

**RECEIVED**

By Office of the Commission Secretary at 4:08 pm, Aug 04, 2023



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 23-19-C**  
**AGENDA ITEM**  
**For meeting of August 10, 2023**  
**SUBMITTED LATE**

August 4, 2023

**MEMORANDUM**

TO: The Commission

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

Neven F. Stipanovic *NFS by RMK*  
Associate General Counsel

Robert Knop *RMK*  
Assistant General Counsel

Evan R. Christopher *ERC*  
Attorney

Subject: Draft AO 2023-05 (Alamo PAC) Draft C

Attached is a proposed draft of the subject advisory opinion. We have been asked to place this draft on the Agenda by one or more Commissioners.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 p.m. (Eastern Time) on August 9, 2023.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2023-05

2

3 Jason Torchinsky, Esq.

4 Jessica Furst Johnson, Esq.

5 Matthew Petersen, Esq.

6 Holtzman Vogel Baran Torchinsky & Josefiak PLLC

7 2300 N St. NW, Suite 643

8 Washington, DC 20037

9

**DRAFT C**

10 Dear Counsel:

11 We are responding to your advisory opinion request on behalf of Alamo PAC (the  
12 “Committee”) concerning the application of the Federal Election Campaign Act, 52 U.S.C.  
13 §§ 30101–45 (the “Act”), and Commission regulations to the Committee’s proposal to open a  
14 separate account with a separate contribution limit to finance independent expenditures as part of  
15 the Committee’s ordinary management structure or, in the alternative, administered and overseen  
16 by an independent special committee. Because the Committee is a leadership PAC established,  
17 financed, maintained, or controlled by a federal officeholder and the Act and Commission  
18 regulations provide for only one contribution limit for leadership PACs, the Committee may not  
19 open an account with a separate contribution limit within the Committee’s ordinary management  
20 structure. However, because the special committee described in your alternative proposal would  
21 effectively prevent any federal officeholder from participating with the proposed second account,  
22 we conclude that under that arrangement, the second account would not be established,  
23 maintained, financed or controlled by a federal officeholder and therefore would not be subject  
24 to the Act’s \$5,000 per year per contributor limit.

1 ***Background***

2           The facts presented in this advisory opinion are based on your letter received June 16,  
3 2023; a supplementary email message received on July 27, 2023 (“AOR Supp.”); and disclosure  
4 reports filed with the Commission.

5           The Committee is a leadership PAC sponsored by and established, financed, maintained,  
6 or controlled by U.S. Senator John Cornyn of Texas.<sup>1</sup> The Committee currently maintains a  
7 single account into which the Committee receives funds raised in compliance with the Act’s  
8 limitations, prohibitions, and reporting requirements and out of which the Committee makes  
9 contributions to other candidates and candidate committees.<sup>2</sup> You refer to this account as a  
10 “contribution account” or “hard-money contribution account.”<sup>3</sup>

11           The Committee proposes to create a second account that would be used exclusively for  
12 financing independent expenditures that expressly advocate the election or defeat of candidates  
13 other than Senator Cornyn.<sup>4</sup> Importantly, this second account “would be subject to a separate  
14 contribution limit”; that is, contributions made to this second account would not be aggregated  
15 with contributions made to the first account for purposes of determining whether contributions  
16 from a single donor have exceeded the Committee’s \$5,000 contribution limit.<sup>5</sup> You assert that

---

<sup>1</sup> Advisory Opinion Request (“AOR”) at AOR001; *see also* Alamo PAC, Statement of Organization, Amend., FEC Form 1 (Dec. 13, 2021), <https://docquery.fec.gov/pdf/764/202112139469842764/202112139469842764.pdf>.

<sup>2</sup> AOR001.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

1 neither Senator Cornyn nor any of the Committee’s agents would solicit funds for this second  
2 account “in excess of the \$5,000 PAC contribution limit” or ask for donations from corporations,  
3 labor organizations, or any other prohibited sources under the Act.<sup>6</sup> You refer to this second  
4 account as a “non-contribution account” and a second “hard money” account.<sup>7</sup>

5 You state that the Committee would implement procedures and safeguards to ensure that  
6 the amounts in both accounts would not be commingled, and that all independent expenditures  
7 financed out of the second account would not constitute coordinated communications, as that  
8 term is defined at 11 C.F.R. § 109.21.<sup>8</sup>

9 In the alternative, you state that if the Commission does not approve the Committee’s  
10 proposal to establish a second account as set forth above, the Committee proposes to establish  
11 the same second contribution account but administered and overseen by a special committee  
12 whose members are appointed without any involvement of, and whose decision-making is not  
13 approved by, Senator Cornyn.<sup>9</sup> You have proposed that the special committee be appointed and  
14 overseen by an employee, consultant, or other Committee agent, which could be the Committee  
15 treasurer.<sup>10</sup> You have described the proposed special committee as “an outgrowth” of the

---

<sup>6</sup> AOR005.

