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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

October 16, 2000

## AGENDA ITEM

For Meeting of: 10-19-00

**SUBMITTED LATE**

### MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon   
Staff Director

FROM: Lawrence M. Noble   
General Counsel

N. Bradley Litchfield   
Associate General Counsel

SUBJECT: Draft Advisory Opinion 2000-29, with Alternative Proposed Draft  
from Office of General Counsel

Attached is a draft of the subject advisory opinion, as requested by several Commissioners, which concludes that a Congressional "primary election" was "held" in Louisiana on August 18, 2000 and that a separate contribution limit applies to candidates who filed for the November 7 general election ballot by August 18.

Also attached is an alternative draft proposed by the Office of General Counsel concluding that no Congressional primary elections were held in Louisiana in 2000 and that a general election on November 7 is the only certain Federal election that will be held in Louisiana.

Both drafts conclude that November 7 is the date of the general election in Louisiana for Federal offices and that there is the possibility of a Congressional runoff election on December 9 in any Congressional District where no candidate in the November 7 election obtains more than 50% of the popular vote.

This opinion is subject to the 20 day advisory opinion process under 2 U.S.C. 437f(a)(2). We request that both drafts be placed on the agenda for October 19, 2000.

Attachments

1 ADVISORY OPINION 2000-29

2  
3 Honorable W. J. "Billy" Tauzin  
4 United States House of Representatives  
5 2183 Rayburn House Office Building  
6 Washington, DC 20515-1803

**DRAFT**

7  
8 Dear Mr. Tauzin:

9 This responds to your letter dated September 25, 2000, wherein you and eight  
10 other Members of Congress from the State of Louisiana request an advisory opinion  
11 concerning the application of the Federal Election Campaign Act of 1971, as amended  
12 ("the Act"), and Commission regulations to the determination of the number of elections  
13 to Federal office that will be held this year in Louisiana. Those Members joining in this  
14 request are Senators John Breaux and Mary Landrieu, and U.S. Representatives Richard  
15 H. Baker, John Cooksey, Jim McCrery, David Vitter, William Jefferson and Chris John.

16 The request explains that all Federal candidates in Louisiana received a letter from  
17 the Commission on or about July 26, 2000, apprising them of the Commission's  
18 interpretation that the 2000 Federal election cycle in Louisiana will include the general  
19 election on November 7 and a contingent runoff election on December 9, but only in  
20 those Congressional districts where no candidate in the November 7 election receives  
21 over 50% of the vote. The letter further indicated the Commission's understanding that  
22 there will be no primary elections for these Federal offices in 2000.

23 The request states that under this interpretation, "all individual Louisiana federal  
24 candidates are being denied equal legal treatment enjoyed by all other 526 Members of  
25 Congress." It further explains that, based on your research and that of legal counsel, the  
26 Louisiana Members of Congress believe that November 7, 2000, is "in actuality, our  
27 primary election date" and that December 9, 2000 is the date of "a run-off or general  
28 election . . . Therefore, we have two established election cycles and are entitled to two  
29 separate contribution limits." You request that the Commission review the above  
30 interpretation.

1 **General election date**

2           There can be no doubt in fact or in law that November 7, 2000 is the date of the  
3 general election for Federal offices in Louisiana as it is in the other 49 States of the  
4 United States.<sup>1</sup> It is prescribed by Federal statute, 2 U.S.C. §7, as the national election  
5 date, and Commission regulations have adhered to that statutory definition since 1977  
6 because there is no other credible and legally justified alternative.<sup>2</sup> 11 CFR 100.2(b)(1).<sup>3</sup>  
7 The United States Supreme Court affirmed this interpretation in *Foster v. Love*, 522 U.S.  
8 67 (1997) [holding that Louisiana's election schedule for Federal offices, allowing the  
9 final election of Federal officeholders before the national election day in early November,  
10 conflicted with the Federal statute and was invalid]. Federal court decisions in 1998  
11 provided a remedy consistent with the cited Supreme Court decision, scheduling a final  
12 Federal election in Louisiana for November 3, 1998, and a runoff in December (but not  
13 reinstating the pre-1978 closed primary system). *Love v. Foster*, No. 95-788-B-M (M.D.  
14 La. May 21, 1998); *aff'd*, 147 F.3d 383 (5th Cir. 1998).

