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February 11, 2005

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Senator Jon Corzine

Dear Mr. Norton:

We are writing on behalf of Senator Jon Corzine and Corzine for Governor, Inc., pursuant to 2 U.S.C. § 437f (2004), to seek an advisory opinion from the Federal Election Commission on activities in which Senator Corzine would engage as a candidate for Governor of New Jersey.

I. INTRODUCTION

Senator Corzine is a United States Senator from New Jersey. In December 2004, he announced his intention to run for Governor of New Jersey in the 2005 election. Senator Corzine will be a candidate for Governor in the June 5, 2005, Democratic primary, and intends to be the nominee of the Democratic Party for Governor in the November 8, 2005 general election. Corzine for Governor, Inc., is his state political campaign committee.

Senator Corzine was elected to the United States Senate in 2000. On or about May 4, 2001, Senator Corzine became a "candidate," as that term is defined and used by 2 U.S.C. § 431(2), for the United States Senate in the 2006 elections, and accordingly filed a Statement of Candidacy with the Secretary of the Senate. After announcing that he is running for Governor of New Jersey, Senator Corzine ceased being a candidate for federal office.

[57154-0001-000000/DA050310.074]

The June 5, 2005 and November 8, 2005 elections in which Senator Corzine is now running will neither nominate nor select any candidates for federal office. Unlike the vast majority of states, New Jersey elects candidates to statewide office, state legislature and other state and local offices during odd-numbered years. *See, e.g.,* N.J. Const. Art. 11, § 3, ¶ 1 (providing for election of Governor during odd-numbered years).

The source restrictions and contribution limits of New Jersey law differ significantly from those of federal law. For example, gubernatorial candidates may raise up to $3,000 per election; continuing political committees may raise up to $7,200 per calendar year; and the nonfederal accounts of state and county political parties may raise up to $25,000 and $37,000 per calendar year, respectively. *See* HTTP://WWW.ELEC.STATE.NJ.US/LIMITS.HTM. Unlike federal law, New Jersey law permits contributions by most types of corporations, and by labor organizations.

Senator Corzine would like to be able to act like any other gubernatorial candidate, notwithstanding his status as a United States Senator. While a candidate for Governor, he would like to raise funds, both himself and through agents, for his own principal campaign committee, for other New Jersey state and local candidates, for New Jersey state PACs, and for the nonfederal accounts of New Jersey state and local parties – all within the limits prescribed by New Jersey state law. He and his agents would like to participate in the spending activities undertaken by New Jersey state and local political party committees to the maximum extent permitted by New Jersey state law.

The solicitations made by Senator Corzine would not always be for contributions made payable to his gubernatorial campaign committee. They would all nonetheless be in connection with his gubernatorial campaign. State and local candidates often look to the top of the ticket for support; the extent of their cooperation and help may depend on the extent of that support. State PACs and party committees are apt to engage in efforts to support the November 8, 2005 Democratic ticket; the success of their efforts is apt to depend on the support given by the top of the ticket. All of the activity described in this opinion request will be exclusively for the purpose of influencing his 2005 gubernatorial campaign. None will be in connection with any federal election, and none will refer to any candidate for federal office.

Especially when interpreted in light of the specific facts posed by New Jersey's off-year elections, 2 U.S.C. § 441i(e)(2) and 11 C.F.R. § 300.63 should allow Senator Corzine and his agents to raise funds within New Jersey limits for the above-

referenced entities – so long as they comply with New Jersey state law; so long as they solicit, receive and spend funds solely in connection with the June 5, 2005, and November 8, 2005 elections; and so long as they refer to Senator Corzine only in his capacity as a gubernatorial candidate, and not to any other federal candidate. Such an interpretation is consistent with the intent of Congress, which intended broadly to withhold BCRA restrictions from federal officeholders who run for state office and do not mention other federal candidates.

A different interpretation of § 441i(e)(2) and 11 C.F.R. § 300.63 would create complexity that Congress did not intend. Thus Senator Corzine and Corzine for Governor, Inc., seek an advisory opinion confirming that the law permits them and other agents of Senator Corzine to engage in the full range of activities described above.