<sup>7</sup> AOR001; AOR007.

<sup>8</sup> AOR002.

<sup>9</sup> AOR006–7.

<sup>10</sup> AOR Supp. at 1.

1 Committee that would function “as a limited-purpose advisory committee to the non-contribution  
2 account of [the Committee].”<sup>11</sup>

3 ***Questions Presented***

4 1. *May the Committee establish a “non-contribution account” for making*  
5 *independent expenditures that is separate from the Committee’s hard-money contribution*  
6 *account and has its own contribution limit, provided that the account is “limited to soliciting and*  
7 *receiving contributions that are subject to the Act’s limitations, prohibitions, and reporting*  
8 *requirements”?*

9 2. *If the answer to Question 1 is “no,” may the Committee established the same*  
10 *separate account proposed in the request but that is administered and overseen by a special*  
11 *committee whose members are appointed without any involvement of, and whose decision-*  
12 *making is not approved by, Senator Cornyn?*

13  
14 ***Legal Analysis***

15 1. *May the Committee establish a “non-contribution account” for making*  
16 *independent expenditures that is separate from the Committee’s hard-money contribution*  
17 *account and has its own contribution limit, provided that the account is “limited to soliciting and*  
18 *receiving contributions that are subject to the Act’s limitations, prohibitions, and reporting*  
19 *requirements”?*

20 No, the Committee may not establish a second account with its own contribution limit to  
21 finance independent expenditures because the Act and Commission regulations only provide for  
22 a single contribution limit for leadership PACs; any funds received in excess of that limit would  
23 therefore be outside the limitations set forth in the Act and in violation of 52 U.S.C. § 30125(e).

24 Section 30125(e) of the Act and implementing regulations prohibit federal candidates and  
25 officeholders, their agents, and entities directly or indirectly established, financed, maintained, or  
26 controlled by them, or acting on their behalf, from soliciting, receiving, directing, transferring, or

---

<sup>11</sup> *Id.*

1 spending funds “in connection with an election for Federal office, unless the funds are subject to  
2 the limitations, prohibitions, and reporting requirements of the Act.”<sup>12</sup>

3 Commission regulations define a leadership PAC as a “political committee that is directly  
4 or indirectly established, financed, maintained or controlled by . . . an individual holding Federal  
5 office” and that is not the individual’s authorized committee, is not affiliated with the  
6 individual’s authorized committee, and is not a political party committee.<sup>13</sup> The Act limits  
7 contributions by any person to any political committee other than authorized candidate  
8 committees, and national and state party committees, to \$5,000 per calendar year.<sup>14</sup>  
9 Furthermore, national banks, corporations, labor organizations, federal contractors, and foreign  
10 nationals are prohibited from making any contribution in connection with any federal election.<sup>15</sup>

11 The Committee was established by Sen. Cornyn in 2003.<sup>16</sup> It is neither Sen. Cornyn’s  
12 authorized committee, nor affiliated with that committee, nor is it a committee of a political  
13 party.<sup>17</sup> The Commission agrees with the Committee’s self-stated conclusion that it is a  
14 leadership PAC.<sup>18</sup> From that conclusion naturally flows the rest of the Commission’s analysis:

---

<sup>12</sup> 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. § 300.61.

<sup>13</sup> 11 C.F.R. § 100.5(e)(6).

<sup>14</sup> *See* 52 U.S.C. § 30116 (a)(1)(C); *see also* 11 C.F.R. §§ 110.1(d), 110.2(b)(1).

<sup>15</sup> 52 U.S.C. §§ 30118(a), 30119, 30121.

<sup>16</sup> AOR001.

<sup>17</sup> Alamo PAC, Statement of Organization, Amend., FEC Form 1 (Dec. 13, 2021), <https://docquery.fec.gov/pdf/764/202112139469842764/202112139469842764.pdf>.

<sup>18</sup> AOR001.