15           Given that the general election in Louisiana will be November 7, 2000, it follows  
16 that each Congressional candidate in this general election may accept otherwise lawful  
17 contributions made with respect to that election in amounts not exceeding \$1,000 per

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<sup>1</sup> The Commission has consistently advised Congressional candidates in Louisiana of this position, first in 1978 and again in 1984. See Advisory Opinions 1978-79 and 1984-54.

<sup>2</sup> In 1984, the Commission addressed the schedule for Federal elections in Louisiana and concluded, as it did in 1978, that, for purposes of the Act, the general election for Federal office in Louisiana would occur on the same November date as the general election date in all other States. Advisory Opinion 1984-54. The Commission did recognize that the 1984 Federal candidates in Louisiana were seeking office in an earlier election (an open primary election under LA statutes) which preceded the November general election, and that the earlier election was a separate election for purposes of the Act. As a result of the United States Supreme Court decision in *Foster v. Love*, cited above, this open primary election is no longer held for Federal offices. Accordingly, Advisory Opinion 1984-54 is superseded as to its discussion of the application of the Act to the Louisiana open primary election process for nomination (or conclusive election) to Federal office since it was based upon what is no longer a correct description of the Federal election schedule in Louisiana. In addition, the conclusion of Advisory Opinion 1992-35 that an independent candidate for the U.S. Senate in Louisiana had a separate contribution limit for the October 3, 1992, "open primary" is no longer valid since, as a result of the cited court decisions, Louisiana no longer includes Congressional offices on its open primary election ballots. See discussion below.

<sup>3</sup> Commission regulations also provide that a "general election" may occur in the context of a special election that is held to fill a vacancy in a Federal office. 11 CFR 100.2(b)(2), 100.2(f). That is obviously not the situation presented here. The most recent special election in Louisiana was held in May 1999 to fill a vacancy in the First Congressional District.

1 donor, or \$5,000 if the donor is a qualified multicandidate committee. 2 U.S.C.  
2 §§441a(a)(1)(A), 441a(a)(2)(A); *see* 11 CFR 110.1(b) and 110.2(b).<sup>4</sup>

3 ***Contingent runoff election date***

4 The further question arises as to what other Federal elections may occur, or have  
5 already occurred, this year in Louisiana. Pursuant to the cited judicial decisions, the  
6 Louisiana Secretary of State (“Secretary”) has published a 2000 regular elections  
7 schedule indicating that a “CONGRESSIONAL RUNOFF/TIE” election may be held on  
8 December 9, 2000. See website <http://www.sec.state.la.us/elections/elec2000.htm>. The  
9 Commission understands that this runoff election would be held, if at all, only in each  
10 Congressional district where no candidate receives more than 50% of the vote in the  
11 November 7 general election, and it would be restricted to the two candidates who receive  
12 the highest number of votes in the November election.

13 Commission regulations provide that the term “election” includes a runoff  
14 election that is held after a general election and prescribed by applicable State law as the  
15 means for deciding which candidate should be certified as an officeholder elect. 11 CFR  
16 100.2(d)(2).<sup>5</sup> Therefore, any Congressional candidate in Louisiana who qualifies to  
17 participate in a December 9, 2000, runoff election will be a candidate with respect to that  
18 election. Such a candidate may accept and retain contributions designated, in writing, by  
19 the donors as made with respect to the runoff election if the contributions are otherwise  
20 lawful under the Act. 2 U.S.C. §§441a(a)(1)(A), 441a(a)(2)(A). However, if the  
21 December 9 runoff election will not be held, any contributions designated for the runoff  
22 must be refunded to the donors within 60 days after November 7 (in other words, not later  
23 than January 6, 2001). *See*, by analogy, 11 CFR 102.9(e). They may not be redesignated  
24 for any other election because the contribution redesignation option is only available  
25 under Commission regulations with respect to contributions made for an election that has  
26 already been held or that is certain to occur. *See* 11 CFR 110.1(b)(3)(i), 110.2(b)(3)(i);

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<sup>4</sup> A general election contribution limit is available to these candidates even if they have no opponent in the general election. 11 CFR 110.1(j)(2), 110.2(i)(2).

