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September 6, 2018

Michael Dobi
Senior Campaign Finance Analyst
Reports Analysis Division
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

**Re: Request For Additional Information
Friends of Mia Love (C00505776), July 2018 Quarterly Report**

Dear Mr. Dobi,

This letter is submitted in response to your Request for Additional Information regarding the July 2018 Quarterly Report of Friends of Mia Love (C00505776). Your letter indicates that any contributions the committee received that were designated for the 2018 primary election must be refunded because “the candidate will not participate in the 2018 Primary election.”

Representative Love is a candidate for election in Utah’s Fourth Congressional District. In Utah, a candidate has three avenues to gain access to the primary ballot as a political party nominee. First, the individual may participate in the party’s convention process and be nominated at convention. Second, the individual may qualify for the ballot by gathering signatures. Third, the individual may participate in the convention process and gather signatures. See State of Utah 2018 Candidate Manual (May 8, 2018), <https://elections.utah.gov/Media/Default/2018%20Election/2018%20Candidate%20Manual.pdf>

Previous Commission Consideration of Senator Lee Matter

In 2016-2017, the Commission considered, in response to Request for Consideration of a Legal Question Submitted by Friends of Mike Lee (LRA #1044), the same basic circumstances which arose in connection with Utah’s 2016 primary and convention elections. As explained in that matter:

As of 2016, a candidate seeking to appear on the primary ballot in Utah has two methods to obtain primary ballot access under Utah law. See [***]; UT Code § 20A-9-403; 406 (2016). First, the candidate may be nominated at his or her party's convention. UT Code § 20A-9-406 (2016). In addition, Utah law permits candidates to use a petition process to bypass the convention and advance to a primary election. UT Code § 20A-9-403(3)(a) (2016). If a candidate gathers a sufficient number of signatures on his or her petition by a certain date, the candidate's name will be placed on the ballot for a primary election to be held after the convention. UT Code § 20A-9-403(3)(b), (4)(a)(ii), and (5)(c) (2016). If a candidate is nominated at the party convention and no other candidates gain access to the primary election ballot, the party-nominated candidate becomes that party's candidate for the general election without participating in a primary election. UT Code § 20A-9-403-5(c) (2016).

Memorandum from Acting General Counsel Lisa J. Stevenson to the Commission re: LRA #1044 (May 22, 2017) at 2

In that matter, Senator Lee "used both methods to gain access to the primary ballot." *Id.* As the General Counsel explained:

On April 23, 2016, the Candidate became the Republican Party's nominee for the United States Senate at the conclusion of the Utah Republican Party convention. The Candidate also gained enough signatures on his petition to appear on the primary election ballot. The Candidate learned five days before the nominating convention that he was the only candidate to qualify for the primary ballot through the petition method. [***] Once the Candidate became the party nominee at the party convention and no other candidates qualified for the ballot via the petitioning process, Utah determined there was no need for a Republican primary election. As a result, Utah cancelled the Republican primary election. UT Code § 20A-9-403-5(c) (2016).

Id.

On the grounds that "Utah cancelled the primary election, the Reports Analysis Division requested that the Committee refund or redesignate the contributions that contributors had designated for the primary election. The Committee refunded all of the primary contributions received after April 23, 2016, the date of the convention, but it retained the \$453,583.78 in primary election contributions that it received before the convention." *Id.* The Committee explained that it had spent more than \$200,000 gathering signatures in connection with the primary election, and that "[d]ue to uncertainty surrounding the new law ... the Lieutenant Governor (the chief election officer in Utah) issued guidance recommending that all candidates seek both the nomination at their party convention and the petitioning process." *Id.* at 2-3.

The General Counsel concurred with RAD and "conclude[d] that the Committee cannot retain the contributions that the contributors designated for the primary election because the primary election was cancelled." *Id.* at 3.

The Commission rejected the General Counsel's recommendation and, according to the short letter from the Acting General Counsel, "concluded that Friends of Mike Lee may retain the contributions designated for the primary and received before the party convention." According to that letter:

The Commission, however, concluded that the Committee may retain the contributions designated for the primary election because of the unique facts in this case. The Commission determined that the Committee had no choice but to prepare for both the primary election and the party convention at the same time because of the short time frame between the party convention and the primary election. The subsequent cancellation of the primary election was out of the Committee's control. Even though the candidate did not have any opponents in the primary election, they still were required to spend money and campaign because they did not know at the time whether they would have any opponents.

Letter from Acting General Counsel Lisa J. Stevenson to Clela Mitchell (August 1, 2017).

The Commissioners did not issue any further explanation of their decision.

Application to Present Matter

In the present matter, Friends of Mia Love relied on the Commission's conclusions in the Senator Lee matter.

In a conversation with a RAD official, counsel for Friends of Mia Love learned that the division had taken the position that the Commission's conclusions in the Senator Lee matter applied only to that matter, and RAD would need either a recommendation from the Office of General Counsel, or a determination from the Commissioners, to take the same position in a separate matter.

