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2018 DEC 21 AM 11:59

Mr. Neven Stipanovic
Acting Associate General Counsel for Policy
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

OFFICE OF
GENERAL COUNSEL
2018 DEC 21 PM 1:19

Dear Mr. Stipanovic:

Pursuant to 52 USC § 30108 and 11 CFR § 112.6, It Starts Today requests an advisory opinion concerning the activities outlined below related to establishing and accepting contributions made to conditional nominee funds.

I. Factual Background

It Starts Today is registered with the Federal Election Commission ("Commission" or "FEC") as a non-connected federal committee. It Starts Today operates the website <http://itstarts.today> (and associated pages thereof) which provides internet based opportunities for donors to make earmarked contributions to Democratic nominees for the United States House of Representatives and United States Senate and to the presumptive Democratic Nominee for President in 2020. It Starts Today acts as an intermediary within the meaning of 52 USC § 30116(a)(8) to Democratic nominees.

It Starts Today complies with all of the requirements related to such nominee funds and presumptive nominee funds that have been laid out in prior Commission advisory opinions related to Nominee Funds such as FEC Advisory Opinion ("AO") 1977-16 (Iowa 1980 U.S. Senate Campaign Committee), AO 1982-23 (Westchester Citizens for Good Government), AO 2003-23 (WE LEAD), 2006-30 (ActBlue), AO 2011-06 (Democracy Engine), AO 2014-07 (Crowdpac), and AO 2014-19 (ActBlue). Principal among these requirements are complying with the Commission's source prohibitions and amount limitations, clearly disclosing to whom an individual's contribution will be forwarded under what circumstances, timely forwarding of those contributions, and properly reporting the contributions to the Commission. All of the nominee funds administered by It Starts Today, including those contemplated by this request, will continue to comply with these requirements.

It Starts Today proposes to offer Endorsement Conditioned Nominee Funds ("ECNF"s) and Endorsement Conditioned Presumptive Nominee Funds ("ECPNF"s) to the public.

An ECNF would differ from a traditional nominee fund in that it would allow for the earmark of a contribution not simply based on office sought, party affiliation, and election cycle, but also the public endorsement of a political or media organization ("Endorsing Organization"). An ECPNF would differ from a traditional Presumptive Nominee Fund in that it would allow for the earmark of a contribution not simply based on the securing of pledged delegates to the nominating convention by a specific time and date, office sought, party affiliation, and election cycle, but also the public endorsement of an Endorsing Organization.

It Starts Today would not have any role in the endorsement process of any Endorsing Organization.

A "Public Endorsement" would be an expression of support or approval of a specific candidate for a specific office by an Endorsing Organization that appears in a newspaper or magazine article, a transcript from a television show, a press release, or any publicly available website (a "Public Endorsement").

It Starts Today would limit Endorsing Organizations to organizations registered with the IRS under sections 501(c)(4) or 527 of the Internal Revenue Code or with the Federal Election Commission as a political committee as well as media outlets with a history of electoral endorsements.

If all conditions of an ENCF or ENPCF are not met, It Starts Today would instead forward the contributions to a default recipient. The default recipient would be determined at the time that the fund is created and disclosed to contributors before they make their contributions. If no default recipient is determined at the time of the contribution, donations would be returned to the contributor.

II. Question Presented

In order to determine whether the contemplated modifications to traditional draft and nominee funds are permissible under the Federal Election Campaign Act, It Starts Today asks the following questions regarding the ways in which individual donors may earmark contributions to a nominee or presumptive nominee:

1. May It Starts Today establish a traditional nominee fund with the additional criterion that the Democratic nominee for federal office must receive a Public Endorsement by an Endorsing Organization in order to receive the contributions?

2. May It Starts Today establish a traditional presumptive nominee fund with the additional criterion that the nominee of the Democratic Party for president in 2020 must receive a Public Endorsement by an Endorsing Organization in order to receive the contributions?

It Starts Today proposes to establish these funds and allow users to begin soliciting contributions to them as soon as possible, contingent upon receiving an affirmative response to this request.