<sup>5</sup> The cited regulations also provide that a runoff election may be held after a primary election in order to decide which candidate should be certified as a political party’s nominee. 11 CFR 100.2(d)(1). This regulation is not applicable here since, as explained above, the runoff in this instance would be held, if at all, after the November general election.

1 *see also* 11 CFR 110.1(b)(5)(i)--(5)(iii) and 110.2(b)(5)(i)--(iii). In the circumstances  
2 presented here, the December 9 runoff is, at most, a contingent possibility and by no  
3 means certain or even likely to become necessary.<sup>6</sup>

4 ***Primary election date***

5 Having concluded that there is a general election contribution limit for all  
6 candidates in the November 7 general election, and the possibility of a separate  
7 contribution limit for candidates who qualify to enter a December 9 runoff election (if  
8 needed), the remaining question is whether any primary election for Federal office has  
9 occurred this year in Louisiana.

10 The Louisiana elections schedule for 2000, as published by the Secretary,  
11 indicates that an "OPEN PRIMARY" would be held on October 7, but no Congressional  
12 offices are listed for that ballot; only 34 non-federal offices. <http://www.sec.state.la.us/cgibin/?rqstyp=CNDMS&rqsdta=100700>.<sup>7</sup> Commission regulations include multiple  
13 definitions of the term "primary election," including the most typical form; namely, an  
14 election "held prior to a general election, as a direct result of which candidates are  
15 nominated, in accordance with applicable State law, for election to Federal office in a  
16 subsequent" election. 11 CFR 100.2(c)(1).<sup>8</sup> Since the Louisiana primary election of  
17

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<sup>6</sup> The most recent Congressional election outcomes in Louisiana suggest that a December runoff is not likely. In the 1998 election cycle, all of the Federal elections in Louisiana were decided at the November 3, general election. Furthermore, the current ballot listings of Congressional candidates provided by the Secretary indicate that only one candidate of either the Democratic or Republican party will appear on the ballot in the 2<sup>nd</sup>, 3<sup>rd</sup>, and 7<sup>th</sup> Congressional Districts. <http://www.sec.state.la.us/cgibin/> In the other four Districts the incumbent Members will appear on the ballot, and the ballot in each of them includes at least one other candidate who is identified as either a Democrat or Republican. However, the non-incumbent candidates in those four districts have not filed reports of financial activity with the Commission; this is also the case for the independent candidates who have filed in all seven districts. This may indicate that those individuals have not qualified as candidates under the Act; that is, they have not received or expended over \$5,000 in their campaigns. See 2 U.S.C. §431(2).

<sup>7</sup> The Secretary's published ballot list for the Congressional elections on November 7 includes all seven Congressional Districts and the candidates who have filed with the Secretary for those offices. <http://www.sec.state.la.us/cgibin/?rqstyp=CNDMS&rqsdta=110700>.

<sup>8</sup> The cited regulations also include two types of primary elections that only occur in the presidential primary process. 11 CFR 100.2(c)(2), (c)(3). They also include a "primary election" definition for cases where a major party candidate is unopposed for nomination within his or her political party and who is thus certified to appear as that party's nominee on the general election ballot. As indicated by the discussion above, this is not the case in Louisiana this year. Two candidates of the same party have qualified for the November 7 general election ballot in two Congressional districts, and there is no indication that any Congressional candidate was previously nominated by the political party with which they claim affiliation or affinity, for ballot listing purposes.

1 October 7 did not include any candidates for Federal office, it clearly would not qualify as  
2 a "primary election" for purposes of the Act and Commission regulations.

