



THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 22, 2004

Mr. John Barker
Committee to Elect John Barker
72375 Via Vail
Rancho Mirage, CA 92270

Re: ADR 176/RR 04L-06

Dear Mr. Barker:

This is a follow-up to our earlier discussions regarding the reporting by the Committee to Elect John Barker and the efforts to resolve the matters brought to your attention by the Reports Analysis Division (RAD) of the Federal Election Commission (FEC).


You will recall, we previously discussed omissions in the 2004 Pre-Primary Report the Committee filed with the Commission, the need to provide details about the loan the Committee received and further explanations about the Committee's operating expenditures. Following our last discussion, you provided the Commission, on Schedules B and C, details regarding the Committee's \$25,000 loan and explanations about the \$28,000 expenditures. That information was helpful and addressed some of the issues raised in the Commission's earlier correspondence.

However, there are two matters that have not been resolved. First, the loan the Committee received from Jessica Barker for \$25,000 exceeded the limits (\$2,000) permitted by the statute and as such is unlawful. (I have enclosed pertinent portions of the statute that addresses this issue). Second, the Committee was in violation of the statute when it accepted a contribution that exceeded the statutory limits. (Again, pertinent portions of the statute are enclosed for your review.) Both issues are matters the Commission considers serious violations of the Federal Election Campaign Act (FECA) and need to be addressed.

As I indicated in our initial discussion, the ADR Office -- the office to which this matter has been referred -- provides an informal means for resolving matters that come before the Commission. It also provides respondents with an opportunity to resolve matters collaboratively without proceeding through the enforcement process of the FEC's Office of General Counsel (OGC). However, those matters that cannot be or are not resolved through the ADR process must be returned subsequently to OGC.

Please review the above matter and the enclosed material. I will be in touch with you early next month and hope that we can resolve this matter to our mutual satisfaction. In the meantime, if you have questions about this matter please be in touch.

Sincerely,


Allan D. Silberman
Director, ADR Office

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ply with respect to any
as a system that permits
s and statements that are

tain purposes¹

pted by a candidate, and
is support for activities of
y be used by the candidate

ditures in connection with
ndidate or individual;
enses incurred in connec-
lder of Federal office;
zation described in section
1986; or
on, to a national, State, or

donation described in sub-
person to personal use.
of paragraph (1), a contri-
to be converted to personal
to fulfill any commitment,
would exist irrespective of
individual's duties as a holder
or utility payment;

automobile expense;
ship;
campaign-related trip;

g event, concert, theater, or
associated with an election

of 2002 (BCRA), Pub L. No. 107-
age. This amendment is effective

(I) dues, fees, and other payments to a health club or recreational facility.

§ 439b. Repealed.

§ 439c. Authorization of appropriations

NOTE: This section contains the authorization for FEC appropriations for FY 1975 through FY 1978, and for FY 1981. While contained in the United States Code, this provision has no substantive election law content.

§ 440. Repealed.

§ 441. Repealed.

§ 441a. Limitations, contributions, and expenditures

(a) *Dollar limits on contributions.*

(1) Except as provided in subsection (i) and section 315A (2 U.S.C. § 441a-1), no person shall make contributions—¹

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$2,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed \$25,000;

(C) to any other political committee (other than a committee described in subparagraph (D)) in any calendar year which, in the aggregate, exceed \$5,000; or

(D) to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed \$10,000.

¹Sections 102 and 307 of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub L. No. 107-155, amended section 441a to modify contribution limits. This section was further amended by section 319(b) of BCRA to cross-reference new section 441a-1 and new paragraph (i). These amendments apply with respect to contributions made on or after January 1, 2003.

party nominates a candidate, no committee of the political party may make—

(i) any coordinated expenditure under this subsection with respect to the candidate during the election cycle at any time after it makes any independent expenditure (as defined in section 301(17)) (2 U.S.C. § 431(17)) with respect to the candidate during the election cycle; or

(ii) any independent expenditure (as defined in section 301(17)) (2 U.S.C. § 431(17)) with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under this subsection with respect to the candidate during the election cycle.

(B) *Application.* For purposes of this paragraph, all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee.

