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ONE HUNDRED SEVENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515-6328

September 26, 2002

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SUITE 417-2, THE CAPITOL
(202) 225-7103

John C. Vergelli,
Acting Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Notice of Proposed Rulemaking
2002-15

Dear Mr. Vergelli:

As the Chairman and Ranking Minority Member of the House Committee on Standards of Official Conduct, we submit the following comments on the proposed changes to the Federal Election Commission rules on personal and non-campaign use of campaign funds. Our comments are directed to the proposed rules regarding the provisions of the Bipartisan Campaign Reform Act that include the following among the enumerated impermissible personal uses of campaign funds:

- "a noncampaign-related automobile expense," and
- "a vacation or other noncampaign-related trip."¹

In particular, we respond to the Commission's invitation to address whether the latter provision should be interpreted to prohibit the use of campaign funds to pay for any non-campaign-related travel, including travel undertaken for Federal officeholder purposes. It is our emphatic view that the Commission should **not** interpret the Act in such a manner, but instead, as suggested in the notice, should continue to evaluate travel on a case-by-case basis under its personal use rules. It is also our view that Commission rules should continue to permit the use of campaign-funded motor vehicles for Federal officeholder purposes.

By way of background, as the Commission is aware, the House Code of Official Conduct, like the Federal Election Campaign Act, prohibits the conversion of campaign funds to personal use.² This is a matter on which Standards Committee has been especially active in recent years. In the past two years the Committee handled two major disciplinary cases that involved in part issues relating to the conversion of campaign funds to personal use, and one

¹ 2 U.S.C. §439a(b)(2)(C), (E), as amended by Pub. L. 107-155, §301 (2002) (emphasis added).

² House Rule 23, cl. 6.

of those cases involved the extensive use of campaign funds for travel.³ Furthermore, in December 2001 the Committee issued a booklet on campaign activity that extensively addresses the prohibition against personal use, and the related requirement that Members be able to verify, through record-keeping, that their campaign funds have been used for legitimate purposes.⁴ The Senate Rules likewise prohibit the conversion of campaign funds to personal use.⁵

While thus the Federal Election Campaign Act, the House Rules and the Senate Rules prohibit personal use of campaign funds, each of those authorities has also long allowed the use of campaign funds for certain purposes that are neither personal nor campaign in nature. The scope of permissible non-campaign use is different under each of those authorities, and they use very different terminology. In the House Rules, that authority is set out in a provision allowing Members to use campaign funds for any "bona fide campaign or political purposes."⁶ The words "or political" were added to the rule in 1989, and as the legislative history of that change correctly states, its purpose was merely to clarify the original intent of the rule on use of campaign funds that the House had adopted in 1977.⁷ In that regard, an early committee report on the rules changes made in 1977 states with regard to this provision, "The rule should not be interpreted to limit the use of campaign funds strictly to a Member's reelection campaign."⁸

Under this provision as long interpreted by the Standards Committee, a Member may use campaign funds for travel that, while not campaign-related *per se*, serves a bona fide political purpose, and does not amount to a conversion of campaign funds to personal use. Such travel may include travel the purpose of which is to engage in fact-finding, or to meet with government officials or others, regarding legislative issues. While current House Rules prohibit the use of campaign funds to pay any official House expenses,⁹ use of campaign funds to pay for travel of this nature is nevertheless permissible provided that (1) it serves a bona fide political purpose, (2) no House funds or resources are used in connection with the particular trip, and (3) the trip is not in any way characterized by the Member or his or her office as an official trip.¹⁰

³ House Comm. on Standards of Official Conduct, *In the Matter of Rep. E.G. "Bud" Shuster*, H. Rep. 106-979, 106th Cong., 2d. Sess. (2000); *In the Matter of Rep. Earl F. Hilliard*, H. Rep. 107-130, 107th Cong., 1st Sess. (2001).

⁴ House Comm. on Standards of Official Conduct, *Laws, Rules and Standards of Conduct on Campaign Activity*, 107th Cong., 1st Sess., at pp. 50-61 (Dec. 2001) (hereinafter "Campaign Activity booklet").

⁵ Senate Rule 38, cl. 2.

⁶ House Rule 23, cl. 6(c) (emphasis added).

⁷ House Bipartisan Task Force on Ethics, *Report on H.R. 3660*, 101st Cong., 1st Sess. (Comm. Print, Comm. on Rules 1989) 36, reprinted in 135 Cong. Rec. 30740, 30751 (1989).