3 Another definition, though, addresses candidates who seek Federal office as  
4 "independent candidates" or "without nomination by" either of the two major political  
5 parties (Democratic or Republican). 11 CFR 100.2(c)(4). The regulation provides that  
6 an independent candidate or one that seeks election without nomination by a major  
7 political party may choose one of three possible dates as his/her "primary election" date.  
8 One of the options for a primary election date is the last day, prescribed by State law, to  
9 qualify for a position on the general election ballot. 11 CFR 100.2(c)(4)(i)<sup>9</sup>

10 The Commission concludes that, pursuant to 11 CFR 100.2(c)(4), the candidates  
11 who are entered in the Louisiana Congressional general election this year must be treated  
12 as candidates who also had a primary election on August 18, 2000, which was the last day  
13 to file for the general election ballot. The salient circumstances are that such candidates  
14 had no opportunity under Louisiana statutes to seek nomination in a Congressional  
15 primary election, and there was no alternative political party nomination process in effect  
16 by either of the two major political parties in Louisiana that those candidates could have  
17 entered this year. Therefore, all such candidates are "seeking federal office . . . without  
18 nomination by a major party" and are entitled to consider August 18, 2000, as their  
19 primary election date. See 11 CFR 100.2(c)(4).

#### 20 *Contribution designation and limitation issues*

21 As indicated above, Commission regulations apply the contribution limits on a per  
22 contributor and per election basis and make distinctions between contributions that are  
23 designated in writing by a contributor for a specific election and those that are not so

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<sup>9</sup> This subsection also offers independent or non-major party candidates an option to choose a primary election date that corresponds to the last major party primary held in the State, or the date of the candidate's actual nomination by his political party. 11 CFR 100.2(c)(4)(ii), (4)(iii). Neither of those options are pertinent here since the two major political parties in Louisiana did not hold any primary election for Congressional candidates in 2000 and do not have any other party process for nominating one candidate to seek each Congressional office as the party's nominee in the November general election.

The history and underlying purpose of this subsection of the election definitions was "to be neutral as between party affiliated and independent candidates" and to treat non-major party candidates "the same as independent candidates. This was done because non-major parties usually do not have actual primary elections and spend a great deal of effort to secure a ballot position." *Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 40, 41(1977)*

1 designated. 11 CFR 110.1(b)(1)--(6), 110.2(b)(1)--(6). The Commission had earlier  
2 (about July 26, 2000) apprised the Louisiana Congressional candidates in the 2000 cycle  
3 that there would not be a primary election this year, and those candidates have reported  
4 receiving contributions for the 2000 cycle both before and after July 26. Having herein  
5 concluded that there was a "primary election" on August 18 for those candidates, it is  
6 necessary for the Commission to address how the Louisiana Congressional candidates  
7 should treat contributions received before and after the issuance of this opinion for  
8 purposes of the contribution limits which are now deemed available.

9       Because of the unique circumstances here, contributions (otherwise lawful) that  
10 were received at any time up to the issuance of this advisory opinion and that are within  
11 the combined limits of either \$2000 per donor (or \$10,000 for a multicandidate  
12 committee donor), will be regarded as within the Act's limits. Only contributions  
13 received after the date of this opinion must be governed by designation rules at 11 CFR  
14 110.1(b)(1)-(6) and 110.2(b)(1)-(6) and the rules relating to receipt and possible return of  
15 contributions for the December 9 conditional runoff referred to on page 3, [or 2 depend-  
16 ing on final pagination format] *supra*.

17 ***Reporting periods and filing dates***

18       The political committee reporting periods and filing dates remain unchanged as a  
19 result of this opinion. In part, this means that a report covering the period from July 1  
20 through September 30, 2000 must be filed no later than October 15, 2000. A 12 day pre-  
21 general election report must be filed no later than October 26, 2000, with coverage dates  
22 from October 1 through October 18, 2000. Post general election reports are also required  
23 on December 7, as is a year end report with a filing date of January 31, 2001. Other  
24 reports will be required from candidates' committees who participate in a December 9  
25 runoff, if held. The Act also requires other reports and 48 hour contribution notices at the  
26 prescribed dates within the 2000 Federal election cycle. *See generally*, 2 U.S.C.  
27 §434(a)(2) and (a)(6). Because the August 18 "primary election" date has passed and was  
28 not determined to be a primary election until this opinion was issued, and because the  
29 contributions and expenditures within that time frame will be disclosed on the report due

1 October 15, 2000, the Commission will not require the filing of a deferred 12 day pre-  
2 election report covering the period that would normally be specified for such a report.