1 under the plain language of the Act and Commission regulations, no person may contribute to the  
2 Committee — nor may the Committee receive — more than \$5,000 per contributor per calendar  
3 year, regardless of the account in which the contribution is stored or the use to which it is put.  
4 As proposed, the Committee could receive \$5,000 from one individual into the account it uses to  
5 make direct contributions to federal candidates *and* \$5,000 from that exact same individual into  
6 its separate account for independent expenditures. The proposal would allow the Committee to,  
7 in effect, receive double the amount of contributions that it's allowed to under the Act. The  
8 Commission finds no authority in the Act or Commission regulations to conclude that the  
9 Committee may receive \$10,000 from a single contributor in a single calendar year when the Act  
10 plainly states that it can receive no more than \$5,000.

11 This straightforward analysis is not altered by the Committee's self-imposed limitations  
12 on the funds received into the Committee's proposed second account. It is irrelevant that the  
13 Committee would limit itself to receiving no more than \$5,000 from only non-prohibited sources  
14 in this account;<sup>19</sup> the Committee is still asking permission to receive as much as \$10,000 from a  
15 single contributor in a single calendar year, just deposited in two accounts.<sup>20</sup> That is permission  
16 the Commission cannot give because it would directly violate the language of the Act. That  
17 language, as relevant here, is concerned with only one factor: the amount of funds a leadership

---

<sup>19</sup> AOR005 (“Senator Cornyn and Committee agents would not solicit any funds [for the second account] in excess of the \$5,000 PAC contribution limit, nor would they ask for donations from . . . prohibited sources.”).

<sup>20</sup> The Committee has stated that it does not intend to aggregate contributions made to both accounts from a single contributor for the purpose of Committee's statutorily imposed limit of \$5,000 per calendar year. As a result, a single contributor could contribute up to \$10,000 to the Committee, under the Committee's self-imposed limits on contributions to the proposed second account.

1 PAC may receive from a given contributor in a given calendar year which is expressly limited to  
2 a total of \$5,000.

3 The Commission’s reasoning in Advisory Opinion 2011-21 (Constitutional Conservatives  
4 Fund PAC) aligns with this conclusion. There, a leadership PAC sponsored and established,  
5 financed, maintained, and controlled by Senator Michael Lee of Utah maintained a single  
6 “Federal account” into which it received contributions that were subject to the limitations,  
7 prohibitions, and reporting requirements of the Act.<sup>21</sup> The leadership PAC sought to establish a  
8 “separate Federal account,” which it referred to as a “non-contribution account,” into which it  
9 would receive unlimited contributions from individuals, corporations, and labor organizations.  
10 The leadership PAC proposed to use its one account to make direct contributions to candidates’  
11 authorized committees and to use its separate account as proposed to finance independent  
12 expenditures.

13 The Commission noted that the leadership PAC was “[b]y definition . . . directly or  
14 indirectly established, financed, maintained, or controlled by a candidate for Federal office, or a  
15 Federal officeholder.”<sup>22</sup> Therefore, the Commission concluded, the leadership PAC must  
16 comply with section 30125(e) of the Act, and the funds received in connection with a federal  
17 election must be subject to the limitations, prohibitions, and reporting requirements of the Act.  
18 As such, the leadership PAC could not receive unlimited funds from individuals or any funds  
19 from corporations or labor organizations because such funds would not be subject to the \$5,000

---

<sup>21</sup> Advisory Opinion 2011-21 (Constitutional Conservatives PAC) at 2.

<sup>22</sup> *Id.* at 4 (citing 11 C.F.R. § 100.5(e)(6) (defining “leadership PAC”)).



1 per contributor per year limit in the Act. The Commission noted that the leadership PAC’s  
2 proposed use of the funds solely to finance independent expenditures supporting or opposing the  
3 election of federal candidates or officeholders other than Senator Lee was irrelevant, as was the  
4 leadership PAC’s proposal to deposit funds into a separate federal account, because the only  
5 relevant factor is the amount of funds a leadership PAC can receive per contributor per year.<sup>23</sup>

6 This conclusion is also consistent with the Commission’s past statements concerning the  
7 intersection of leadership PACs and the Act’s per contributor per year contribution limits. In an  
8 advisory opinion predating the leadership PAC rule, Advisory Opinion 2003-12 (Stop Taxpayer  
9 Money for Politicians Committee), the Commission treated the requesting committee “as it has  
10 historically treated leadership PACs for affiliation purposes” and concluded that the committee  
11 was not affiliated with the principal campaign committee of its chair, a federal officeholder.<sup>24</sup>  
12 Importantly, the Commission further concluded that, under the Act, the leadership PAC “may  
13 raise up to a *total* of \$5,000 per calendar year from any particular permissible source[.]”<sup>25</sup> Later