III. Legal Discussion

The Commission's regulations permit an earmarked contribution to be made to a "clearly identified candidate or a candidate's authorized committee." 11 CFR § 110.6(b)(1). The Commission has interpreted this regulation to allow contributions to be earmarked for an undetermined Federal candidate in certain circumstances. See AO 2014-19 (ActBlue), AO 2006-30 (ActBlue), AO 2003-23 (WE LEAD), AO 1982-23 (Westchester Citizens for Good Government), AO 1977-16 (Iowa 1980 U.S. Senate Campaign Committee).

In prior rulings, the Commission approved contributions to an undetermined candidate identifiable by specific office sought, party affiliation, and election cycle. See AO 1982-23 (Westchester Citizens for Good Government), AO 1977-16 (Iowa 1980 U.S. Senate Campaign Committee). The Commission has also approved contributions to an undetermined nominee for president with the added condition that a candidate secure a majority of pledged delegates to a party's nominating convention to receive the funds (a presumptive nominee). See AO 2003-23 (WE LEAD). Finally, the Commission approved contributions to a undetermined presumptive presidential nominee conditioned further on the gender of the nominee. See AO 2014-19 (ActBlue).

The questions presented here do not differ materially from those presented in Advisory Opinions 2014-19 (ActBlue), 2003-23 (WE LEAD) and 1982-23 (Westchester Citizens for Good Government).

In those requests, ActBlue, WE LEAD and Westchester Citizens for Good Government described a clear method by which to identify the nominee or presumptive

nominee. Here, It Starts Today proposes to use a similar process. In the case of a ECNF or ECPNF, the nominee remains identifiable on the same fundamental basis as the earlier Advisory Opinions: office sought, party affiliation, and election cycle. As in AO 2014-19 with respect to gender, the additional criterion of whether the nominee has received a Public Endorsement by an Endorsing Organization does not alter It Starts Today's ability to identify the candidate for whom the contribution will be earmarked.

Furthermore, these criteria, including a Public Endorsement in which It Starts Today has no role in the endorsement process of the Endorsing Organization would not result in the exercise of direction or control by It Starts Today. Because It Starts Today does not exercise discretion or control over the choice of the recipient candidate, contributions should only be attributed to the original contributor.

"Under the Act and Commission regulations, any contribution made by a person on behalf of or to a candidate, including a contribution that is earmarked or otherwise directed to the candidate through an intermediary or conduit, is a contribution from that person to the candidate. 52 U.S.C. § 30116(a)(8); 11 C.F.R. § 110.6(a). If the intermediary or conduit exercises any 'direction or control' over the choice of the recipient candidate, then the contribution is treated as a contribution from both the intermediary and the original contributor. 11 C.F.R. § 110.6(d)." AO 2014-19 (ActBlue) at 3.

"[A] conduit or intermediary does not exercise direction or control where the contributor has the final say over whether to make a contribution to a given recipient and the amount of any contribution." AO 2014-13 (ActBlue) at 3.

In Advisory Opinion 2014-19 (ActBlue), the Commission concluded that ActBlue "may establish a traditional nominee fund with the added criterion that the nominee must be a woman in order to receive the contributions" without exercising discretion or control over the earmarked funds. AO 2014-19 at 3. Indeed, in a number of advisory opinions in which the question has arisen, the Commission has determined that, the intermediary could lawfully accept and transfer earmarked contributions without being deemed to have exercised discretion or control because the intended recipient of the contributions was objectively identifiable by office sought, party affiliation, and election cycle, and, in the case of AO 2014-19, by gender. Therefore, the intermediary exercised no discretion in determining which candidate would receive the contributions. See also AO 2003-23 (WE LEAD) (permitting contributions earmarked for a presumptive presidential nominee); AO 1982-23 (Westchester Citizens for Good Government) (permitting earmarks through a conduit for unidentified nominees); and AO 1977-16 (Iowa 1980

U.S. Senate Campaign Committee) (earmarks for unidentified candidates are “retroactively regarded” as having been accepted by candidate’s principal campaign committee once candidate was identified and “assume[d] ... control” of funds).

