



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 20, 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2004-25

Marc E. Elias, Esq.
Perkins Coie LLP
607 14th Street, N.W.
Washington, D.C. 20005-2011

Dear Mr. Elias:

This responds to your letter dated June 17, 2004, requesting an advisory opinion on behalf of Senator Jon Corzine, concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to Senator Corzine's donation of his personal funds to organizations engaging in voter registration activity.

Background

Senator Corzine is a U.S. Senator from New Jersey and a candidate for re-election in 2006. He currently serves as chairman of the Democratic Senatorial Campaign Committee ("DSCC"), which is a national congressional campaign committee of the Democratic Party. He plans to donate his "personal funds" (as defined in 2 U.S.C. 431(26) and 11 CFR 100.33) in various amounts, including amounts exceeding \$25,000, to one or more organizations that engage in "voter registration activity," as defined in 11 CFR 100.24(a)(2). You state that such donations will be made solely at his own discretion, without express or implied authority from, or on behalf of, the DSCC. Further, Senator Corzine will not donate to organizations that he has directly or indirectly established, financed, maintained, or controlled, and he will not exercise any direction or control over how his funds are used by any organization to which he donates. Senator Corzine seeks an advisory opinion on whether the amounts he donates from his personal funds to these organizations will be restricted by 2 U.S.C. 441i(a), 441i(d), or 441i(e), and any of the Commission's regulations implementing those provisions.

Question Presented

Does Senator Corzine's status as an officer of a national party committee, a Federal candidate, or a Federal officeholder place limits on donations from his personal funds to organizations that engage in voter registration activity, as defined in 11 CFR 100.24(a)(2)?

Legal Analysis and Conclusion

Based upon the analysis set out below, the Commission concludes that 2 U.S.C. 441i(a), 441i(d), and 441i(e) do not restrict Senator Corzine's ability to donate his personal funds to organizations engaging in voter registration activity, as defined in 11 CFR 100.24(a)(2).

1. National Party Committee Officer

The Act, as amended by the Bipartisan Campaign Reform Act of 2002 ("BCRA"), and the Commission's rules bar national party committees (including national congressional committees of a political party, such as the DSCC) from raising or spending any non-Federal funds, which are funds not subject to the limitations, prohibitions, and reporting requirements of the Act. *See* 2 U.S.C. 441i(a); 11 CFR 300.2(k) and 300.10. BCRA also restricts national party committees in the raising and spending of funds for 501(c) organizations that make expenditures and disbursements in connection with an election for Federal office, and for 527 organizations. *See* 2 U.S.C. 441i(d); 11 CFR 300.11 and 300.50.

Although the restrictions extend to officers and agents of a national party committee, the plain language of both the Act and the Commission's regulations specifically limit application of these restrictions to national party committee officers and agents only when such individuals are *acting on behalf of* the national party committee.¹ *See* 2 U.S.C. 441i(a) and (d); 11 CFR 300.10(c)(1), 300.11(b)(1), and 300.50(b)(1). Moreover, in discussing the application of 2 U.S.C. 441i(a) and 441i(d) to party officers, the Supreme Court has acknowledged that these provisions do not apply to officers acting in "their individual capacities." *McConnell v. Federal Election Commission*, 540 U.S. ___, 124 S.Ct. 619, at 658, 668, 679 (2003).

Based on your representation that Senator Corzine's donation of his personal funds will be made solely at his own discretion, without express or implied authority from, or on behalf of, the DSCC, the Commission concludes that Senator Corzine would not be *acting on behalf of* the DSCC.² Accordingly, sections 441i(a) and 441i(d) would not restrict Senator Corzine's donation

¹ These provisions also apply to an entity that is directly or indirectly established, financed, maintained or controlled by a national party committee, and agents or officers of such an entity. 2 U.S.C. 441i(a)(2) and 441i(d); 11 CFR 300.10(c), 300.11(b), and 300.50(b). In defining the term "agent" for the purposes of part 300 (*see* 11 CFR 300.2(b)), the Commission explained that "a principal can only be held liable for the actions of an agent when the agent is acting on behalf of the principal, and not when the agent is acting on behalf of other organizations or individuals. Specifically, it is not enough that there is some relationship or contact between the principal and agent; rather the agent must be acting on behalf of the principal to create potential liability for the principal." Explanation and Justification for Final Rules on "Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money," 67 Fed. Reg. 49064, 49083 (July 29, 2002).

² The Commission assumes that your representations also mean that the DSCC will not solicit or direct Senator Corzine's donations of his personal funds to the organizations. *See* 2 U.S.C. 441i(a) and (d).

of his personal funds to organizations that engage in voter registration activity, as defined in 11 CFR 100.24(a)(2), irrespective of his status as the DSCC chairman. However, if any of these organizations qualifies as a political committee, his contributions would be subject to the same dollar limits as those applicable to the contributions of any other individual. *See* 2 U.S.C. 441a(a)(1).

2. *Federal Candidate or Officeholder*

BCRA and the Commission's rules also restrict Federal candidates and officeholders in their ability to raise and spend funds in connection with an election for Federal office, including funds for any Federal election activity. *See* 2 U.S.C. 441i(e)(1)(A) and 11 CFR 300.61.³ The term "Federal election activity" includes voter registration activity that occurs during the period beginning on the date that is 120 days before the date a regularly scheduled Federal election is held and ending on the date of the election. 2 U.S.C. 431(20); 11 CFR 100.24(b)(1). For the purposes of defining "Federal election activity," voter registration activity

means contacting individuals by telephone, in person, or by other individualized means to assist them in registering to vote. Voter registration includes, but is not limited to, printing and distributing registration and voting information, providing individuals with voter registration forms, and assisting individuals in the completion and filing of such forms.