(C) *Transfers.* A committee of a political party that makes coordinated expenditures under this subsection with respect to a candidate shall not, during an election cycle, transfer any funds to, assign authority to make coordinated expenditures under this subsection to, or receive a transfer of funds from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate.

(e) *Certification and publication of estimated voting age population.*

During the first week of January 1975, and every subsequent year, the Secretary of Commerce shall certify to the Commission and publish in the Federal Register an estimate of the voting age population of the United States, of each State, and of each congressional district as of the first day of July next preceding the date of certification. The term "voting age population" means resident population, 18 years of age or older.

(f) *Prohibited contributions and expenditures.*

No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation

of any limitation in this section.

(g) *Attribution limitation in each State.* The Commission shall be attributed by a candidate in each such State, based on the amount of expenditure that can reasonably be expected to be made by the candidate.

(h) *Senatorial limitation.* Notwithstanding any other law, no more than \$35,000 may be expended for election, or for election campaign, in which an election is held by a Republican or Democratic Party, by a committee of a political party.

(i) *Increased limits on funds.²*

(1) *Increased limits on personal funds.* (A) No person shall contribute more than \$5,000 to the office of a candidate under subsection (b) of this section, applicable to the increased limits on funds.

(B) *Formal response.* (1) No person shall contribute more than \$5,000 to the office of a candidate under subsection (b) of this section, applicable to the increased limits on funds.

¹Section 307(c) of the Bipartisan Campaign Reform Act of 2002, amended section 441a to prohibit contributions made on or after the date of enactment of that Act.

²Section 304 of the Bipartisan Campaign Reform Act of 2002, amended section 441a to prohibit contributions resulting from elections held on or after the date of enactment of that Act. BCRA, cited at Note, 2

nittee of the political party
 enditure under this subsec-
 e during the election cycle
 / independent expenditure
 (2 U.S.C. § 431(17)) with
 3 the election cycle; or
 3 expenditure (as defined in
 31(17)) with respect to the
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 ses of this paragraph, all
 id maintained by a national
 essional campaign commit-
 .stablished and maintained by
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 tion cycle, transfer any funds
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 respect to the candidate.
 .estimated voting age popu-
 / 1975, and every subsequent
 rtify to the Commission and
 : of the voting age population
 each congressional district as
 date of certification. The term
 opulation, 18 years of age or
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 in violation of the provisions of
 olitical committee shall know-
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of any limitation imposed on contributions and expenditures under this section.

(g) *Attribution of multi-State expenditures to candidate's expenditure limitation in each State.*

The Commission shall prescribe rules under which any expenditure by a candidate for presidential nominations for use in 2 or more States shall be attributed to such candidate's expenditure limitation in each such State, based on the voting age population in such State which can reasonably be expected to be influenced by such expenditure.

(h) *Senatorial candidates.*

Notwithstanding any other provision of this Act, amounts totaling not more than \$35,000¹ may be contributed to a candidate for nomination for election, or for election, to the United States Senate during the year in which an election is held in which he is such a candidate, by the Republican or Democratic Senatorial Campaign Committee, or the national committee of a political party, or any combination of such committees.

(i) *Increased limit to allow response to expenditures from personal funds.²*

(1) *Increase.*

(A) *In general.* Subject to paragraph (2), if the opposition personal funds amount with respect to a candidate for election to the office of Senator exceeds the threshold amount, the limit under subsection (a)(1)(A) (in this subsection referred to as the 'applicable limit') with respect to that candidate shall be the increased limit.

(B) *Threshold amount.*

(i) *State-by-state competitive and fair campaign formula.* In this subsection, the threshold amount with respect to an election cycle of a candidate described in subparagraph (A) is an amount equal to the sum of—

(I) \$150,000; and

(II) \$0.04 multiplied by the voting age population.

¹Section 307(c) of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No 107-155, amended section 441a to modify paragraph (h). This amendment is effective for contributions made on or after January 1, 2003

²Section 304 of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No 107-155, amended section 441a to add paragraph (i). This amendment is effective as of November 6, 2002. It does not apply with respect to runoff elections or recounts of contested elections resulting from elections held prior to November 6, 2002. See section 402(a)(4) of BCRA, cited at Note, 2 U.S.C. § 431.