---

<sup>23</sup> The Commission went on to explain that, in *McConnell v. FEC*, “[n]o party seriously question[ed] the constitutionality of [section 30125(e)]’s ban on donations of ‘soft money’ made directly to federal candidates and officeholders, their agents, or entities established or controlled by them.” *Id.* at 3 (citing 540 U.S. 93, 182 (2003)). Section 30125(e) was necessary to “prevent the corruption or the appearance of corruption of federal candidates and officeholders” by “severing the most direct link between the soft-money donor and the federal candidate.” *Id.* (citing *McConnell*, 540 U.S. at 182) (emphasis removed). According to the Commission, neither section 30125(e) nor the Supreme Court’s reasoning in *McConnell* upholding and interpreting the provision had been disturbed by more recent court decisions in *Citizens United v. FEC*, 558 U.S. 310 (2010); *EMILY’s List v. FEC*, 581 F.3d 1, 12 (D.C. Cir. 2009); *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010); or *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011).

<sup>24</sup> Advisory Opinion 2003-13 (Stop Taxpayer Money for Politicians Committee) at 8.

<sup>25</sup> *Id.* (emphasis in original).

1 that year, the Commission's Explanation and Justification for adopting the rule defining  
2 “leadership PACs” was consistent with its thinking expressed in Advisory Opinion 2003-12:

3       The Commission determined . . . that BCRA does not allow a Federal candidate  
4       or officeholder to raise up to \$5,000 separately for the Federal and non-Federal  
5       accounts of leadership PACs directly or indirectly established, financed,  
6       maintained, or controlled by that Federal candidate or officeholder. *Rather, for*  
7       *their leadership PACs, they are limited to raising a total of \$5,000 from any one*  
8       *source, per election cycle.*<sup>26</sup>

9       Further, the Committee’s proposal is distinguishable from those presented in Advisory  
10      Opinion 2006-24 (NRSC, *et al.*) and Advisory Opinion 2009-24 (Franken), in which the  
11      Commission permitted separate accounts with their own contribution limits to be set up for  
12      recount purposes. In those advisory opinions, the Commission permitted separate accounts  
13      because recount funds are not considered “contributions” under the Act and therefore were not  
14      required to be aggregated with contributions from the same contributors to the committee’s other  
15      accounts. Nor does Advisory Opinion 2011-11 (Majority PAC and House Majority PAC) —  
16      which permitted federal candidates or officeholders to raise limited funds for independent  
17      expenditure-only committees — apply to this question because the committees in that opinion  
18      were not established, financed, maintained, or controlled by federal candidates or officeholders  
19      and thus were not subject to section 30125(e) at all.

---

<sup>26</sup> Leadership PACs, 68 Fed. Reg. 67013, 67015 (Dec. 1, 2003) (emphasis added).

1           Lastly, this conclusion comports with court decisions in *Citizens United v. FEC*,<sup>27</sup>  
2 *EMILY's List v. FEC*,<sup>28</sup> *SpeechNow.org v. FEC*,<sup>29</sup> or *Carey v. FEC*,<sup>30</sup> which in various ways  
3 expanded the ability of certain entities to raise or spend funds for independent expenditures, but  
4 which did not address the activity of an entity directly or indirectly established, financed,  
5 maintained, or controlled by a federal candidate or officeholder. While the court in *Carey* held  
6 that, consistent with the First Amendment, a nonconnected political committee that is “wholly  
7 separate” from a federal candidate or officeholder must be permitted to receive unlimited funds  
8 into a separate bank account for the purpose of financing independent expenditures, the court  
9 stressed that contributions “directed toward a federal candidate’s personal coffers or his or her  
10 own political action committee . . . are subject to statutory limits because of the ‘strong  
11 governmental interest in combating corruption and the appearance thereof.’”<sup>31</sup>

12           In its request, the Committee acknowledges that it is not “wholly separate” from Senator  
13 Cornyn but asserts that leadership PACs “have interests and purposes that are distinct from the  
14 campaigns of the PACs’ sponsoring candidates,” and that there is no increased risk of corruption  
15 because “none of the funds received into either the contribution or non-contribution accounts  
16 could be used to further the sponsoring candidate’s own election.”<sup>32</sup> This assertion is against the

---

<sup>27</sup> 558 U.S. 310 (2010).

<sup>28</sup> 581 F.3d 1, 12 (D.C. Cir. 2009).

<sup>29</sup> 599 F.3d 686, 696 (D.C. Cir. 2010).