⁸ House Select Comm. on Ethics, *Final Report*, H. Rep. 95-1837, 95th Cong., 2d Sess. 16 (1979).

⁹ House Rule 24, cl. 1-3; see also Campaign Activity booklet, pp. 39-41, 61-65. However, as discussed below, the Standards Committee has proposed changing this rule so as to allow use of the funds of a Member's principal campaign committee to pay certain congressional expenses.

¹⁰ However, under the current House Rules, there are certain kinds of trips that cannot be paid for with campaign funds, such as Members' trips to Washington for the purpose of attending congressional sessions, and their return trips to their district.

While the Federal Election Campaign Act does not specifically allow the use of campaign funds for non-campaign "political" purposes, it has allowed and continues to allow use of campaign funds "for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office."¹¹ As the Commission correctly observed when it issued its original personal use regulations in 1995, in most instances a use of campaign funds that is permissible under the House Rules as serving a bona fide political purpose will also be permissible under this provision of the Act.¹²

One of the questions posed in the Notice of Proposed Rulemaking is whether Congress, in enacting the above-quoted provision of the Bipartisan Campaign Reform Act on travel, intended to prohibit Federal officeholders from using their campaign funds for "trips that are not campaign-related, such as factfinding trips." We understand that other commenters will address this question extensively, and thus we limit our comments on this question to the following points. In view of the fact that use of campaign funds for bona fide political or Federal officeholder purposes has long been recognized as permissible, it appears to us that the Commission should not interpret the statute to prohibit such use absent a clear indication, in either the statutory terms or the legislative history, of an intention to do so. As the Commission appears to recognize, the statutory terms themselves do not mandate such a result, and we are aware of no indication of such an intention in the legislative history. To the contrary, the legislative history of the relevant statutory provision, as quoted in the Notice of Proposed Rulemaking,¹³ indicates that the sole concern underlying the provision was the conversion of campaign funds to personal use, and not the use of campaign funds for bona fide political or Federal officeholder purposes.

Moreover, the Commission should be aware that –

- within the past year Congress enacted legislation that provides Senators with greater leeway to use campaign funds to pay expenses of their Senate office,¹⁴ and
- earlier this year the Standards Committee formally recommended to the House Leadership that amendments be made in the applicable statutory law (2 U.S.C. §59e(d)) and the House Rules to grant similar (although not identical) authority to Members of the House.¹⁵

Underlying these actions is the view that the rules previously in effect in the Senate and those currently in effect in the House – which generally prohibit the use of campaign funds to pay

¹¹ 2 U.S.C. §439a(a)(2).

¹² 60 Fed. Reg. 7862, 7871 (1995).

¹³ 67 Fed. Reg. 55353.

¹⁴ See 2 U.S.C. §59e(d), as amended by Pub. L. 107-68, Legislative Branch Appropriations Act, 2002, §110 (2001), and Senate Select Comm. on Ethics Interpretative Ruling 444 (Feb. 14, 2002).

A change in the Senate rules could not be made without an amendment to 2 U.S.C. §59e(d), in that this statute in effect codifies the rules of both bodies on use of non-official funds to pay congressional expenses.

¹⁵ An advisory memorandum of May 8, 2002 that the Standards Committee issued in connection with this effort is attached hereto. As that memorandum notes, under the new Senate rules, Senators may use funds of their principal campaign committee to pay any congressional expenses except in the categories of (1) franked mail, (2) employee salaries, (3) office space, (4) furniture, or (5) equipment and associated information technology services, except that cellphones and similar devices may be paid with campaign funds.

congressional expenses, and the use of campaign-funded resources to perform congressional business – impose undue administrative burdens on Members and needlessly limit their ability to perform their congressional duties.

For example, under the current House Rules, a Member is prohibited from using a campaign-funded motor vehicle for travel that he or she undertakes in connection with official duties (other than on an incidental basis). Thus, under the current rules, a House Member who has significant political as well as official needs for a motor vehicle must either acquire two vehicles – one with campaign funds and the other with official funds – or use personal funds to acquire a vehicle that could be used for both purposes. In contrast, under the amendments proposed by the Standards Committee, Members would be able to acquire a vehicle with campaign funds and use it on an unlimited basis for both political and official purposes. We understand that Senators now have such ability under Senate rules.