§§ 100.34-100.50

§§ 100.34-100.50 [Reserved]

Subpart B—Definition of Contribution (2 U.S.C. 431(8))

SOURCE 67 FR 50585, Aug. 5, 2002, unless otherwise noted

§ 100.51 Scope.

(a) The term *contribution* includes the payments, services, or other things of value described in this subpart.

(b) For the purpose of this subpart, a contribution or payment made by an individual shall not be attributed to any other individual, unless otherwise specified by that other individual in accordance with 11 CFR 110.1(k).

§ 100.52 Gift, subscription, loan, advance or deposit of money.

(a) A gift, subscription, loan (except for a loan made in accordance with 11 CFR 100.72 and 100.73), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office is a contribution.

(b) For purposes of this section, the term *loan* includes a guarantee, endorsement, and any other form of security

(1) A loan that exceeds the contribution limitations of 2 U.S.C. 441a and 11 CFR part 110 shall be unlawful whether or not it is repaid

(2) A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 CFR part 110. A loan, to the extent it is repaid, is no longer a contribution.

(3) Except as provided in paragraph (b)(4) of this section, a loan is a contribution by each endorser or guarantor. Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such

11 CFR Ch. I (1-1-04 Edition)

written agreement. In the event that such agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered a loan by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors.

(4) A candidate may obtain a loan on which his or her spouse's signature is required when jointly owned assets are used as collateral or security for the loan. The spouse shall not be considered a contributor to the candidate's campaign if the value of the candidate's share of the property used as collateral equals or exceeds the amount of the loan that is used for the candidate's campaign.

(5) If a political committee makes a loan to any person, such loan shall be subject to the limitations of 11 CFR part 110. Repayment of the principal amount of such loan to such political committee shall not be a contribution by the debtor to the lender committee. Such repayment shall be made with funds that are subject to the prohibitions of 11 CFR 110.20 and part 114. The payment of interest to such committee by the debtor shall be a contribution only to the extent that the interest paid exceeds a commercially reasonable rate prevailing at the time the loan is made. All payments of interest shall be made from funds subject to the prohibitions of 11 CFR 110.4(a) and part 114.

(c) For purposes of this section, the term *money* includes currency of the United States or of any foreign nation, checks, money orders, or any other negotiable instruments payable on demand.

(d)(1) For purposes of this section, the term *anything of value* includes all in-kind contributions. Unless specifically exempted under 11 CFR part 100, subpart C, the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution. Examples of such goods or services include, but are not limited to, securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and

Federal Election Commission

mailing lists. If goods or services are provided at less than the usual and normal charge, the amount of the contribution is the difference between the actual and normal charge for the goods or services at the time of the contribution and the amount of the political committee.

(2) For purposes of paragraph (1) of this section, *usual and normal charge* means the price of the goods or services in the market from which they would have been purchased, if the contribution is the difference between the actual and normal charge for any services provided by an unpaid contributor; and *reasonable rate* means the hourly or piecework rate prevailing at the time the services were rendered.

[67 FR 50585, Aug. 5, 2002, as amended, 78 FR 7880, Dec. 26, 2002]

§ 100.53 Attendance at a political event.

The entire amount paid to a fundraiser or other political committee for any political event shall be a contribution to the political committee if the price for a fundraising event is a contribution to the political committee.

§ 100.54 Compensation services.

The payment by any person to another person if those services are rendered without charge to the political committee for any purpose shall be a contribution to the political committee if the payment is for legal and accounting services under 11 CFR 100.74 and 100.75. No compensation shall be paid to any employee of the political committee under the following conditions:

(a) *Paid on an hourly basis.* If an employee is paid on an hourly basis and is employed on a particular number of hours, no contribution results if the employee engages in political activities during what would otherwise be a work period, provided that the time is completed by the employee on a reasonable time.

(b) *Paid on commission basis.* No contribution results if an employee engages in political activities during what would otherwise be working hours if the

(1) No aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election.

