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August 16, 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 For Chris Stewart, Inc. (C00506931), 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 For Chris Stewart, Inc. (C00506931). 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 Stewart is a candidate for election in Utah’s Second 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 Cleta Mitchell (August 1, 2017).

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

Application to Present Matter

In the present matter, Friends For Chris Stewart, Inc. relied on the Commission’s conclusions in the Senator Lee matter.

During a telephone conversation after the RFAI dated July 19, 2018, was issued, a RAD official explained 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 here.

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 early 2018, Representative Stewart made preparations and expenditures to gather signatures to obtain access to the primary ballot. These preparations included discussions with other candidates, creating a general strategy for collecting signatures, securing and organizing volunteers to collect signatures, conferring with vendors who collect signatures on a paid basis, and meeting with the Lieutenant Governor's office to discuss the primary ballot access process. One of Representative Stewart's primary challengers, Mary Burkett, was publicly gathering signatures, so there was a very real possibility of a primary election even if Representative Stewart secured a 60% vote at the state convention. Ultimately, Mary Burkett did not gather a sufficient number of signatures to meet the required threshold and was unable to qualify for the ballot through this route. However, she participated as a candidate in the convention (as did another challenger Ken Clark) and, until the convention occurred, it was still possible for her or Clark to force a primary election by securing 40% or more of the delegate votes at the convention.

Representative Stewart'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.").

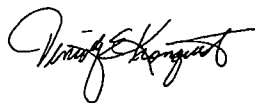
Representative Stewart ultimately determined that he did not wish to risk a legal battle with the state party by gaining access to the primary ballot by collecting signatures, and he did not gather signatures, despite the extensive effort and expense that had already gone into planning and organizing a signature gathering program.

Ultimately, Representative Stewart secured the party's nomination at the convention, defeating two opponents by a margin sufficient to proceed directly to the general election ballot. Neither challenger gathered a sufficient number of petition signatures or earned 40% or more of the delegate votes at the convention. As a result, Representative Stewart became the sole nominee and was able to bypass the primary election. (Note, however, that Mitt Romney did not win at the convention by a margin sufficient to avoid a primary election. Romney and Mike Kennedy were on the June 26 primary election ballot, and Romney secured the Republican nomination for U.S. Senate by winning that primary election.) Thus, it was not until April 21 that it became known that there would be no primary election, and up to this date, Representative Stewart had no choice but to prepare for a primary election.

Consistent with these facts, Friends For Chris Stewart, Inc. has refunded or secured redesignations for all contributions designated for the primary election that were received after April 21, 2018. (The committee received no such contributions between April 1 – April 21, so as a practical matter, all contributions designated for the primary that have been retained or redesignated were received on or before March 31, 2018.)

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
Mike Bayes
Counsel to Friends for Chris Stewart Inc.

Jace Nilsson
Treasurer

FOOT

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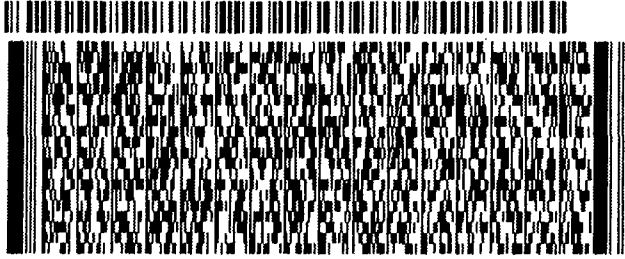
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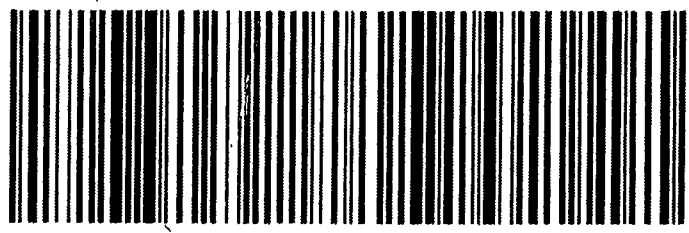
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