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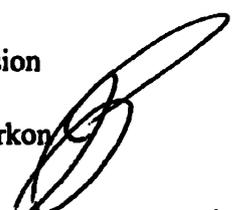


FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 4, 2004

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon 
Staff Director

FROM: Lawrence H. Norton 
General Counsel

Rosemary C. Smith 
Acting Associate General Counsel

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AGENDA ITEM
For Meeting of: 02-05-04

SUBMITTED LATE

SUBJECT: Recommended amendments to Agenda Doc. No. 04-12
(Draft AO 2003-38)

The Office of General Counsel has prepared Attachment A to this memorandum, which lists this Office's recommended amendments to Agenda Document No. 04-12.

Recommendation

The Office of the General Counsel recommends that the Commission approve Draft B of Agenda Document No. 04-12 incorporating the amendments contained in Attachment A to this memorandum.

ATTACHMENT A
Agenda Document No. 04-12 Amendments Sheet

1. At page 4 of Draft B, line 10: replace “donations” with “contributions”

2. At page 4 of Draft B, line 11: Make the sentence beginning on line 11 the first sentence of a new paragraph.

3. On page 4 of Draft B, line 13: insert the following after “apply.”:

Under 2 U.S.C. 441i(e)(2), the prohibitions of section 441i(e)(1) do not apply to the solicitation, receipt, or spending of funds by an individual described in section 441i(e)(1) who is or was also a candidate for a State or local office solely in connection with such election for State or local office if the solicitation, receipt, or spending of funds is permitted under State law and refers only to such State or local candidate, or to any other candidate for the State or local office sought by such candidate or both. Accordingly, the exception in section 441i(e)(2) does not apply to Representative Engel because he is a candidate solely for Federal office.

The exception in section 441i(e)(3) applies to Federal candidates or officeholders when they attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party. 2 U.S.C. 441i(e)(3); 11 CFR 300.64. This exception does not apply to fundraising events for the Committee, however, because the Committee is not a State, district, or local committee of a political party.

Under section 441i(e)(4)(A), Federal candidates and officeholders may make a general solicitation of funds on behalf of a 501(c) organization provided that the organization's primary purpose is not to conduct certain election activities and provided that the solicitation does not specify how the funds will or should be spent. 2 U.S.C. 441i(e)(4)(A). Commission regulations implementing this exception limit the exception to 501(c) organizations that satisfy one of three criteria: (1) organizations that do not engage in activities in connection with an election; (2) organizations that engage in activities in connection with an election but such activities are not the organization's principal purpose; and (3) organizations that engage in activities in connection with an election but the solicitation made on behalf of the organization is not to obtain funds for such activities. 11 CFR 300.65(a)(1). As explained above, the principal purpose of the Committee is to defray costs incurred in a redistricting lawsuit, activities that the Commission has determined are in connection with an election within the meaning of 2 U.S.C. 441i(e)(1). In addition, all funds solicited by Representative Engel on behalf of the Committee would be used for that purpose. Therefore, even if the Committee were to seek or obtain 501(c) status, the exceptions in section 441i(e)(4)(A) do not apply.

Pursuant to the exception in section 441i(e)(4)(B), Federal candidates and officeholders may make a solicitation explicitly to obtain funds for certain election activities or for an organization whose principal purpose is to conduct such activities provided that the solicitation is made only to individuals and the amount solicited from any individual does not exceed \$20,000 during any

calendar year. 2 U.S.C. 441i(e)(4)(B); 11 CFR 300.65(b). This exception is limited, however, to the following, specific types of election activities, all of which are described by Commission regulations: (1) voter registration activity; (2) voter identification; (3) get-out-the-vote activity; and (4) generic campaign activity. 11 CFR 300.65(b); *see also* 11 CFR 100.24(a)(2) (voter registration activity); 11 CFR 100.24(a)(4) (voter identification); 11 CFR 100.24(a)(3) (get-out-the-vote activity); and 11 CFR 100.25 (generic campaign activity). Based on the facts presented in your request, the Committee does not engage in any of these four election activities. Thus, the exception in section 441i(e)(4)(B) does not apply.

4. At page 4 of Draft B, line 18: insert "contributions" after "raise"
5. At page 4 of Draft B, line 21: insert "such" after "receives"