Only if the answer to the question above is "no," then requestors would require guidance to ensure that their conduct complies with the statute and the regulation. The subjects on which they would need guidance can be divided into four broad categories:

1. The extent to which Senator Corzine may raise funds for state and local candidates. Previous Commission advisory opinions affirm that Senator Corzine, at any time, may raise funds for other New Jersey state and local candidates in federally permissible amounts and from federally permissible sources. *See, e.g.*, Advisory Opinion 2003-3. However, New Jersey law uniquely permits two state or local candidates to conduct their activities together through a "joint candidates committee." *See* N.J.S.A. § 19:44A-9. May Senator Corzine raise only up to $2,000 per election for such a committee, or may he raise up to $4,000 per election as the "per-candidate" limit would seem to suggest?

2. The extent to which Senator Corzine may raise funds for state and local party committee nonfederal accounts. The regulations suggest that Senator Corzine may solicit federally permissible funds for the nonfederal accounts of the New Jersey state and local Democratic party committees. *See* 11 C.F.R. § 300.62. May Senator Corzine solicit up to $10,000 from any one donor for the nonfederal account of each state and local party committee? Would the solicitation limit apply to each party committee separately, or to all of them collectively? Would a different limit apply to solicitations for unregistered local party committees, or to solicitations made on behalf of party committees to federal PACs? In the case of a federally registered party committee, must the prospective donor's previous contributions to the

committee's federal account be considered by Senator Corzine in determining the amount he may solicit?

3. The extent to which Senator Corzine may be involved in nonfederal activities short of triggering § 441i(e) restrictions. Reviewing restrictions even more stringent than those imposed by § 441i(e), the Supreme Court said: "Nothing on the face of § 323(a) prohibits national party officers, whether acting in their official or individual capacities, from sitting down with state and local party committees or candidates to plan and advise how to raise and spend soft money. *As long as the national party officer does not personally spend, receive, direct or solicit soft money,* § 323(a) permits a wide range of joint planning and electioneering activity." *Mc Connell v. FEC,* 124 S. Ct. 619, 670 (2003) (emphasis added).

May Senator Corzine and his agents help state and local candidates, state PACs, and state and local party committees plan the structure of their fundraising and spending activities, as *McConnell* seems to permit? May they recommend individuals for employment to candidates, PACs and parties, if those individuals' duties would involve soliciting, receiving, directing, transferring, spending or disbursing nonfederal funds? What specific conduct by Senator Corzine or his agents would result in "spending" or "disbursing" funds under 11 C.F.R. § 300.62?

4. The scope of agency under § 441i(e). Are there circumstances under which individuals might be agents of Corzine for Governor, Inc., and yet not of Senator Corzine – and thus not subject to the provisions of § 441i(e) at all? Does an individual automatically become an "agent" of Senator Corzine simply by working for his gubernatorial campaign, or even by volunteering for it?

II. LEGAL DISCUSSION

A. Statutory and Regulatory Interpretation

The Bipartisan Campaign Reform Act of 2002 generally prohibits federal officeholders, federal candidates, and agents acting on their behalf from soliciting, receiving, directing, transferring, or spending funds in connection with any election, unless the funds fall within the source restrictions and contribution limits of federal campaign finance law. *See* 2 U.S.C. § 441i(e)(1); 11 C.F.R. §§ 300.61 and 300.62.

When it passed these restrictions, Congress saw that there would be times when federal officeholders and federal candidates might seek state and local elective office,

under campaign financing rules that differ from the federal scheme. In these cases, Congress chose to exempt the candidates from the soft money fundraising and spending restrictions of § 441i(e)(1). *See* 2 U.S.C. § 441i(e)(2).

The statutory exemption crafted by Congress contains the following elements:

1. It applies "to the solicitation, receipt, or spending of funds";
2. It applies when the covered person "is or was also a candidate for a State or local office";
3. It applies when the solicitation, receipt or spending is "solely in connection with" the covered person's "election for State or local office";
4. It applies when "the solicitation, receipt, or spending of funds is permitted under state law"; and
5. It applies when "the solicitation, receipt or spending of funds" refers only to the covered person, "or to any other candidate for the State or local office sought by such candidate, or both."