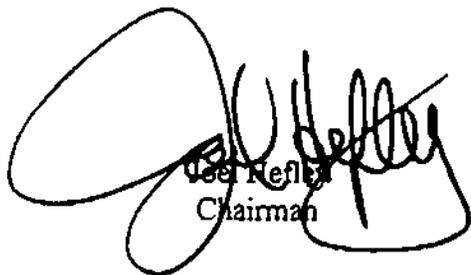
With regard to travel, we understand that Senators, under the current Senate rules, have the ability to pay for their official travel, including their travel to Washington for attending congressional sessions and return to their home state, with campaign funds. House Members do not have such ability under the current House Rules, but would be able to pay for such travel with funds of their principal campaign committee under the amendments proposed by the Standards Committee.

In view of these recent and ongoing efforts to change House and Senate rules to allow greater use of campaign funds to pay congressionally related expenses, the reasons for our concern about this Commission rulemaking are quite apparent. Any Commission ruling to the effect that campaign funds may not be used to pay travel or motor vehicle expenses incurred in connection with the performance of Federal officeholder duties would be directly at odds with – and would significantly undermine – those congressional efforts.

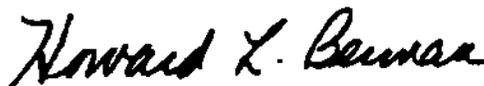
Accordingly, we strongly urge that in issuing its regulations implementing 2 U.S.C. §439a as amended, the Commission make it clear that use of campaign funds to pay Federal officeholder expenses, including those for travel and for motor vehicles, continues to be permissible, provided that there is no conversation of campaign funds or resources to personal use.

Any questions on this filing should be directed to either Robert Walker, the Committee's Chief Counsel, or John Vargo, the Director of the Office of Advice and Education, at (202) 225-7103.

Sincerely,



Joe Neftci
Chairman



Howard L. Berman
Ranking Minority Member

JOEL HEFLEY, COLORADO
CHAIRMAN

DOC HASTINGS, WASHINGTON
JUDY BIGGERT, ILLINOIS
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ONE HUNDRED SEVENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515-6328

May 8, 2002

MEMBERS' ATTENTION – NEW POLICY

MEMORANDUM TO ALL MEMBERS, OFFICERS AND EMPLOYEES

FROM: Committee on Standards of Official Conduct
Joel Hefley, Chairman *JH*
Howard L. Berman, Ranking Minority Member *HLB*

SUBJECT: Member Use of Campaign Funds to Pay Food and Beverage Expenses at Events Sponsored by Their Office and Other Official House Events

The purpose of this memorandum is to announce that effective immediately, Members may use funds of their principal campaign committee to pay food and beverage expenses at events sponsored by their Member office, as well as at other official House events in which they or a member of their staff are participating.

Under the policy announced here, Members are free to use funds of their principal campaign committee to pay food and beverage expenses at, for example, town hall meetings, briefings, conferences and other events sponsored by their Member office, whether in their congressional district or on Capitol Hill. As another example, Members may now use funds of their principal campaign committee to pay meal expenses at meetings of congressional caucuses or state delegation meetings.

The change that the Standards Committee here announces does not permit the use of campaign funds to pay any other expenses of such events, or any other expenses of any congressional office. While this change is limited to food and beverage expenses, it is a significant one. Up to now, the Committee has administered the pertinent House rules¹ in a manner that strictly prohibits the use of campaign funds to pay any congressionally related expenses.² Thus the effect of this Committee action is to create an exception – albeit a specific, limited one – to the general prohibition against using campaign funds to pay any such expenses.

¹ House Rule 24, clauses 1-3; House Rule 23, clause 6(c).

² This point was made most recently in the *Campaign Activities* booklet that the Committee issued in December 2001 (on pp. 61-65), and a Committee Advisory Memorandum of September 28, 2001 on events sponsored by House offices (on p. 3). Insofar as the use of campaign funds to pay food and beverage expenses at official House events is concerned, the guidance provided in this memorandum supercedes the guidance in those publications.

A number of cautionary points that Members should bear in mind when considering using campaign funds to pay food and beverage expenses at official events are set out at the end of this memorandum.

Reasons for the Committee Action. According to inquiries and comments that the Standards Committee has received from congressional offices, the prohibition against using campaign funds to pay food and beverage expenses at official House events has been among the aspects of the rules that Members have found most troubling. Often they wish to offer a meal or other refreshments at an official meeting or similar event as a means of encouraging attendance and full participation, but frequently Members find that absent authority to use campaign funds for this purpose, they are unable to do so.

