/sos_primary10 (last visited Aug. 11, 2010).

election, however, Representative Souder resigned from office. The Governor of the State of Indiana scheduled a special election to fill the vacancy created by Representative Souder's resignation. *See* Ind. Exec. Order 10-03, May 28, 2010. The special election will be held on November 2, 2010, the same day as the general election. *Id.* The candidate elected in the special election will serve the remainder of Representative Souder's term of office. *Id.* The candidate elected in the general election will serve the next full two-year term of office. *Id.*

The Republican Party held a caucus to nominate a candidate for the special election and also to nominate a new candidate for the general election. State Senator Stutzman was nominated as the Republican Party's candidate for both elections.²

State Senator Stutzman is campaigning in both elections and the Committee anticipates receiving undesignated contributions from contributors that exceed the Act's contribution limits for a single election. The Committee plans to redesignate the excessive portion of those contributions from the general election to the special election without seeking written redesignations from the contributors.

Question Presented

When a general election and a special election are held on the same day, may the principal campaign committee of a Federal candidate in both elections treat undesignated contributions as contributions made with respect to either the general election or the special election, without obtaining contributor redesignations or presumptively redesignating the excessive portion of such contributions?

Legal Analysis and Conclusions

Yes, the Committee may treat undesignated contributions as contributions made for the general election or for the special election held on the same day, or divided between the two elections, as long as those contributions do not exceed the contributor's combined limit for both elections. If the combined contribution limits for both elections are not exceeded, no redesignation is necessary.

The Act prohibits any person from making contributions to candidates and their authorized political committees "with respect to any election for Federal office" that in the aggregate exceed \$2,400. 2 U.S.C. 441a(a)(1)(A); 11 CFR 110.1(b)(1). These contributions limits "apply separately with respect to each election." 2 U.S.C. 441a(a)(6); 11 CFR 110.1(j)(1). A general election and a special election are both included in the definition of an "election." 2 U.S.C. 431(1)(A); 11 CFR 100.2. Commission regulations define a special election as an election that is held to fill a vacancy in a Federal office. 11 CFR 100.2(f). A general election is defined as either (1) an election held in even numbered years on the Tuesday following the first Monday in

² *See* Marlin Stutzman Wins Third District Republican Nomination, *available at* <http://indianapublicmedia.org/election/marlin-stutzman-wins-district-republican-caucus> (last visited Aug. 11, 2010).

November or (2) a special election that is intended to result in the final selection of a single individual to the office at stake. 11 CFR 100.2(b).

A contribution that is not designated in writing (*i.e.*, an “undesigned contribution”) by the contributor for a particular election is deemed to be a contribution for the next election for that Federal office after the contribution is made. 11 CFR 110.1(b)(2)(ii). In the present circumstance, although the Federal office sought by State Senator Stutzman is the same in both elections, each election will fill a vacancy for a different term of that office. The Commission previously concluded that in this situation each election is subject to a separate contribution limit. *See* Advisory Opinion 1984-42 (Perkins) (State of Kentucky held a special election for a Congressional district seat on the same day as the general election). The Committee, therefore, may accept contributions with respect to both elections. Because both elections will occur on the same day, under the Commission’s regulations either election would be considered “the next election” for purposes of treating undesigned contributions.

The Commission addressed a nearly identical situation in Advisory Opinion 1986-31 (Democratic Senatorial Campaign Committee). In 1986, the State of North Carolina held a special election on the same day as the general election for the same Senate seat after the incumbent Senator John East died in office. The general election was held for the full six-year term, while the special election was held for the remainder of Senator East’s term. The Commission concluded that the candidate’s authorized committee may treat undesigned contributions as made with respect to either election or divided between the two elections as long as the contributor did not exceed the combined contribution limits for both elections. *See* Advisory Opinion 1986-31 (Democratic Senatorial Campaign Committee) at 3. The Commission also concluded that “[t]he committee need not seek redesignations from the contributors in this special circumstance.” *Id.*

The Commission similarly concludes here that the Committee may treat undesigned contributions as made with respect to either election or divided between the two elections. This means that undesigned contributions up to the contributor’s combined \$4,800 limit for both elections (\$2,400 for the special election and \$2,400 for the general election) will not be excessive contributions. Accordingly, the Committee does not have to seek written designations or redesignations for these contributions from the contributors. However, undesigned contributions that exceed the contributor’s combined contribution limits for both elections are prohibited to the extent they exceed the combined limits.

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. 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* 2 U.S.C. 437f(c)(1)(B). Please note 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. The cited advisory opinions are available on the Commission's Web site at <http://saos.nictusa.com/saos/searchao>.

On behalf of the Commission,

(signed)
Matthew S. Petersen
Chairman