3 This opinion does not address the issue of primary election contribution limits for  
4 the 2002 and 2004 Federal election cycles in Louisiana since you have not inquired. *See*  
5 11 CFR 112.1(b). For the reasons set forth above, however, it is clear that persons, who  
6 have already established (or will soon do so) their Federal candidate status for the United  
7 States Senate with respect to the 2002 and 2004 general elections in Louisiana, may  
8 currently accept otherwise lawful contributions with respect to those general elections.  
9 Furthermore, if the Louisiana Congressional election system is unchanged for the 2002  
10 and 2004 Federal election cycles from that described in this opinion, and if the  
11 circumstances are otherwise materially the same at that time, candidates in those elections  
12 may rely on this opinion for guidance regarding primary election contributions. *See* 2  
13 U.S.C. §437f(c) and 11 CFR 112.5.

14 This response constitutes an advisory opinion concerning the application of the  
15 Act and Commission regulations to the specific transaction or activity set forth in your  
16 request. *See* 2 U.S.C. §437f.

17 Sincerely,

18  
19  
20 Darryl R. Wold  
21 Chairman

22  
23 Enclosures (AOs 1992-35, 1984-54 and 1978-79)  
24

2  
3 Honorable W. J. "Billy" Tauzin  
4 United States House of Representatives  
5 2183 Rayburn House Office Building  
6 Washington, DC 20515-1803  
7

8 Dear Mr. Tauzin:

9 This responds to your letter dated September 25, 2000, wherein you and eight  
10 other Members of Congress from the State of Louisiana request an advisory opinion  
11 concerning the application of the Federal Election Campaign Act of 1971, as amended  
12 ("the Act"), and Commission regulations to the determination of the number of elections  
13 to Federal office that will be held this year in Louisiana. Those Members joining in this  
14 request are Senators John Breaux and Mary Landrieu, and U.S. Representatives Richard  
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23 The request states that under this interpretation, "all individual Louisiana federal  
24 candidates are being denied equal legal treatment enjoyed by all other 526 Members of  
25 Congress." It further explains that, based on your research and that of legal counsel, the  
26 Louisiana Members of Congress believe that November 7, 2000, is "in actuality, our  
27 primary election date" and that December 9, 2000 is the date of "a run-off or general  
28 election . . . Therefore, we have two established election cycles and are entitled to two  
29 separate contribution limits." You request that the Commission review the above  
30 interpretation.

31 ***General election date***

32 There can be no doubt in fact or in law that November 7, 2000 is the date of the  
33 general election for Federal offices in Louisiana as it is in the other 49 States of the

1 United States.<sup>1</sup> It is prescribed by Federal statute, 2 U.S.C. §7, as the national election  
2 date, and Commission regulations have adhered to that statutory definition since 1977  
3 because there is no other credible and legally justified alternative.<sup>2</sup> 11 CFR 100.2(b)(1).<sup>3</sup>  
4 The United States Supreme Court affirmed this interpretation in *Foster v. Love*, 522 U.S.  
5 67 (1997) [holding that Louisiana's election schedule for Federal offices, allowing the  
6 final election of Federal officeholders before the national election day in early November,  
7 conflicted with the Federal statute and was invalid]. Federal court decisions in 1998  
8 provided a remedy consistent with the cited Supreme Court decision, scheduling a final  
9 Federal election in Louisiana for November 3, 1998, and a runoff in December (but not  
10 reinstating the pre-1978 closed primary system). *Love v. Foster*, No. 95-788-B-M (M.D.  
11 La. May 21, 1998); *aff'd*, 147 F.3d 383 (5th Cir. 1998).