A Public Endorsement by an Endorsing Organization is, like gender, an objective, easily determined fact outside of It Starts Today’s direction or control.

In addition, because It Starts Today will notify potential contributors in advance of the default recipient of contributions to the ECNF or ECPNF, It Starts Today will not exercise any direction or control over contributions in the event that no candidate meets the criteria of the ECNF or ECPNF.

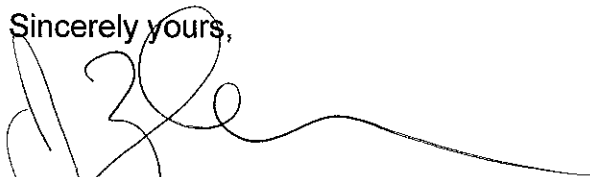
IV. Conclusion

The Commission has previously determined that a contribution may be earmarked to an undetermined candidate as long as that person is identifiable as to specific office sought, party affiliation, and election cycle and has allowed that general earmark to be further conditioned on the gender of the candidate. Like the addition of gender as a criterion, the addition of a Public Endorsement criterion does not involve the exercise of discretion or control by It Starts Today in the identification of candidates that satisfy the criteria. Therefore, It Starts Today should be permitted to establish Endorsement Conditioned Nominee Funds and Endorsement Conditioned Presumptive Nominee Funds and such earmarked contributions should impact only the contribution limit of the original donor to the eventual recipient.

For the reasons set forth above, It Starts Today respectfully requests that the Commission issue an advisory opinion responding affirmatively to each of our questions relating to nominee and presumptive nominee funds for potential candidates.

Thank you very much for your consideration. Should you require any further information, please do not hesitate to reach me by email at jonathan@itstarts.today or phone at (202) 656-5645.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jonathan Zucker", with a long horizontal flourish extending to the right.

Jonathan Zucker, Esq.
Treasurer, It Starts Today

From: [Heather Filemyr](#)
To: [Anthony Bell](#)
Cc: [Esther Gyory](#); [Neven Stipanovic](#)
Subject: FW: Advisory Opinion Request
Date: Tuesday, February 05, 2019 3:24:33 PM

From: Jonathan Zucker [mailto:jonathan@itstarts.today]
Sent: Tuesday, February 05, 2019 2:57 PM
To: Heather Filemyr <HFilemyr@fec.gov>
Cc: Esther Gyory <EGyory@fec.gov>
Subject: Re: Advisory Opinion Request

Hi Heather...

All of those statements are accurate.

Thank you.

Jonathan

On Tue, Feb 5, 2019 at 12:56 PM Heather Filemyr <HFilemyr@fec.gov> wrote:

Mr. Zucker:

Thank you for speaking with me today about the advisory opinion request you submitted on behalf of It Starts Today. During today's phone call, you clarified some factual information included in your original request. Below is my understanding of your clarifications:

1. It Starts Today would select a single endorsing organization for each solicitation. It Starts Today would disclose the identity of that selected endorsing organization in the solicitation.
2. It Starts Today would track any public endorsements by the specified endorsing organization.
3. It Starts Today intends an "endorsement" to be a formal statement made on behalf of an endorsing organization that encourages voters to support a single, specific candidate for a specific office. The endorsement must also be "public," meaning that it must be communicated in the manner outlined in your original request.
4. It Starts Today would determine that a particular media outlet has a "history of electoral endorsements" before selecting that media outlet as the endorsing organization for a particular solicitation.
5. For both nominee funds and presumptive nominee funds, It Starts Today would specify in the solicitation a date certain by which all conditions of the nominee fund or presumptive nominee fund must be met. If all conditions are not met on that specified date, It Starts Today would forward the contribution to a default recipient.

6. It Starts Today would select the default recipient and disclose the identity of the default recipient in the solicitation.

Please send me an email that either confirms the accuracy of these statements or corrects them.

Your response may be considered to be part of the advisory opinion request; if so, it will be posted as such on the Commission's website.

Sincerely,

Heather Filemyr
Office of the General Counsel, Policy Division
Federal Election Commission
1050 First Street, NE
Washington, DC 20463
(202) 694-1543