2 U.S.C. § 441i(e)(2).

The apparent intent of Congress was to leave a federal officeholder's candidacy for state office unaffected by BCRA and allow it to be conducted on the same terms as with other candidates, so long as the exemption did not prove to be a vehicle to help others evade BCRA, or to help the candidate use soft money for a federal election of his own. As BCRA's principal sponsor said of § 441i(e)(1): "The restrictions of this section do not apply to federal officeholders who are running for state office and spending non-Federal money on their own elections, so long as they do not mention other federal candidates who are on the ballot in the same election and are not their opponents for state office." 148 Cong. Rec. S1991, S1992 (daily ed. Mar. 18, 2002) (remarks of Sen. Feingold).

The Commission regulation implementing the statute, 11 C.F.R. § 300.63, follows the Congressional design. It operates as an exception to §§ 300.61 and 300.62, just as § 441i(e)(2) operates as an exception to § 441i(e)(1). It imposes three essential conditions:

- First, the solicitation, receipt or spending of the funds must be consistent with state law. *See* 11 C.F.R. § 300.63.
- Second, the solicitation, receipt or spending must refer only to the state or local candidate, or to others seeking the same office. *See id.*
- Third, if an individual is simultaneously seeking both federal and state office, then he must "raise, accept, and spend only Federal funds for the Federal election." *Id.*

Each condition is grounded in a purpose consistent with Congressional intent. The first condition is intended to limit the exception to its intended purpose. If the federal officeholder is raising and spending the money as a state candidate, then it follows logically that the funds raised and spent should comply with state campaign finance laws.

The second condition is likewise intended to make sure the federal officeholder intends only to support his own state candidacy. However, it seems intended to apply mainly in situations where that intention might not otherwise be clear – such as when the officeholder is raising funds for entities other than his own campaign committee. The condition would not be needed if the officeholder were raising funds for his own state campaign; that money would be governed by state law and usable only for state campaign-related purposes. Rather, the condition serves a rational purpose only if it were meant to apply to other types of fundraising done to advance a nonfederal candidacy, such as for state and local candidates, PACs and parties.[1]

The third condition is intended to ensure that a candidate for federal office remains subject to § 300.61 while acting in that capacity, and that the pre-BCRA requirements of § 110.8(d) continue to apply.

Thus, contrary to the view one might take from reading Advisory Opinion 2003-32 and its reliance on the statute, the regulation remains an appropriate framework for the analysis of the activities proposed here. Both the regulation and the statute reflect

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[1] Indeed, the regulation itself contains a reference to parties – it is described in its heading as an "Exception for State party candidates." *See* 11 C.F.R. § 300.63.

Congress' intent to create a broad exemption for officeholder activities genuinely intended to support an active state candidacy.[2]

B. Application to Senator Corzine's State Candidacy

The text of the statute, Congressional intent, and the peculiar case of New Jersey's off-year elections all weigh toward allowing Senator Corzine to participate in the 2005 New Jersey elections like any other gubernatorial candidate. Senator Corzine wants to raise funds for his own campaign on the same terms as other candidates. He wants to be able to work with parties and PACs in the same way as other candidates. He wants to provide the same types of support to other state and local candidates, so he can enjoy the same degree of political benefit.

Nothing in the statute indicates that Congress intended to deny him the ability to do these things. The statute and the legislative history indicate that a campaign like his should be left alone, so long as his conduct does not affect other federal candidates on the same ballot, or provide a vehicle to spend soft money on a federal election of his own.

This conclusion is not altered by BCRA's broad purpose of severing ties between federal officeholders and federally impermissible funds. At issue here is the scope of an exemption that expressly permits federal officeholders to raise precisely these sorts of funds for their own campaigns. It would be irrational to allow a candidate to raise corporate funds for his *own* election, while barring that same candidate from raising those same funds for *other* candidates and entities involved in that same election – on the same terms as his opponents.