<sup>30</sup> 791 F. Supp. 2d 121 (D.D.C. 2011).

<sup>31</sup> *Id.* at 125–26 (quoting *Emily’s List*, 581 F.3d at 8).

<sup>32</sup> AOR004, 6.

1 weight of Commission and court precedent. The Commission stated in Advisory Opinion 2011-  
2 21 (Constitutional Conservatives PAC) that the “fact that the Committee would use the funds  
3 solely to finance independent expenditures supporting or opposing the election of Federal  
4 candidates and officeholders other than [the sponsoring candidate] does not alter [its]  
5 conclusion.”<sup>33</sup> The Act prohibits leadership PACs from receiving more than \$5,000 per  
6 contributor per calendar year, regardless of how those excess funds would be spent. Moreover,  
7 the Supreme Court has also made clear that, regarding contributions to federal candidates or  
8 officeholders or entities established, financed, maintained, or controlled by them, a threat of  
9 corruption comes from who the money is given to, “regardless of the ends to which those funds  
10 are ultimately put.”<sup>34</sup> Your proposal would still allow contributors who have already given up to  
11 \$5,000 to Sen. Cornyn’s leadership PAC to give up to another \$5,000 to Sen. Cornyn’s  
12 leadership PAC, which would be contrary to the plain language of the Act.

13           2.       *If the answer to Question 1 is “no,” may the Committee established the same*  
14 *separate account proposed in the request but that is administered and overseen by a special*  
15 *committee whose members are appointed without any involvement of, and whose decision-*  
16 *making is not approved by, Senator Cornyn?*

17           Yes, the Committee may establish the same separate account proposed in the request if it  
18 is administered and overseen by a special committee whose members are appointed without any  
19 involvement of, and whose decision-making is not approved by, Senator Cornyn.

---

<sup>33</sup>       Advisory Opinion 2011-21 (Constitutional Conservatives PAC) at 4.

<sup>34</sup>       *Id.* at 3 (quoting *McCormell*, 540 U.S. at 182) (emphasis removed).

1           As explained above, the Act and Commission regulations prohibit federal candidates and  
2 officeholders, their agents, and entities directly or indirectly established, financed, maintained, or  
3 controlled by them, or acting on their behalf, from soliciting, receiving, directing, transferring, or  
4 spending funds “in connection with an election for Federal office, [ ] unless the funds are subject  
5 to the limitations, prohibitions, and reporting requirements of this Act.”<sup>35</sup> Because a leadership  
6 PAC is “[b]y definition . . . directly or indirectly established, financed, maintained, or controlled  
7 by a candidate for Federal office, or a Federal officeholder,”<sup>36</sup> any contributions that it receives  
8 in connection with a federal election are subject to the limitations, prohibitions, and reporting  
9 requirements of the Act, regardless of whether the leadership PAC proposes to deposit the  
10 contributions into a single or separate federal accounts.<sup>37</sup>

11           Under your alternative proposal, however, the account at issue would be administered  
12 and overseen by a special committee effectively walled off from Sen. Cornyn. Specifically, the  
13 members of the committee would be appointed without any involvement of, and their decision-

---

<sup>35</sup> 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. § 300.61.

<sup>36</sup> Advisory Opinion 2011-21 (Constitutional Conservatives PAC) at 4 (citing 11 C.F.R. § 100.5(e)(6) (defining “leadership PAC”).

<sup>37</sup> The Commission went on to explain that, in *McConnell v. FEC*, “[n]o party seriously question[ed] the constitutionality of [section 30125(e)]’s ban on donations of soft money made directly to federal candidates and officeholders, their agents, or entities established or controlled by them.” *Id.* at 3 (citing 540 U.S. 93, 182 (2003)). Section 30125(e) was necessary to “prevent the corruption or the appearance of corruption of federal candidates and officeholders” by “severing the most direct link between the soft-money donor and the federal candidate.” *Id.* (citing *McConnell*, 540 U.S. at 182) (emphasis removed). According to the Commission, neither section 30125(e) nor the Supreme Court’s reasoning in *McConnell* upholding and interpreting the provision had been disturbed by more recent court decisions in *Citizens United v. FEC*, 558 U.S. 310 (2010); *EMILY’s List v. FEC*, 581 F.3d 1, 12 (D.C. Cir. 2009); *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010); or *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011).

