COMMENTS OF
COMMISSIONER MICHAEL E. TONER
ON THE FEC'S FINAL SOFT MONEY REGULATIONS
JUNE 22, 2002

Today the Federal Election Commission, acting on a bipartisan basis, approved final regulations implementing the soft money provisions of the Bipartisan Campaign Reform Act ("BCRA").

The final rules approved today are balanced and practical and provide clear and understandable guidance about what is legal and illegal under BCRA. The final rules reflect a strong, grassroots consensus that emerged during the rulemaking process. In their comments and testimony, organizations across the political spectrum – including civil rights groups, non-profit groups, and labor organizations – all agreed that it was essential that the Commission act with clarity and issue bright-line rules implementing BCRA.

In area after area, the final rules adopted today do this. For example, in defining the term "agent," the Commission rejected efforts to have the national political parties held potentially liable for the actions of individuals who do not have any actual authority to act on their behalf, but have only "apparent authority" to do so. Some argued during this rulemaking that excluding individuals with apparent authority would seriously undermine BCRA. The Commission, acting upon the General Counsel's recommendation, wisely rejected this extreme argument and adopted a common-sense definition of agency that limits the term to only individuals who have actual authority to act on behalf of their principals. The Commission also made clear that agency liability is created only when an agent is acting on behalf of his or her principal, and not when the agent is acting on behalf of other organizations or individuals. This makes clear, in the strongest possible terms, that state party chairs who serve on both parties national committees can raise funds under BCRA for their own state parties without running afoul of the national party soft money ban.

Similarly, in defining the key statutory question of whether one organization is "directly or indirectly established, financed, maintained or controlled" by another organization, the Commission rejected efforts to evaluate such relationships on a case-by-case, totality-of-the-circumstances basis. Clearly, such an approach is no standard at all, and leaves political participants guessing about what they can and cannot do under the law. Instead, the Commission drew upon its established affiliation regulations, which are known to and understood by the political community, as the test to apply. The Commission also took critical, affirmative steps to ensure that BRCA is not applied retroactively in this area.

In addition, regarding the critical statutory terms "promote, support, attack, oppose," the Commission agreed with the sponsors of the legislation and relied solely on the statutory language itself and did not create any additional regulatory definitions. We will now need to wait and see how the courts interpret this key statutory provision.

Moreover, the Commission adopted rules that protect the vitality of Senator Levin's key amendment to BCRA that preserves the ability of state and local parties to engage in grass-roots political activities. Some people sought to place extraordinary restrictions on these Levin activities -- such as mandating separate bank accounts and imposing extra solicitation and disclaimer rules. Had these hyper-technical, legalistic efforts been successful, the Levin Amendment may have been hobbled.

Fortunately, in all of these and other areas, the Commission rejected the extreme views of some, and instead adopted balanced rules that are practical in the real world and provide clear guidance to people involved in politics across the country. I applaud the Commission's action here, and I look forward to working on future BCRA rulemakings with this same emphasis on issuing balanced and clear rules.