Nor is this conclusion altered by § 441i(e)(2)'s use of the phrase "solely in connection with such election for State or local office." By using the "in connection with" language, which echoes other parts of the Federal law, Congress clearly intended to

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[2] Neither § 441i(e)(2) nor § 300.63 contains an express allowance for fundraising or spending by the candidate's agents. Nonetheless, the statute and the regulation can only be read logically to provide this allowance. A contrary interpretation would not permit the sorts of activities in which state and local campaigns commonly engage, and yet in which the candidates themselves almost never engage – such as signing checks, purchasing media and blast-faxing fundraising invitations, to take but three obvious examples. Both Congress and the Commission were well aware of prevailing candidate practices when they wrote the statute and rule, respectively.

extend the exemption to the full range of activities in which state and local candidates engage. Had Congress wanted to limit the allowance to fundraising or spending solely by a candidate's own campaign committee, it could have done so. That it chose not to do so is significant to the interpretation of the statute.[3]

Finally, this conclusion, while generally correct for all active state candidates regardless of the calendar years in which they run, is beyond cavil in these special circumstances. Here, there will not be any federal candidates on the same ballot. The 2005 elections will select only candidates for state and local office, and the spending to influence those elections presumptively will not be in connection with a federal election.

Both the Commission and BCRA's principal sponsors have viewed off-year elections as presenting little, if any, opportunity for soft money spending to affect federal elections. As the Commission wrote: "Activities in connection with such elections are presumably not 'conducted in connection with an election in which a candidate for Federal office appears on the ballot,' *even under the most expansive reading of the statute.*" Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule, 67 Fed. Reg. 49,064, 49,066 (2002) (emphasis added).

In their turn, BCRA's principal sponsors identified "states holding regularly scheduled state elections in odd-numbered years" as the one place where restrictions on party get-out-the-vote, voter identification and generic campaign activity might be withheld in conformity with Congressional intent. *See* Letter from Sen. John McCain *et al.* to Ms. Rosemary C. Smith, at 3 (May 29, 2002).

Thus, a proper interpretation of § 441i(e)(2) would permit Senator Corzine to do what any other New Jersey gubernatorial candidate may do – to participate, with his agents, in raising and spending funds for his own principal campaign committee, for other New Jersey state and local candidates, for New Jersey state PACs, and for the nonfederal accounts of New Jersey state and local parties.

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[3] In Advisory Opinion 2003-32, issued to Inez Tenenbaum, the Commission viewed the "solely in connection with" language as prohibiting much of the requestor's proposed conduct. Yet that was the opposite of this situation. There, a defunct campaign proposed to make donations of funds to organizations that the Commission thought likely to conduct Federal election activity. Here, an active campaign proposes to raise and spend funds in an election where there will be no Federal election activity.

A narrower interpretation would require the Commission to go where Congress itself chose not to go, and to develop a detailed set of rules to govern the conduct of federal officeholders seeking state office. The questions that would be necessary in developing such rules are set forth above; they indicate the complexity that would result. Such complexity was not intended by Congress, which evidenced a belief that it was standing back from the regulation of federal candidates' state campaigns. It is especially inapt here, where all of the activities that will occur "are presumably not conducted in connection with an election in which a candidate for Federal office appears on the ballot." 67 Fed. Reg. at 49,066.

For these reasons, Senator Corzine and Corzine for Governor, Inc., respectfully request issuance of an advisory opinion.

Very truly yours,

Marc E. Elias
Brian G. Svoboda
Counsel to Senator Corzine
and Corzine for Governor, Inc.

cc: Chairman Scott E. Thomas
Vice Chairman Michael E. Toner
Commissioner David M. Mason
Commissioner Danny L. McDonald
Commissioner Bradley A. Smith
Commissioner Ellen L. Weintraub

FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 22, 2005

Marc E. Elias, Esq.
Brain G. Svoboda, Esq.
Perkins Coie LLP
607 14th Street, N.W.
Washington, D.C. 20005-2011

Dear Messrs. Elias and Svoboda:

This refers to your letter dated February 11, 2005, on behalf of United States Senator Jon Corzine and Corzine for Governor, Inc., concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to solicitation activities by Senator Corzine in connection with his 2005 candidacy for Governor of New Jersey.