12 Given that the general election in Louisiana will be November 7, 2000, it follows  
13 that each Congressional candidate in this general election may accept otherwise lawful  
14 contributions made with respect to that election in amounts not exceeding \$1,000 per  
15 donor, or \$5,000 if the donor is a qualified multicandidate committee. 2 U.S.C.  
16 §§441a(a)(1)(A), 441a(a)(2)(A); *see* 11 CFR 110.1(b) and 110.2(b).<sup>4</sup>

17

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<sup>1</sup> The Commission has consistently advised Congressional candidates in Louisiana of this position, first in 1978 and again in 1984. *See* Advisory Opinions 1978-79 and 1984-54.

<sup>2</sup> In 1984, the Commission addressed the schedule for Federal elections in Louisiana and concluded, as it did in 1978, that for purposes of the Act, the general election for Federal office in Louisiana would occur on the same November date as the general election date in all other States. Advisory Opinion 1984-54. The Commission did recognize that the 1984 Federal candidates in Louisiana were seeking office in an earlier election (an open primary election under LA statutes) which preceded the November general election, and that the earlier election was a separate election for purposes of the Act. As a result of the United States Supreme Court decision in *Foster v. Love*, cited above, this open primary election is no longer held for Federal offices. Accordingly, Advisory Opinion 1984-54 is superseded as to its discussion of the application of the Act to the Louisiana open primary election process for nomination (or conclusive election) to Federal office since it was based upon what is no longer a correct description of the Federal election schedule in Louisiana. In addition, the conclusion of Advisory Opinion 1992-35 that an independent candidate for the U.S. Senate in Louisiana had a separate contribution limit for the October 3, 1992, "open primary" is no longer valid since, as a result of the cited court decisions, Louisiana no longer includes Congressional offices on its open primary election ballots. *See* discussion below.

<sup>3</sup> Commission regulations also provide that a "general election" may occur in the context of a special election that is held to fill a vacancy in a Federal office. 11 CFR 100.2(b)(2), 100.2(f). That is obviously not the situation presented here. The most recent special election in Louisiana was held in May 1999 to fill a vacancy in the First Congressional District.

<sup>4</sup> A general election contribution limit is available to these candidates even if they have no opponent in the general election. 11 CFR 110.1(j)(2), 110.2(i)(2).

1 ***Contingent runoff election date***

2 The further question arises as to what other Federal elections may occur this year  
3 in Louisiana. Pursuant to the cited judicial decisions, the Louisiana Secretary of State  
4 (“Secretary”) has published a 2000 regular elections schedule indicating that a  
5 “CONGRESSIONAL RUNOFF/TIE” election may be held on December 9, 2000. See  
6 website <http://www.sec.state.la.us/elections/elec2000.htm>. The Commission  
7 understands that this runoff election would be held, if at all, only in each Congressional  
8 district where no candidate receives more than 50% of the vote in the November 7  
9 general election, and it would be restricted to the two candidates who receive the highest  
10 number of votes in the November election.

11 Commission regulations provide that the term “election” includes a runoff  
12 election that is held after a general election and prescribed by applicable State law as the  
13 means for deciding which candidate should be certified as an officeholder elect. 11 CFR  
14 100.2(d)(2).<sup>5</sup> Therefore, any Congressional candidate in Louisiana who qualifies to  
15 participate in a December 9, 2000, runoff election will be a candidate with respect to that  
16 election. Such a candidate may accept and retain contributions designated, in writing, by  
17 the donors as made with respect to the runoff election if the contributions are otherwise  
18 lawful under the Act. 2 U.S.C. §§441a(a)(1)(A), 441a(a)(2)(A). However, if the  
19 December 9 runoff election will not be held, any contributions designated for the runoff  
20 must be refunded to the donors within 60 days after November 7 (in other words, not later  
21 than January 6, 2001). They may not be redesignated for any other election because the  
22 contribution redesignation option is only available under Commission regulations with  
23 respect to contributions made for an election that has already been held or that is certain  
24 to occur. See 11 CFR 110.1(b)(3)(i), 110.2(b)(3)(i); see also 11 CFR 110.1(b)(5)(i)--  
25 (5)(iii) and 110.2(b)(5)(i)--(iii). In the circumstances presented here, the December 9

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<sup>5</sup> The cited regulations also provide that a runoff election may be held after a primary election in order to decide which candidate should be certified as a political party’s nominee. 11 CFR 100.2(d)(1). This regulation is not applicable here since, as explained above, the runoff in this instance would be held, if at all, after the November general election.