(2)(i) An event or appearance meeting the requirements of paragraph (e)(1) of this section and occurring prior to January 1 of the year of the election for which the individual is a candidate is presumptively party-related;

(ii) Notwithstanding the requirements of paragraph (e)(1) of this section, an event or appearance occurring on or after January 1 of the year of the election for which the individual is a candidate is presumptively for the purpose of influencing the candidate's election, and any contributions or expenditures are governed by the contribution and expenditure limitations of this part 110.

(iii) The presumptions in paragraphs (e)(2) (i) and (ii) of this section may be rebutted by a showing to the Commission that the appearance or event was, or was not, party-related, as the case may be.

(f)(1) Expenditures made by or on behalf of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be expenditures made by or on behalf of the candidate of such party for election to the office of President of the United States.

(2) Expenditures from personal funds made by a candidate for Vice President shall be considered to be expenditures by the candidate for President, if the candidate is receiving General Election Public Financing, see § 9003.2(c).

(g) An expenditure is made on behalf of a candidate, including a Vice-Presidential candidate, if it is made by—

(1) An authorized committee or any other agent of the candidate for purposes of making any expenditure;

(2) Any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate to make the expenditure, or

(3) A committee not authorized in writing, so long as it is requested by the candidate, an authorized com-

mittee of the candidate, or an agent of the candidate to make the expenditure.

[41 FR 35948, Aug. 25, 1976, as amended at 45 FR 21210, Apr. 1, 1980, 54 FR 34114, Aug. 17, 1989, 54 FR 48580, Nov. 24, 1989; 56 FR 35911, July 29, 1991; 68 FR 457, Jan. 3, 2003, 68 FR 6346, Feb. 7, 2003]

§ 110.9 Violation of limitations.

No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of 11 CFR part 110. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this part 110.

[67 FR 69949, Nov. 19, 2002]

§ 110.10 Expenditures by candidates.

Except as provided in 11 CFR parts 9001, *et seq.* and 9031, *et seq.*, candidates for Federal office may make unlimited expenditures from personal funds as defined in 11 CFR 100.33.

[68 FR 3996, Jan 27, 2003]

§ 110.11 Communications; advertising; disclaimers (2 U.S.C 441d).

(a) *Scope.* This section applies only to public communications, defined for this section to include the communications at 11 CFR 100.26 plus unsolicited electronic mail of more than 500 substantially similar communications and Internet websites of political committees available to the general public, and electioneering communications as defined in 11 CFR 100.29. The following types of such communications must include disclaimers, as specified in this section:

(1) All public communications for which a political committee makes a disbursement.

(2) All public communications by any person that expressly advocate the election or defeat of a clearly identified candidate.

(3) All public communications by any person that solicit any contribution.

(4) All electioneering communications by any person.

(b) *General content requirements.* A disclaimer required by paragraph (a) of this section must contain the following information:

(1) If the communication, including any solicitation, is paid for and authorized by a candidate, an authorized committee of a candidate, or an agent of either of the foregoing, the disclaimer must clearly state that the communication has been paid for by the authorized political committee;

(2) If the communication, including any solicitation, is authorized by a candidate, an authorized committee of a candidate, or an agent of either of the foregoing, but is paid for by another person, the disclaimer must clearly state that the communication is paid for by such other person authorized by such candidate, authorized committee, or agent; or

(3) If the communication, including any solicitation, is not authorized by a candidate, authorized committee of a candidate, or an agent of either of the foregoing, the disclaimer must clearly state the full name and permanent street address, telephone number, World Wide Web address of the person who paid for the communication, and that the communication is not authorized by any candidate or candidate committee.

(c) *Disclaimer specifications.*—(1) *Specific requirements for all disclaimers.* A disclaimer required by paragraph (a) of this section must be presented in a clear, conspicuous manner, to give the reader, observer, or listener adequate notice of the identity of the person or political committee that paid for the communication, that authorized the communication. A disclaimer is clear and conspicuous if it is difficult to read or hear, or if the placement is easily overlooked.