You state that Senator Corzine is seeking election as the Governor of New Jersey in 2005, and that Corzine for Governor is his State political campaign committee. You also assert that Senator Corzine has "ceased being a candidate for federal office." You note that, unlike the vast majority of States, New Jersey elects candidates to statewide office, to the State legislature, and to other State and local offices during odd-numbered years. You contend that the Act and Congressional intent, along with "the peculiar case of New Jersey's off-year elections," "weigh toward allowing Senator Corzine to participate in the 2005 New Jersey elections like any other gubernatorial candidate." Based on these assertions, you ask whether solicitations by Senator Corzine or his agents on behalf of other New Jersey State and local candidates, State PACs, and the non-Federal accounts of New Jersey State and local party committees would fit within the exceptions at 2 U.S.C. 441i(e)(2) and 11 CFR 300.63, allowing for the solicitation of funds outside the limitations and prohibitions of the Act, even where the solicitation does not refer only to Senator Corzine (as a gubernatorial candidate) or to another New Jersey gubernatorial candidate.

You also ask an additional series of questions, seeking the Commission's response in the event the Commission concludes that the above-described solicitations would not fit within the exceptions at 2 U.S.C. 441i(e)(2) and 11 CFR 300.63 and that such solicitations could ask only for funds that comply with the Federal limits and prohibitions, as well as State law restrictions. These questions pertain to the extent to which Senator Corzine may raise funds for non-Federal candidates and State and local party committees. In that regard, you inquire as to the contribution limits applicable with respect to individual candidates and committees. You also ask about the extent to which

Senator Corzine and his agents may be involved in non-Federal activities short of triggering the restrictions of 2 U.S.C. 441i(e), and about the circumstances under which individuals would be agents of Corzine for Governor, but not of Senator Corzine.

The Act authorizes the Commission to issue an advisory opinion in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. 437f(a). Such a request "shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made." 11 CFR 112.1(c). Inquiries presenting only a general question of interpretation do not qualify as advisory opinion requests. 11 CFR 112.1(b). The regulations further explain that this Office shall determine if a request is incomplete or otherwise not qualified as an advisory opinion request. 11 CFR 112.1(d).

In view of the requirements of 11 CFR 112.1(b) and (c), you will need to provide further clarification or specificity with respect to the questions you present, in order for your letter to qualify as an advisory opinion request. Accordingly, please respond to the following:

(1) In your letter, you describe certain characteristics of the proposed solicitations, including the representation that they will "refer to Senator Corzine only in his capacity as a gubernatorial candidate, and not to any other federal candidate." Please state whether these solicitations will contain specific and/or general references to other non-Federal candidates.

(2) In your first additional question, you refer to solicitations by Senator Corzine on behalf of a New Jersey "joint candidates committee." Please clarify whether Senator Corzine will be one of the two candidates using such a committee to raise campaign funds.

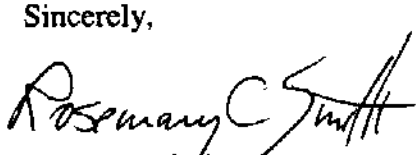
(3) In your third additional question, you ask whether Senator Corzine and his agents may help State and local candidates, State PACs, and State and local party committees plan the structure of their fundraising and spending activities. Please provide further details as to the types of help to be provided by Senator Corzine and his agents and as to the types of activities by the State and local candidates and committees that would receive assistance.

This Office also notes that you ask generally what conduct by Senator Corzine or his agents would result in spending or disbursing funds by Senator Corzine or his agents under 11 CFR 300.62. This question does not ask about a specific transaction or activity. In addition, your questions pertaining to what would constitute agency under 2 U.S.C. 441i(e) do not specify any particular activity and constitute general questions of interpretation. As currently framed, these questions do not qualify for a response in an advisory opinion.

