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Via Facsimile: 202-208-3333 & 202-219-3923

**Hon. Mary Dove, Secretary
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463**

**Lawrence Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463**

Re: Draft Advisory Opinion 2003-23

Dear Ms. Dove and Mr. Norton:

These comments are submitted on the above-referenced draft advisory opinion on behalf of our client, Women Engaged in Leadership, Education and Action in Democracy (WE LEAD) PAC, the federal political committee that has requested the advisory opinion.

The draft AO correctly concludes that because, under WE LEAD's proposal, the "presumptive nominee" is identifiable as to specific office, party affiliation and election cycle, individual contributors may earmark contributions to the primary committee of the "presumptive nominee" through WE LEAD. The draft AO then holds, however, that any such earmarked contributions must be forwarded to the treasurer of the presumptive nominee's authorized committee consistent with the requirements of 2 U.S.C. §432(b)(2) and 11 C.F.R. §102.8(a), i.e., within ten days of receipt of each such earmarked contribution by WE LEAD.

The draft AO concedes that, in materially identical circumstances, in Advisory Opinion 1982-33, CCH Fed. Elec. Camp. Fin. Guide Trans. Binder ¶5662 (April 23,

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1982), the Commission held that the requirements of 11 C.F.R. §102.8 would not apply until the name of the Federal candidate was known. The draft AO refers to this as a "suspension" of the 10-day rule by the Commission and suggests that the holding that the 10-day rule would not apply, *id.* n. 2 at p. 10,863, "does not provide the basis for determining that the commission has the authority to suspend the statutory requirement in 2 U.S.C. 432(b) that 11 C.F.R. 102.8 implements." Draft AO at 8, lines 3-6.

Clearly, however, AO 1982-33 did not rely on any Commission decision suddenly to "suspend" the application of 11 C.F.R. §102.8, in the sense of waiving it or letting the requestor out of complying with it. What the footnote simply says is that the 10-day time limit "would be suspended until the name of the candidate is known." (AO 1982-23, Fed. Elec. Camp. Fin. Guide Trans. Binder ¶5662 at p. 10,862 n.2.). This statement is nothing more than an acknowledgement of the obvious: that the 10-day requirement of 11 C.F.R. §102.8(a) cannot and does not apply, *by its terms*, unless and until there is a specific authorized committee to which the requirement *can* be applied, in the first place. There can be no doubt that AO 1982-33 was correctly decided; there has been no change in the relevant statutory or regulatory provisions since that AO was issued; and there is no reason whatsoever to supercede or overrule that AO.

The statute, 2 U.S.C. §432(b)(1), refers to a person "who receives a contribution for an authorized political committee...." Clearly, in the context of the WE LEAD proposal, there is no "authorized" political committee that can be identified until there is a presumptive nominee. At the same time, the contribution is not being received for a political committee which is not an authorized committee, so 2 U.S.C. §432(b)(2) is equally inapplicable.

Rather, subsection 432(b)(1) (and section 102.8(a) of the Commission's rules) become applicable, by their terms, only when there exists an actual authorized committee to which the earmarked contributions can be transferred, which is the moment when there exists a presumptive nominee, under WE LEAD's proposal. Therefore, the 10 day rule can and must be applied only from the day when that presumptive nominee can be identified under the objective criteria spelled out in the WE LEAD proposal.

Further, it should be noted, in this regard, that the policy purpose of the 10-day rule would certainly not be served by the holding set forth in the draft AO. Contrary to the statement on page 6, note 1 of the draft AO, section 432(b) did not originate in the 1979 amendments to the Act. The first provision requiring transmittal of contributions received by a person to the intended recipient committee within a certain period of time appeared in the original 1971 Act, P.L. 92-225 as section 302(b). That provision required that any person receiving a contribution for a political committee "render a detailed account thereof" to the treasurer of that committee "on demand of the treasurer" and "in any event within 5 days" of receipt. The manifest purpose of this provision was one of *disclosure*—to ensure that if one person receives a contribution, and transmits it,

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the recipient committee will have the proper information as to the name, etc. of the contributor. See S. Rep. 92-229, 92d Cong. 1st Sess. 57 (June 21, 1971)(entire purpose of Title III was to promote "total disclosure" of political finances).

The 1979 amendments added the requirement that the contribution must be forwarded to the treasurer together with the identifying information and extended the time period from 5 days to 10 days. There was no intent to alter the meaning of the 1971 language in any way except to extend the time period from 5 to 10 days. See H. Rep. 96-422, 96th Cong., 1st Sess. 12 (Sept. 7, 1979).

Manifestly, there is no issue of disclosure with respect to the earmarked contributions under the WE LEAD proposal. All earmarked contributions will be reported by WE LEAD for the period in which they are received by WE LEAD. Then, of course, the transmittal of every contribution, and its receipt by the authorized primary committee of the presumptive nominee, will be reflected both in the reports of WE LEAD and those of the authorized committee. No policy purpose whatsoever would be served—and in particular, the purpose of the 10-day rule itself would not be served—by applying the 10-day rule to the date contributions are received by WE LEAD.

For these reasons, we urge the Commission to reject those portions of the draft AO applying the 10-day rule from the date the contributions are received by WE LEAD and to hold, instead, that section 102.8(a) of the Commission's rules should apply from and after the date the presumptive nominee is identified.

Respectfully submitted,



Joseph E. Sandler
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