The "unique facts" of the 2016 matter involving Senator Lee have not changed. Utah's unusual primary ballot access laws were upheld by the Tenth Circuit on March 20, 2018 (*see Utah Republican Party v. Cox*, 885 F.3d 1219 (10th Cir. 2018)), just one month before the 2018 state party convention. Utah's law (SB54) remains in place, and the process and methods of obtaining ballot access as described in Memorandum of May 22, 2017, quoted above, remain unchanged.

Under the present system, the primary ballot may be accessed either by obtaining a sufficient number or signatures or by being nominated at the party convention. The calendar for 2018 primary ballot access was as follows:

- | | |
|-----------------------------------|--|
| January 2 – March 15, 2018 | Period to declare intent to gather signatures |
| March 9 – March 15, 2018 | Period to declare candidacy |

March 20, 2018

10th Cir. upholds SB54

**Two weeks before convention
(April 7, 2018)**

Candidate petition signatures must be submitted

One day before convention

**Signature gathering candidates are certified for
primary election ballot**

April 21, 2018

Utah Republican Party convention

In January 2018, Representative Love made preparations and expenditures to gather signatures to obtain access to the primary ballot. These preparations included creating a general strategy for collecting signatures, conferring with vendors who collect signatures on a paid basis, and ultimately paying a vendor over \$36,000 to collect signatures for the primary election ballot.

Representative Love's decision whether to move forward with collecting signatures was further informed by, and complicated by, an internal party dispute in which a faction of the state party sought to force candidates to use only the convention process. *See* Bill Dentzer, *State GOP infighting could see more legal battles to enforce party loyalty, keep some candidates off the Republican ballot*, Salt Lake Tribune (Feb. 27, 2018), <https://www.sltrib.com/news/politics/2018/02/26/state-gop-infighting-could-see-more-legal-battles-to-enforce-party-loyalty-keep-some-candidates-off-the-republican-ballot/> ("The Utah state GOP's internal skirmishing over who may run for office as a Republican erupted again in a weekend leadership meeting that saw party hard-liners push through a change designed to get back in court to fight for stricter, loyalty-enforcing nominating rules. . . . Saturday's rule change seeks another legal path to challenge the 2014 state law that permits candidates to get on a party ballot by collecting signatures rather than exclusively through a party nominating caucus and convention. . . . The bylaw change approved Saturday would require that candidates seek the GOP nomination only via the caucus-convention route, barring them from collecting signatures and threatening those who take that route with party expulsion.").

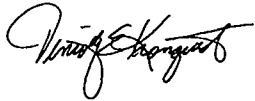
Representative Love ultimately determined not to file the petition signatures that were collected for her campaign, and instead, to seek her party's nomination at the state party convention on April 21, 2018. At the convention, Representative Love secured the party's nomination with sufficient support to proceed directly to the general election ballot.

While no challenger filed prior to the March 15 deadline to be a candidate for nomination at the state party convention, a primary election candidate *could have* filed petition signatures up until April 7, two weeks before the date of the convention. Petitions are not certified until the day before the convention, meaning that until April 20, it was not known with certainty whether any challenger had qualified for the primary election ballot. Similarly, it was not known with certainty until April 21 – the date of the state party convention – that there would be no primary election at all.

Consistent with these facts, Friends of Mia Love will refund, or process re-designations for, all contributions designated for the primary election that were received after April 21, 2018, which will be reflected on the subsequently filed amended reports.

We hope this response provides RAD with the additional clarification needed. Please feel free to contact us if you have any further questions.

Sincerely,



Timothy Kronquist
Michael Bayes
Counsel to Friends of Mia Love

Robert F. Carlin
Treasurer

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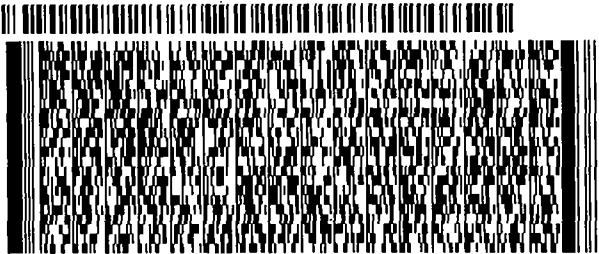
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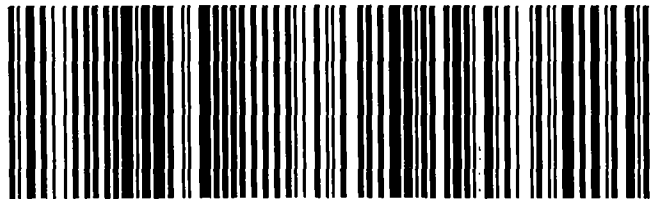


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