Upon receipt of complete responses to the above requests for information, this Office will give further consideration to your inquiry. If you have any questions about the

advisory opinion process or this letter, please contact Jonathan Levin, a senior attorney in this Office, at 202-694-1650.

Sincerely,



Rosemary C. Smith
Associate General Counsel

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Perkins Coie

607 Fourteenth Street N.W.
Washington, D.C. 20005-2011
PHONE 202.628.6600
FAX 202.434.1690
www.perkinscoie.com

February 23, 2005

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2005 FEB 23 P 3:13

Rosemary C. Smith, Esq.
Associate General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Senator Jon Corzine and Corzine for Governor, Inc.

Dear Ms. Smith:

We are writing on behalf of the above-referenced Requestors in response to your letter dated February 22, 2005.

In a nine-page request received by the Commission on February 11, 2005, requestors set forth specific transactions and activities that they plan to undertake, and in which they intend to undertake in the future. *See* 11 C.F.R. § 112.1(b). Each of these transactions and activities pertained directly to the conduct of Senator Corzine and his campaign, and was supported by the most complete description possible of the relevant facts. *See id.* § 112.1(c). Nonetheless, to assist the Commission's timely review of this request, *see* 11 C.F.R. § 112.4(a), we wish to respond to the questions you posed in your letter.[1]

First, you asked whether the solicitations proposed by Senator Corzine "will contain specific and/or general references to other non-Federal candidates." The answer to

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[1] The February 22, 2005, letter was sent eleven calendar days after the Commission's receipt of the original request. *See* 11 C.F.R. § 112.1(d).

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this question is that some solicitations will contain specific references to other non-Federal candidates; some will contain general references to other non-Federal candidates; and some will contain no reference to such candidates, either general or specific.

Second, you asked whether Senator Corzine would be among the candidates having established any of the "joint candidates committees" for which he proposes to raise funds. The answer to this question is no.

Third, you ask for details as to the types of help Senator Corzine and his agents would provide to state and local candidates, state PACs, and state and local party committees in planning the structure of their fundraising and spending activities. You also ask for details as to the types of activities they might plan. The answer to this question is that Senator Corzine and his agents would communicate with representatives of the above-described entities and convey views about what types of fundraising events they might schedule and when; how they might spend funds effectively in support of the entire Democratic ticket; and how they might effectively coordinate their activities with the Corzine campaign, subject to New Jersey state law.

You note that Requestors asked "[w]hat specific conduct by Senator Corzine or his agents would result in 'spending' or 'disbursing' funds under 11 C.F.R. § 300.62?" *See* Letter from Marc E. Elias to Lawrence H. Norton, at 4 (Feb. 11, 2005). Requestors respectfully submit that this question is about specific transactions and activities that they plan to undertake. *See* 11 C.F.R. § 112.1(b). Should the Commission conclude that the exemptions provided by 2 U.S.C. § 441i(e)(2) and 11 C.F.R. § 300.63 do not apply to the full range of Senator Corzine's conduct regarding the 2005 election, Senator Corzine will need to know what he and his agents cannot permissibly say to state and local candidates, state PACs, and state and local party committees regarding their spending plans.

You further say that Requestors' questions "pertaining to what would constitute agency under 2 U.S.C. 441i(e) do not specify any particular activity and constitute general questions of interpretation." To the contrary, the request indicates that Corzine for Governor will engage various individuals in connection with the 2005 election, both as employees and as volunteers. The request asks whether these individuals would automatically and invariably become "agents" of Senator Corzine solely by virtue of their engagement by Corzine for Governor.

We appreciate the opportunity to provide you with this additional information and clarification, and look forward to the Commission's timely consideration of the request.

Very truly yours,

Marc E. Elias
Brian G. Svoboda
Counsel to Senator Corzine
and Corzine for Governor, Inc.

cc: Chairman Scott E. Thomas
Vice Chairman Michael E. Toner
Commissioner David M. Mason
Commissioner Danny L. McDonald
Commissioner Bradley A. Smith
Commissioner Ellen L. Weintraub
Jonathan Levin, Esq.