11 CFR 100.24(a)(2).

Section 300.61 of the Commission's rules, 11 CFR 300.61, implements 2 U.S.C. 441i(e)(1)(A) and states that no Federal candidate or officeholder:

shall solicit, receive, direct, transfer, spend, or disburse funds in connection with an election for Federal office, including funds for any Federal election activity as defined in 11 CFR 100.24, unless the amounts consist of Federal funds that are subject to the limitations, prohibitions, and reporting requirements of the Act.

11 CFR 300.61; *see also* 11 CFR 300.60 (defining the persons covered by 2 U.S.C. 441i(e) and 11 CFR 300.61).

Unlike the restrictions regarding national party committees, discussed above, the Act and Commission regulations do not contain any language that explicitly limits application of the restrictions on a Federal candidate or officeholder only to when such an individual is acting in his or her official capacity. Nevertheless, the language of 2 U.S.C. 441i(e)(1)(A), as well as its implementing regulation at 11 CFR 300.61, is not clear as to whether the restrictions on the use of funds extend to personal funds of the Federal candidates or officeholders, and there is no legislative history suggesting that Congress intended the section 441i(e)(1)(A) restrictions to apply to the personal funds of Federal candidates and officeholders. Additionally, the underlying purposes of 2 U.S.C. 441i(e)(1)(A) and 11 CFR 300.61 are not furthered by restricting Federal candidates or officeholders who, solely at their own discretion, spend their personal funds, as

³ These provisions also apply to agents of Federal candidates and officeholders, as well as to entities directly or indirectly established, financed, maintained or controlled by, or acting on behalf of, one or more Federal candidates or officeholders. 2 U.S.C. 441i(e)(1); 11 CFR 300.60(c) and (d).

opposed to those who spend funds contributed or donated by others, or who raise funds for other persons or organizations to spend.

A principal sponsor of BCRA, in discussing the purpose of the restrictions on the activities of Federal officeholders contained in 2 U.S.C. 441i(e), stated that “a key purpose” of section 441i(e) was “to stop the use of soft money as a means of buying influence and access with Federal officeholders and candidates .” 148 Cong. Rec. S2139 (Daily ed. March 20, 2002) (statement of Senator McCain). The sponsor characterized the prohibitions contained in section 441i(e) as being “no different from the Federal laws and ethical rules that prohibit Federal officeholders from using their offices or positions of power to solicit money or other benefits.” *Id.* He further characterized the “compelling purpose” of section 441i(e) as “deter[ring] any possibility that solicitations of large sums from corporations, unions, and wealthy private interests will corrupt or appear to corrupt . . .” *Id.* Similarly, the Supreme Court’s discussion of 2 U.S.C. 441i(e) in *McConnell* noted that, “[w]ithout some restriction on solicitations, federal candidates and officeholders could easily avoid FECA’s contribution limits by soliciting funds from large donors and restricted sources to like-minded organizations engaging in federal election activities.” *McConnell*, 124 S.Ct., at 683.

The Commission notes that the restriction on each of the activities listed in 2 U.S.C. 441i(e)(1)(A) and 11 CFR 300.61 (*i.e.*, soliciting, receiving, directing, transferring, spending, or disbursing) furthers the anti-corruption purpose of those sections. The inclusion of each of these activities addresses not just the solicitation and receipt of funds by a Federal candidate or officeholder but also his or her ability to use funds that have been either solicited for, or received by, a committee or entity that is directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, the candidate or officeholder. The purpose of these sections is not furthered, however, by restricting an individual who happens to be a Federal candidate or officeholder from donating his or her own personal funds, when acting solely at his or her own discretion. Such funds have not been solicited or received from others at the behest of the Federal candidate, officeholder or agent (*see* Advisory Opinion 2003-32 applying the section 441i(e) restrictions to funds from a Federal candidate’s State campaign committee raised in a previous race for non-Federal office). Thus, because the funds Senator Corzine plans to donate would not be solicited or received from others, he would not, through his donation of such personal funds, incur an obligation toward any other person that would raise concerns regarding corruption or the appearance thereof. The Commission concludes, therefore, that Senator Corzine may donate his personal funds in amounts exceeding the Act’s limits to organizations that engage in voter registration activity, as defined in 11 CFR 100.24(a)(2), irrespective of his status as a Federal candidate or officeholder. In reaching this conclusion, the Commission assumes, as represented by the requestor, that Senator Corzine’s donations to each organization will not be in amounts that are so large or in amounts that comprise such a substantial percentage of the organization’s receipts that the organization would be considered one that is “financed” by Senator Corzine. *See* 2 U.S.C. 441i(e)(1); 11 CFR 300.61.

The Commission notes again that, if any of these organizations qualifies as a political committee, Senator Corzine’s contributions would be subject to the same dollar limits as those applicable to the contributions of any other individual. *See* 2 U.S.C. 441a(a)(1).

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requester may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)

Bradley A. Smith
Chairman

Enclosure (AO 2003-32)