(2) *Specific requirements for printed communications.* In addition to the general requirement of paragraphs (b) and (c)(1) of this section, a disclaimer required by paragraph (a) of this section that appears on any printed public communication must comply with the following:

(i) The disclaimer must be of sufficient type size to be clearly readable by the recipient of the communication. A disclaimer in twelve (12)-point

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**SCHEDULE B (FEC Form 3)
ITEMIZED DISBURSEMENTS**

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one)

PAGE OF

<input type="checkbox"/> 17	<input type="checkbox"/> 18	<input type="checkbox"/> 19a	<input type="checkbox"/> 21
<input type="checkbox"/> 20a	<input type="checkbox"/> 20b	<input type="checkbox"/> 20c	

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)

COMMITTEE TO ELECT JOHN BARKER

Full Name (Last, First, Middle Initial)

A. High Tech MAILING

Mailing Address

41945 BOARD WALK

City

PALM DESERT, CALIF.

State

Zip Code

Purpose of Disbursement

FLYERS TO ALL REGISTERED REPUBLICANS

Candidate Name

John C. BARKER

Category/Type

Office Sought:

House
 Senate
 President

Disbursement For:

Primary General
 Other (specify) ▼

State: CA

District: 45th

Date of Disbursement

01 15 2004

Amount of Each Disbursement this Period

25000.00

Refund or Disposal of Excess Contributions Required Under 11 C.F.R. 400.53

Full Name (Last, First, Middle Initial)

B. MOBILE HOME NEWS
PR-45 ENTERPRISE, DESERT POST

Mailing Address

City

SIERRA CATH. CITY, PALM DESERT CA.

State

Zip Code

Purpose of Disbursement

NEWS PAPER ADV.

Candidate Name

John C. BARKER

Category/Type

Office Sought:

House
 Senate
 President

Disbursement For:

Primary General
 Other (specify) ▼

State: CA

District: 45th

Date of Disbursement

01 15 2004

Amount of Each Disbursement this Period

3000.00

Refund or Disposal of Excess Contributions Required Under 11 C.F.R. 400.53

Full Name (Last, First, Middle Initial)

C.

Mailing Address

City

State

Zip Code

Purpose of Disbursement

Candidate Name

Category/Type

Office Sought:

House
 Senate
 President

Disbursement For:

Primary General
 Other (specify) ▼

State:

District:

Date of Disbursement

Amount of Each Disbursement this Period

Refund or Disposal of Excess Contributions Required Under 11 C.F.R. 400.53

SUBTOTAL of Disbursements This Page (optional)

TOTAL This Period (last page this line number only)

28000.00

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SCHEDULE C (FEC Form 3)

LOANS

Use separate schedule(s) for each category of the Detailed Summary Page	PAGE	OF
	FOR LINE NUMBER: (check only one)	
	<input type="checkbox"/>	13a
	<input type="checkbox"/>	13b

NAME OF COMMITTEE (In Full)
Committee To Elect JOHN BARKER

LOAN SOURCE Full Name (Last, First, Middle Initial) <i>JENNIFER BARKER (DAUGHTER)</i>	Election: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼
Mailing Address <i>70375 VIA VAL</i>	
City <i>RANCHO MIRAGE</i> State <i>CA.</i> ZIP Code <i>92270</i>	

Original Amount of Loan <i>25000.00</i>	Cumulative Payment To Date	Balance Outstanding at Close of This Period <i>25000.00</i>
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TERMS	Date Incurred <i>JAN 2004</i>	Date Due <i>JAN 2009</i>	Interest Rate <i>0.1% (apr)</i>	Secured. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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List All Endorsers or Guarantors (if any) to Loan Source	
1. Full Name (Last, First, Middle Initial)	Name of Employer
Mailing Address	Occupation
City State ZIP Code	Amount Guaranteed Outstanding:
2. Full Name (Last, First, Middle Initial)	Name of Employer
Mailing Address	Occupation
City State ZIP Code	Amount Guaranteed Outstanding:
3. Full Name (Last, First, Middle Initial)	Name of Employer
Mailing Address	Occupation
City State ZIP Code	Amount Guaranteed Outstanding:
4. Full Name (Last, First, Middle Initial)	Name of Employer
Mailing Address	Occupation
City State ZIP Code	Amount Guaranteed Outstanding:

SUBTOTALS This Period This Page (optional)	
TOTALS This Period (last page in this line only)	<i>25000.00</i>

Carry outstanding balance only to LINE 3, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.

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