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BY FACSIMILE (AND EMAIL)

Mr. Larry Norton
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Draft AO 2004-12

Dear Mr. Norton:

I am filing this comment on draft Advisory Opinion 2004-12 on behalf of the Association of State Democratic Chairs. The comment is directed at the proposed answer to question 9. The draft takes the position that the requester "cannot use Federal funds to pay employees who work in excess of 25 percent in a given month in connection with Federal elections if such Federal funds have been raised through events where the costs of such events were paid for with a combination of Federal and non-Federal funds". The draft cites 11 CFR 300.33(c)(3) as authority for this proposition.

It is the Association's position that the draft proceeds from a fundamental misunderstanding of the intention and effect of that regulation. The regulation in question was intended to implement 2 USC 441i(e)(3), which is not a limitation on the use of Federal funds. This statutory provision and the implementing regulation were intended to prohibit non-Federal funds, other than Levin funds, from being used to raise Levin funds that would be expended on Federal election activity. The allocation regulation themselves prevent non-Federal funds from being used to raise Federal funds. Congress did not rewrite the fundraising allocation rules when it passed the Bipartisan Campaign Reform Act. It would be illogical for Congress to limit the use of Federal funds for Federal election activity but impose no restriction on those very same funds being contributed or spent directly on behalf of a Federal candidate.

The Association concedes that the regulations introduce ambiguity and could be read as the draft suggests. What would be lost in such a reading would be any identifiable policy objective. There is no regulatory justification for creating an additional category of Federal funds that would be subject to an extra-statutory restriction on their use. This is particularly true where the unrestricted permissible uses more directly benefit Federal candidates than the restricted uses.

The approach outlined in the draft would impose a substantial new record-keeping burden on state and local committees. It would require a committee to identify and track how the Federal funds raised at every event are ultimately spent. If the Commission believes that the allocation regulations are an insufficient guard against non-Federal funds being used to subsidize the raising of Federal funds then it should rewrite those regulations. It should not create an unjustified record-keeping burden on such a shaky statutory and regulatory foundation.

Sincerely,

Karl J. Sandstrom

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