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January 6, 2004

VIA FACSIMILE

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

Re: AOR 2003-36 Republican Governors Association

Dear Mr. Norton:

We are writing on behalf of the Center for Responsive Politics (CRP) and its campaign finance law project FEC Watch to comment on Draft A of Advisory Opinion 2003-36, which responds to an advisory opinion request (AOR) submitted by the Republican Governors Association.

Question 1

As we have previously stated, we believe the Commission's regulatory definitions of "to solicit" and "to direct" are too narrow, and allow candidates and officeholders to circumvent the prohibitions in 2 U.S.C. § 441i(e). Therefore, we believe the draft responses to question 1 are inconsistent with the Federal Election Campaign Act, 2 U.S.C. § 431 *et seq.* (FECA).

Question 2

Draft A's response to question 2 ignores the most basic characteristic of a section 527 organization. Under 26 U.S.C. § 527(e), a section 527 organization is an organization whose purpose is "influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed." Thus, a section 527 organization's reason for existing is to engage in activities in connection with an election. As such, any amount solicited for a section 527 organization by a federal candidate or officeholder is subject to the solicitation restrictions in 2 U.S.C. § 441i(e)(1).

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2004 JAN -6 P 12:56

AO 2003-36 Comment
Page 2

That section prohibits federal candidates and officeholders from soliciting amounts from prohibited sources or in excess of the dollar limits in the FECA.

Draft A also ignores the limitations of 2 U.S.C. § 441(e)(4). Section 441(e)(4) contains a limited exception for federal candidate and officeholder solicitations on behalf of organizations that engage in certain types of election-related activity. This exception only applies to solicitations on behalf of section 501(c) organizations. It does not allow solicitations on behalf of section 527 organizations. See 11 CFR 300.65.

Allowing a section 527 organization to set up a separate account and claim that it will be used exclusively for purposes unrelated to elections ignores the fact that dollars are inherently fungible. Any funds that RGA does not have to spend on its conference activities are readily available for its election-related activities. Thus, federal officeholder fundraising, while it may purport to be for conference activities, increases the RGA's resources for its election-related activities.

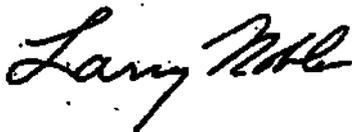
Draft A would set a dangerous precedent for another reason. Recent history shows that many political organizations conduct activities that purport to be issue-oriented rather than election-related, but are in fact designed to promote the election or defeat of particular candidates. Draft A would allow such an organization to enlist the aid of a federal candidate or officeholder to raise nonfederal funds for these activities. In some instances, nonfederal funds solicited by a federal candidate might be used to defeat that candidate's opponent.

Approving Draft A would repeat the mistake made by the Commission in the 1970s when it allowed political parties to set up separate accounts to raise and spend nonfederal funds on ostensibly generic campaign activities. The Supreme Court recently admonished the FEC for these decisions, saying that they played a role in the development of methods used to circumvent the prohibitions and limitations in the FECA. *McCormell v. FEC*, 540 U.S. ____ (2003) (*slip op.* at 12).

Conclusion

For these reasons, we urge the Commission reject Draft A of Advisory Opinion 2003-36.

Respectfully submitted,



Lawrence Noble
Executive Director
Center for Responsive Politics



Paul Sanford
General Counsel
Center for Responsive Politics