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April 22, 2003

Mary Dove
Acting Commission Secretary
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Draft Advisory Opinion 2003-03

Dear Ms. Dove:

I write on behalf of the Campaign Legal Center regarding draft Advisory Opinion 2003-03, which the Federal Election Commission intends to consider this coming Thursday (April 24, 2003). The Campaign Legal Center is a non-profit, non-partisan organization established to represent the public interest in strong enforcement of the nation's campaign finance laws. Through its legal staff, the organization participates in the administrative and legal proceedings in which campaign finance and campaign-related media laws are interpreted and enforced.

In particular, we wish to provide comments on certain elements of this draft Advisory Opinion to assist the Commission in the process of evaluating the issues presented here.

1. We agree with the draft Advisory Opinion that Federal candidates and officeholders may raise funds for state and local candidates under the Bipartisan Campaign Reform Act of 2002 (BCRA). Indeed, we hope that the Commission's affirmation of this fact will dispel some prevailing misimpressions about BCRA's impact on such fundraising. BCRA does require Federal candidates and officeholders to limit their solicitations on behalf of state and local candidates to amounts compliant with Federal source prohibitions and amount limitations. 2 U.S.C. 441i(e)(1)(B); 11 C.F.R. 300.62. But within those parameters, solicitations of funds on behalf of state and local candidates are fully permitted.

2. We also agree with the draft Advisory Opinion that general solicitations of funds for state and local candidates by Federal candidates or officeholders, *i.e.*, solicitations that do not request specific amounts, are impermissible. The rule laid down by the Advisory Opinion – that if a Federal officeholder or candidate solicits funds for a state or local candidate, he or she must expressly qualify or limit his or her request so it is clear that he or she is asking only for Federally compliant funds (and may not proceed to encourage the potential donor to disregard the limitation) – reflects the statute and corresponding regulations and will help fulfill congressional intent that Federal officeholders and

candidates be "out of the soft money fundraising business." 148 CONG. REC. S2116 (daily ed. Mar. 20, 2002) (statement of Sen. Levin).

3. Likewise, we agree with the draft Advisory Opinion's determination that the use of the name of a Federal candidate or officeholder in a written fundraising solicitation, with the authorization of that Federal candidate or officeholder, constitutes a "solicitation" by the candidate subject to the limits of 2 U.S.C. 441i(e)(1) (regardless of whether or not the Federal candidate or officeholder actually signs the letter) – and the writing must accordingly (i) include an express statement limiting or qualifying the solicitation to Federally compliant funds, and (ii) not be distributed to Federally prohibited sources. Along these lines, the Commission is correct to conclude that, at a minimum, by agreeing to be an honorary co-chair of a non-Federal campaign or on the host committee of a fundraising event or program, the Federal candidate or officeholder has authorized his or her name to be used in fundraising solicitations for that campaign or in the context of the fundraising event or program. In these circumstances, written fundraising solicitations cannot somehow be severed from the Federal candidate or officeholder mentioned therein for purposes of 2 U.S.C. 441i(e)(1).

4. The draft Advisory Opinion correctly acknowledges that an individual could be considered an "agent" of a Federal candidate or officeholder – subject to the restrictions of 2 U.S.C. 441i(e)(1) – insofar as that individual is soliciting funds in connection with a non-Federal election (as well as in connection with a Federal election, including for "Federal election activity"). However, we disagree with language appearing on page 15, lines 3-7 suggesting that an individual asked by a Federal candidate or officeholder to raise funds in connection with a non-Federal election is not always an "agent" of a Federal candidate or officeholder under BCRA when they proceed to do so. If a Federal candidate or officeholder asks someone to raise funds in connection with a non-Federal election, the person is certainly an "agent" of the Federal candidate or officeholder in doing so. This is a classic conveyance of "express authority" – clearly covered by the Commission's definition of "agent" at 11 C.F.R. 300.2(b). The Commission should clarify that this person is an "agent" of a Federal candidate or officeholder under 2 U.S.C. 441i(e)(1) in raising non-Federal funds.

5. More broadly, the framework that the draft Advisory Opinion establishes for the solicitation of funds by Federal candidates or officeholders for state and local candidates is triggered only insofar as a communication or act by a Federal candidate or officeholder (or a writing in which his or her name is used with his or her authorization) is deemed a "solicitation" by the Commission. Unfortunately, in its soft money rulemaking, the Commission adopted an exceedingly narrow definition of "to solicit" which excluded acts which had long been deemed "solicitations" by the agency and were accordingly recommended for inclusion in the BCRA definition by the Office of General Counsel. We are concerned that the narrowness of the Commission's definition of "to solicit" could compromise some of the mechanisms established in this draft Advisory Opinion to prevent solicitations of corporate or labor funds, or unlimited individual funds, in connection with elections by Federal candidates or officeholders. This is particularly the

case given what appears to be a one-sided emphasis at various points throughout the draft Advisory Opinion on the narrowness of the Commission's definition of "to solicit."

Given the public insistence of Commissioners that the definition of "to solicit" they ultimately adopted was not readily susceptible to evasion, we believe that the Commission should at least take the opportunity presented by this Advisory Opinion to state and confirm that perspective in a meaningful way. This could help deter Federal candidates or officeholders from endeavoring to skirt BCRA and raise unlimited funds in connection with non-Federal elections.

We appreciate the Commission's willingness to consider these comments.

Sincerely,



Glen Shor
Associate Legal Counsel

cc: Lawrence H. Norton, Esq., General Counsel, Federal Election Commission