The rules governing the use of the Members' Representational Allowance (MRA) do allow use of the MRA to pay food and beverage expenses in certain circumstances.³ However, in a number of instances, Members find that MRA funds are unavailable either because of specific limitations in the governing rules, or as a practical matter because the office budget could not absorb the required outlay. In addition, the Standards Committee has long advised that where a Member office is sponsoring an event – such as a forum on senior citizen issues, or a conference on paying for higher education – the office has the option of charging attendees for their meals.⁴ However, this procedure can be somewhat cumbersome, and at times Members are reluctant to charge their constituents for refreshments at an event sponsored by their congressional office. In the Committee's view, funds of a Member's principal campaign committee are an appropriate alternative for the payment of these expenses.

The Standards Committee was also prompted to review the rules in this area by a recent change in the Senate rules, the effect of which is to permit Senators to use funds of their principal campaign committee to pay any congressional expenses except those in five designated categories.⁵ The Committee favors House adoption of an approach similar to that adopted by the Senate, but such a broader change would require amendment of both statutory law and the House Rules. In the Committee's view, no such amendments are necessary in order for the limited change set out in this memorandum to be made.⁶

³ Those rules provide that food and beverages expenses are reimbursable when "incidental to an official and representational meeting that includes a person(s) who is not a Member or employee of the House." Thus, for example, official funds may not be used where a meeting includes only House Members and/or staff. This is often the case at meetings of the congressional caucuses, and so up to now, the participating Members have had no alternative but to pay meal expenses with personal funds.

⁴ See the Standards Committee advisory memorandum of September 28, 2001, p. 6.

⁵ See 2 U.S.C. §59c(d), as amended by §110 of the Legislative Branch Appropriations Act, 2002, Pub. L. No. 107-68 (2001), and Senate Select Comm. on Ethics Interpretative Ruling 444 (Feb. 14, 2002). Under the revised Senate rule, Senators may use campaign funds to pay any congressional expenses except those in the categories of (1) franked mail, (2) employee salaries, (3) office space, (4) furniture, or (5) equipment and associated information technology services, except that cellphones and similar devices may be paid with campaign funds. As detailed in the text, currently this rule applies in the Senate only, and not in the House.

⁶ In this regard, even when the Senate was governed by a statutory provision relating to use of campaign funds for official purposes that was identical to that which now governs the House, the Senate Select Committee on Ethics

Five Cautionary Points. As Members consider using campaign funds to pay food or beverage expenses at official events, there are at least five points that they should bear in mind.

1. The only campaign funds that a Member may use to pay food and beverage expenses at official events are funds of his or her **principal campaign committee**. Neither the funds of any multicandidate committee nor any "soft money" may be used to pay those expenses.

2. This change concerns the use of funds of a Member's principal campaign committee **only**, and there has been **no** change in the rules prohibiting other private organizations or individuals from subsidizing any congressional activity, whether on a cash or an in-kind basis. Thus it continues to be the rule that no Member or staff person may accept an offer of any private organization or individual to provide or pay for food or beverages at an event sponsored by a Member office, a congressional caucus, or any other House office.

3. Neither a Member nor anyone working on his or her behalf may either solicit campaign contributions for the payment of food or beverage expenses at official events, or accept campaign contributions that are in any way earmarked for the payment of such expenses.

4. There has been no change in the prohibition against conversion of campaign funds to personal use. As noted in the *Campaign Activities* booklet issued by the Standards Committee (on pp. 46-47, 57), outlays of campaign funds for food and beverages are among those that can, in certain circumstances, raise concerns of impermissible personal use. Accordingly, any Member considering using the permission granted here in a context other than a **specific scheduled event sponsored by a congressional office** should first review those pages of the *Campaign Activities* booklet and consult with the Committee's Office of Advice and Education.

5. The Standards Committee understands that disbursements made by a Member's principal campaign committee for the purposes discussed in this memorandum are to be reported on the campaign committee's reports to the Federal Election Commission in the category of "other disbursements." However, campaign committees should consult with the FEC on the applicable reporting requirements.

* * *

Any questions on this subject should be directed to the Committee's Office of Advice and Education at extension 5-7103.

advised Senators that they may use campaign funds to pay for refreshments at official Senate events. On this point, see the *Senate Ethics Manual*, 106th Cong., 2d Sess., p. 300.

In addition, while Member use of campaign funds is subject to the Federal Election Campaign Act, as well as the House Rules, that Act provides that campaign funds may be used to defray "ordinary and necessary expenses incurred in connection with [the candidate's] duties as a holder of Federal office." 2 U.S.C. §439a.