1 runoff is, at most, a contingent possibility and by no means certain or even likely to  
2 become necessary.<sup>6</sup>

3 *Primary election date*

4 Having concluded that there is a general election contribution limit for all  
5 candidates in the November 7 general election, and the possibility of a separate  
6 contribution limit for candidates who qualify to enter a December 9 runoff election (if  
7 needed), the remaining question is whether any primary election for Federal office has  
8 occurred this year in Louisiana.

9 The Louisiana elections schedule for 2000, as published by the Secretary,  
10 indicates that an "OPEN PRIMARY" would be held on October 7, but no Congressional  
11 offices are listed for that ballot; only 34 non-federal offices. <http://www.sec.state.la.us/cgibin/?rqstyp=CNDMS&rqsdt=100700>.<sup>7</sup> Commission regulations include multiple  
12 definitions of the term "primary election," including the most typical form used  
13 extensively by the two major political parties. Namely, an election "held prior to a  
14 general election, as a direct result of which candidates are nominated, in accordance with  
15 applicable State law, for election to Federal office in a subsequent" election. 11 CFR  
16 100.2(c)(1).<sup>8</sup> Since the Louisiana primary election of October 7 did not include any  
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<sup>6</sup> The most recent Congressional election outcomes in Louisiana suggest that a December runoff is not likely. In the 1998 election cycle, all of the Federal elections in Louisiana were decided at the November 3, general election. Furthermore, the current ballot listings of Congressional candidates provided by the Secretary indicate that only one candidate of either the Democratic or Republican party will appear on the ballot in the 2<sup>nd</sup>, 3<sup>rd</sup> and 7<sup>th</sup> Congressional Districts. <http://www.sec.state.la.us/cgibin/>. In the other four Districts the incumbent Members will appear on the ballot, and the ballot in each of them includes at least one other candidate who is identified as either a Democrat or Republican. However, the non-incumbent candidates in those four districts have not filed reports of financial activity with the Commission; this is also the case for the independent candidates who have filed in all seven districts. This may indicate that these individuals have not qualified as candidates under the Act; that is, they have not received or expended over \$5,000 in their campaigns. See 2 U.S.C. §431(2).

<sup>7</sup> The Secretary's published ballot list for the Congressional elections on November 7 includes all seven Congressional Districts and the candidates who have filed with the Secretary for those offices. <http://www.sec.state.la.us/cgibin/?rqstyp=CNDMS&rqsdt=110700>.

<sup>8</sup> The cited regulations also include two types of primary elections that only occur in the presidential primary process. 11 CFR 100.2(c)(2), (c)(3). They also include a "primary election" definition for cases where a major party candidate is unopposed for nomination within his or her political party and who is thus certified to appear as that party's nominee on the general election ballot. As indicated by the discussion above, this is not the case in Louisiana this year. Two candidates of the same party have qualified for the November 7 general election ballot in two Congressional districts, and there is no indication that any Congressional candidate was previously nominated by the political party with which they claim affiliation or affinity, for ballot listing purposes.

1 candidates for Federal office, it clearly would not qualify as a “primary election” for  
2 purposes of the Act and Commission regulations.

