AGENDA DOCUMENT NO. 04-62-A

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

DATE: July 15, 2004

TO: The Commission

FROM: Vice Chair Ellen L. Weintraub ELW
Commissioner Michael E. Toner MT

RE: AO 2004-20 Farrell for Congress

Following please find proposed amendments to Agenda Document 04-62, Draft B that we plan to offer at the Commission's Open Session on July 15, 2004.

Page 4, line 4 Insert:

Prior Commission advisory opinions make clear that in analyzing state law, a convention or caucus need not actually nominate a candidate for "the authority to nominate" requirement to be met. Rather, so long as the convention or caucus has any potential to nominate a candidate, it will be deemed to have the authority to nominate within the meaning of FECA and the Commission's regulations. *See* Advisory Opinion 1978-30 (finding convention had authority to nominate where state law provided that if the endorsed candidate received at least 70 percent of the convention vote, no primary election would be held, and the endorsed candidate would be deemed nominated). *See also* Advisory Opinion 1992-25 (concluding that where a candidate runs for nomination at a state convention of a political party and receives the nomination, a primary is not necessary and, therefore, the party convention has the authority to nominate a candidate). *Cf.* Advisory Opinion 1984-16 (finding that under state law, the convention only had the authority to endorse, not to nominate a candidate, where the endorsed candidate could not become the party nominee without the holding of a primary election).

Page 5, line 5 Insert after "ballot.":

Significantly, the Commission found the "authority to nominate" requirement was satisfied in Advisory Opinion 1976-58 even though there was a possibility that the convention decision would be subsequently disturbed; the fact that the convention could produce a nominee under state law was sufficient.

Page 5, line 5 Start new paragraph and insert "Under the new Connecticut law," before [w]here no candidate"

Page 6, line 20 Insert:

The Commission recognizes that where, as here, state law gives state party conventions the authority to nominate, not just endorse, a candidate, the need for separate contribution limits arises for candidates seeking nomination to Federal office during the convention phase, and potentially, also during a primary election. Such an electoral system places more pressure on candidates to put substantial resources into the convention process to secure the nomination, thus increasing the need for separate contribution limits. Where a convention or a caucus has any potential to nominate a candidate, and a candidate has any potential to secure the nomination at such an event, separate contribution limits are needed to supply the necessary resources for the candidates involved.

This approach also facilitates proper and robust disclosure by those seeking federal nomination. Practically speaking, most nominations will be resolved at the convention. This year, 11 of the 12 federal nominations in Connecticut were in fact resolved through that process. Most expenditures made in seeking these party nominations occurred in the period immediately prior to the convention; this makes sense given that the convention had the potential to produce the nominee under Connecticut law. The pre-convention reports filed prior to this year's convention collectively detail hundreds of thousands of dollars in contributions and expenditures in the twenty-day period leading up to the convention. To not consider the convention to be an election would mean that reports which illuminate this spending would not be produced. Instead, pre-primary reports would be produced during August, when almost all candidates have been officially nominated and when there is no particular value in requiring a round of disclosure. Moreover, those who lost the nomination at the convention and decided against a primary fight would also be required to file reports in August, months after they have ceased seeking the nomination. The filing requirements would be so counterintuitive as to invite violations instead of encouraging compliance.

The practical result of changing our determination that the convention is an election would be a system that promotes meaningless filing requirements, obscures valuable information from the public view, and invites traps for the unwary to run afoul of the law.

Page 6, line 7 Insert new paragraph:

As a general matter, all such contributions received by convention candidates following the date of nomination by the convention will be general election contributions. However, if a successful convention candidate is challenged and a primary is triggered under state law, the candidate would have the option of obtaining redesignation of those contributions for the newly created second election, the primary. Following the primary, a successful candidate would receive a third limit for the third election, the general.

Conversely, a candidate that did not put his name before the convention and availed himself only of the primary process will not receive the benefit of a separate

contribution limit for the convention and the primary, because he participated in only one election. However, a candidate who did place his name before the convention and lost would also be able to avail himself of a second contribution limit for the primary election.