



# SIMMONS FOR CONGRESS

www.simmonsforcongress.com

June 28, 2004

Lawrence M. Norton  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

Re: Simmons for Congress

Dear Mr. Norton:

Pursuant to 2 U.S.C §437f(d), this letter requests the opportunity to provide comments on AOR 2004-20 on behalf of Simmons for Congress ("SFC"). AOR 2004-20, submitted by the Farrell for Congress campaign, asks about the determination of what constitutes an "election" under the provisions of the Federal Election Campaign Act ("FECA"), as amended, in light of the recently revised nomination procedures for candidates to District office under the General Statutes of the State of Connecticut ("CGS").

SFC is the principal campaign committee of Representative Rob Simmons who has filed a statement of candidacy with the Commission as a candidate in 2004 for re-election as a United States Representative from Connecticut's Second District. SFC is raising funds in connection with the 2004 campaign.

Connecticut's previous statutes relating to the nomination of candidates to District office (the office of United States Representative being one such "District office" pursuant to CGS §9-372(3) and (4)), provided that the Convention of the delegates of a political party was the sole authority to determine both the nominee of the party to a District office and whether any other candidate qualified for a primary for such District office. At that time, a candidate qualified for a primary only if he or she received at least fifteen per cent of the delegate votes at said Convention. There was no other means by which a candidate could qualify for a primary.

Advisory Opinion 1976-58 addressed this old statute and indicated that the convention was indeed an "election" for the requirements of FECA and the allocation of contributions thereunder. If a candidate qualified for a primary under the old rules, said primary would then constitute a separate election subject to separate contribution limits.

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Paid for by Simmons for Congress

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LATE COMMENT  
ON

AOR 2004-20

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In 2003, the Connecticut General Assembly significantly revised its statutes regarding the nomination of candidates. CGS §9-400 was amended to allow a candidate for State or District office to petition directly to be included on the ballot in a primary election as long as said candidate gathered valid signatures from at least two percent of the enrolled members of the political party in the district for which office he or she was contesting. The candidate for nomination could still seek delegate votes at the District Convention and if he or she received at least fifteen per cent of the delegate votes, the candidate could still qualify for the primary ballot through that means. However, the candidate could also completely skip the District Convention and submit petitions to qualify for the primary election.

This statutory revision significantly altered the authority and nature of the District Conventions which, in our opinion, requires an Advisory Opinion from the Commission to review its previous opinion from 1976 regarding Connecticut's procedures.

CGS §9-372 (2) defines the term "Convention" as a "meeting of delegates of a political party held for the purpose of designating the candidate or candidates to be endorsed by such party in a primary of such party for state or district office..." (emphasis added). Connecticut's new nomination procedure is now closer to that reviewed by the Commission in Advisory Opinion 1986-17 on New York's laws. In that set of facts, New York's laws allowed the state committee of a political party to designate a candidate for nomination but also allowed enrolled members of the party to petition to designate another candidate for the primary election. The Commission determined that the state committee did not have authority to nominate a candidate but only to designate a candidate for nomination and therefore said state committee action would not be deemed a separate "election" under FECA.

Under Connecticut's new law, a candidate submitting petitions to be qualified on the primary election ballot, must submit said petitions with the required number of signatures within fourteen days after the close of the District Convention (CGS §9-400(b)). Furthermore, CGS §9-416 provides that only if "(1) ... no person other than the party-endorsed candidate has received at least fifteen per cent of the votes of the delegates present and voting ... and (2) within the time specified in section 9-400, no candidacy for nomination by a political party to a state or district office has been filed by or on behalf of a person other than a party-endorsed candidate ... no primary shall be held by such party for such office and the party-endorsed candidate for such office shall be deemed to have been lawfully chosen as the nominee of such party for such office."

Therefore, the earliest date that a party-endorsed candidate can be lawfully and conclusively determined to be the nominee of such party for a state or district office under the new law is fourteen days after the close of the District Convention. Of course, if there has been one or more other candidates who have qualified for the primary election either through receipt of at least fifteen per cent of the delegate votes at the District Convention or through submission of the

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required number of signatures from enrolled party members, then the primary election will be held and the nominee of such party will not be determined until after said primary which pursuant to CGS§9-423 is the second Tuesday in August, this year being August 10, 2004.

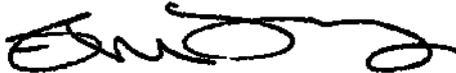
SFC believes that Connecticut's new law is more similar to the New York law reviewed by the Commission in Advisory Opinion 1986-17 than the old Connecticut law reviewed by the Commission in Advisory Opinion 1976-58. For that reason, SFC respectfully requests that the Commission address the following questions as a part of its review of AOR 2004-20:

1) Does the District Convention under Connecticut law constitute an "election" under FECA?

2) Alternatively, since Connecticut law now allows for a candidate to submit petitions to qualify for the primary election, does the last date upon which petitions may be submitted become the date constituting an "election" under FECA if no such petitions are filed and the party-endorsed candidate then is deemed to have been lawfully chosen as the nominee of such party for such office?

The Commission's guidance on this issue is greatly appreciated. Please do not hesitate to contact me if you need further information from our Committee on this matter.

Sincerely,



Eric M. Jarney  
Chairman and Counsel  
Simmons for Congress