1 making would not be subject to approval by, Senator Cornyn.<sup>38</sup> Under these conditions, the  
2 Commission concludes that the account would not be “an entity directly or indirectly established,  
3 financed, maintained or controlled by” Sen. Cornyn, and thus would not be subject to the  
4 leadership PAC’s \$5,000 annual per contributor limit.

5 This conclusion is consistent with prior Commission advisory opinions. In Advisory  
6 Opinion 2021-06 (Kelly), for example, the Commission concluded that a federal officeholder  
7 could serve as chair of a state party committee with a non-federal account that raised funds in  
8 amounts and from sources outside of the limitations of the Act so long as the non-federal account  
9 “is administered by a special committee without the review or approval of [the federal  
10 officeholder] and [the federal officeholder] has no role in the appointment of any member of the  
11 special committee.”<sup>39</sup> Similarly, albeit in a different context, the Commission has concluded that  
12 the Act does not prohibit U.S. corporations whose governing boards, shareholders, or employee  
13 rolls include foreign nationals from establishing separate segregated funds to contribute to  
14 federal candidates so long as the funds were administered by a special committee whose  
15 members did not include foreign nationals and were not selected by foreign nationals.<sup>40</sup> The

---

<sup>38</sup> AOR010.

<sup>39</sup> Advisory Opinion 2021-06 (Kelly) at 7. We note that the committee in Advisory Opinion 2021-06 (Kelly) was not “established,” as that term is used in the Act, by the federal officeholder at issue in that opinion, so that was not part of the Commission’s analysis there. The Commission assumes, *arguendo*, in evaluating the Committee’s alternative request that the proposed second account will not be “established” by Sen. Cornyn. If, as a factual matter, it is later determined that Sen. Cornyn did establish the proposed second account, that would fall outside the four corners of this opinion.

<sup>40</sup> See, e.g., Advisory Opinion 1978-21 (Budd Citizenship Committee); Advisory Opinion 1982-10 (Syntex); Advisory Opinion 1989-29 (GEM of Hawaii, Inc.); Advisory Opinion 2000-17 (Extencicare Health Services, Inc.); Advisory Opinion 2006-15 (TransCanada Corporation); Advisory Opinion 2009-14 (Mercedes Benz USA LLC).

1 Commission has consistently relied on corporate controls of the kinds observed in the opinions  
2 cited herein to ensure that funds and accounts are administered and overseen in accordance with  
3 the Act.<sup>41</sup> We rely on that same reasoning here and conclude that because the special committee  
4 proposed in the alternative request would have sufficient safeguards in place to prevent any  
5 involvement with the proposed second account on the part of Sen. Cornyn, the proposed second  
6 account would not be “an entity directly or indirectly established, financed, maintained or  
7 controlled by” Sen. Cornyn” and subject to the Committee’s \$5,000 per contributor per year  
8 limit.

9 For the reasons stated above, the Commission concludes the Committee may establish a  
10 separate account with its own contribution limit to finance independent expenditures, provided  
11 that account is administered and overseen by a special committee whose members are appointed  
12 without any involvement of, and whose decision-making is neither reviewed nor approved by,  
13 Sen. Cornyn.

14 This response constitutes an advisory opinion concerning the application of the Act and  
15 Commission regulations to the specific transactions or activities set forth in Alamo PAC’s  
16 request.<sup>42</sup> The Commission emphasizes that, if there is a change in any of the facts or  
17 assumptions presented, and such facts or assumptions are material to a conclusion presented in

---

<sup>41</sup> See Advisory Opinion 1990-08 (CIT Group Holdings, Inc.) at 3 (a distinct committee separated by corporate controls is “necessary to ensure the exclusion of foreign nationals from direct or indirect participation in the decision-making process related to the administration and conduct of the committee”); see also Advisory Opinion 2021-06 (Kelly) at 5.

<sup>42</sup> See 52 U.S.C. § 30108.

1 this advisory opinion, then the requestor may not rely on that conclusion as support for its  
2 proposed transactions or activity. Any person involved in any specific transaction or activity  
3 which is indistinguishable in all its material aspects from the transaction or activity with respect  
4 to which this advisory opinion is rendered may rely on this advisory opinion.<sup>43</sup> Please note that  
5 the analysis or conclusions in this advisory opinion may be affected by subsequent developments  
6 in the law including, but not limited to, statutes, regulations, advisory opinions, and case law.  
7 Any advisory opinions cited herein are available on the Commission's website.

8  
9 On behalf of the Commission,

10  
11  
12  
13 Dara Lindenbaum,

14 Chair

---

<sup>43</sup> See *id.* § 30108(c)(1)(B).