3 Another definition has some arguable relevance in the circumstances presented  
4 here. It addresses candidates who seek Federal office as “independent candidates” or  
5 “without nomination by” either of the two major political parties (Democratic or  
6 Republican).<sup>9</sup> 11 CFR 100.2(c)(4). The regulation provides that an independent  
7 candidate, or one that seeks election without nomination by a major political party, may  
8 choose one of three possible dates as her or his “primary election” date. One of the  
9 options for a primary election date is the last day, prescribed by State law, to qualify for a  
10 position on the general election ballot. 11 CFR 100.2(c)(4)(i).<sup>10</sup> The history and  
11 underlying purpose of this subsection of the election definitions was “to be neutral as  
12 between party affiliated and independent candidates” and to treat political party  
13 candidates who are not candidates of a major party “the same as independent candidates.  
14 This was done because non-major parties usually do not have actual primary elections  
15 and spend a great deal of effort to secure a ballot position. Therefore, their primary is  
16 considered to occur on” one of the three dates set forth in section 100.2(c)(4). *Federal  
17 Election Commission Regulations, Explanation and Justification, House Document No.  
18 95-44, at 40, 41 (1977).*<sup>11</sup>

19 This definition of “primary election,” by its terms, focuses on candidates who seek  
20 election without endorsement or nomination by a major political party and without any  
21 declared affiliation with such a party. Its purpose is to afford that class of candidates an  
22 opportunity to receive contributions for both a “primary election” and a general election

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<sup>9</sup> The term “major party” in this regulation means a political party whose presidential candidate in the last election for that office received at least 25% of the national popular vote. See 26 U.S.C. §9002(6). Thus, as indicated by the 1996 election results, there are currently only two major parties.

<sup>10</sup> This subsection also offers independent or non-major party candidates an option to choose a primary election date that corresponds to the last major party primary held in the State, or the date of the candidate’s actual nomination by his political party. 11 CFR 100.2(c)(4)(ii), (4)(iii). Neither of those options are pertinent here since the two major political parties in Louisiana did not hold any primary election for Congressional candidates in 2000 and do not have any other party process for nominating one candidate to seek each Congressional office as the party’s nominee in the November general election.

<sup>11</sup> The regulations did not contemplate an open general election process, such as that now followed in Louisiana, when promulgated in 1977. See 11 CFR 100.6(b)(2) [May 1, 1977]; later revised, in technical respects only, and renumbered as 11 CFR 100.2(c)(4).

1 in the most common and typical campaign situations; namely, where they must compete  
2 with major party candidates in the general election.

3       The above described circumstances in the Louisiana Congressional elections  
4 present a very different situation; major party candidates who are permitted under  
5 Louisiana law to, in effect, nominate themselves by filing directly for the open general  
6 election ballot. There is no need to secure the endorsement, much less the nomination, of  
7 any major political party, and hence there is no campaign to seek the party's nomination.  
8 Indeed, a political party nominating process is not even available should a major party  
9 candidate wish to pursue it. In these respects and since the 1998 election cycle, the party  
10 nomination phase of the Federal election process in Louisiana is quite dissimilar from  
11 that in any other State. Therefore, because the facts are dissimilar it is both necessary and  
12 consistent for the Commission to reach a different conclusion here than would likely  
13 obtain when applying the same regulation in nearly all, if not all, other States.

14       Obviously, all Congressional candidates in Louisiana should be treated the same  
15 with respect to the lack of a separate "primary election" limit under the Act. Given the  
16 information presently available to the Commission, it is not apparent that any independent  
17 or non-major party Congressional candidate who has qualified for the Louisiana general  
18 election ballot is in a financial posture where a separate "primary election" limit should  
19 be made available to such person in order to assure equal or neutral treatment as  
20 compared with the major party candidates who are on that same ballot. See footnote 6  
21 [noting that the non-filing of campaign finance reports by the non-incumbent  
22 Congressional candidates may indicate that they have not qualified as "candidates" under  
23 the Act]. In other words, if all Congressional candidates in the Louisiana 2000 general  
24 election have only one contribution limit, and no separate limit for a "primary election,"  
25 they will, on a class basis, receive parity and equal treatment for purposes of Commission  
26 regulations and the Act.

27       Accordingly, for the reasons discussed above, the Commission concludes that  
28 there are no primary elections for Congressional offices in Louisiana in the 2000 election  
29 cycle. This conclusion applies to major party candidates, candidates of other political  
30 parties and independent candidates with no declared party affiliation.



