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April 20, 2005

BY FACSIMILE

Ms. Mary Dove  
Commission Secretary  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

Re: Senator Jon Corzine and Corzine for Governor, Inc.

Dear Ms. Dove:

We are writing on behalf of the above-referenced Requestors to comment on Draft Advisory Opinion 2005-02.

**A. General Comment on the Applicability of § 441i(e)(2)**

As an initial matter, we respectfully disagree with the Draft's response to the "Threshold Question Presented" – whether 2 U.S.C. § 441i(e)(2) permits Requestors to raise and spend funds broadly in connection with Senator Corzine's candidacy for Governor, subject only to New Jersey state law.

First, the Draft characterizes § 441i(e)(2) as a "limited exception" to the broad prohibition of § 441i(e). See Draft at 5. However, the language and history of § 441i(e)(2) suggest that the purpose of the exception was to permit state candidates who happened also to be Federal officeholders to conduct bona fide campaigns for state office under state law, under the same rules as their opponents. As noted in our initial request, the statute's use of the phrase "in connection with" signaled Congress' intent to extend the exemption to the broad range of activities in which state and local candidates typically engage.

[57154-0001/DA051090.041]

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Second, the Draft's narrow interpretation of § 441i(e)(2) cannot be justified on anti-corruption grounds. See Draft at 5 n.2. It is an accident of geography – not design of Congress – that limits Requestors' ability to raise or spend "soft money" in this instance. A candidate running in one of the many states that impose no limits or restrictions would be able to raise unlimited donations *directly from corporations and labor unions for his own campaign*. It is hard to see how a statute that permits such direct potential for corruption in such circumstances prohibits the conduct proposed here.

Finally, with little elaboration, the Draft assumes that any solicitation made for a state PAC or party committee invariably falls outside the scope of the exception. See Draft at 5-6. However, a fundraising solicitation for a state or local party committee nonfederal account, for example, might well fall within the four corners of § 441i(e)(2). It might refer to the state candidate in that capacity; refer to no other clearly identified candidate; and speak of the value of the party's ticket-wide efforts to the state candidate. The Draft neither admits nor considers such a possibility.

The Draft suggests that there is no alternative but to adopt the most restrictive possible interpretation of § 441i(e)(2). However, the Commission should weigh this suggestion against two considerations. First, it should consider the possibility that the opinion as now worded might chill purely state and local election activity that Congress showed no intention of regulating, for no genuinely anti-corruptive purpose. Second, it should consider that Requestors pose the atypical situation of a candidate seeking state office in an off-year, on a ballot listing no federal candidates. Requestors respectfully suggest that each of these considerations warrants a different response to the "Threshold Question" posed in their request.

#### **B. Specific Comments on Aspects of the Draft**

Requestors believe that the Draft correctly analyzes many of the "Additional Questions" raised by the request. See Draft at 6-15. However, Requestors respectfully suggest that the Commission may want to review and clarify two issues raised by the Draft.

First, the Draft presumes that "any ... spending of funds by a Federal officeholder that refers to State or local candidates running for entirely different offices does not come within the exception" of § 441i(e)(2). Draft at 5. It further suggests that because Corzine for Governor, Inc., is an entity established, financed, maintained, or controlled

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by Senator Corzine, the Committee is always subject to the same restrictions that he is. See Draft at 14.

If adopted and read literally, these portions of the Draft could curtail a number of activities normally undertaken by candidates who seek nonfederal office. For example, they could be read to prohibit a gubernatorial candidate's campaign from paying for and distributing slate cards, even in an election where no federal candidate is on the ballot; from featuring state and local officeholders in endorsement advertisements; and even from pressing jugate campaign buttons that show the candidate alongside other state or local candidates. There is no evidence that Congress intended to regulate any such activities. Indeed, there is little reason to think that the Draft intended to restrict them. Requestors respectfully suggest that some clarification is needed on this point.

Second, the Draft sows some confusion on what contribution limit applies to a local party committee, and thus on what limits would apply to a solicitation made by a Federal officeholder on behalf of a local party committee nonfederal account under § 441i(e)(1)(B). The Commission's August 2004 Campaign Guide for Political Party Committees twice indicates that the contribution limit to a local party committee is \$10,000. It does so first on page 14, where it says that "the state committee and local committees may receive a maximum of \$10,000 per calendar year from any one contributor." It does so again on a chart presented on page 27, where it describes the limit as a "\$10,000 per year combined limit."

Nonetheless, the Draft says that a "\$5,000 per calendar year limit on contributions by an individual to 'any other political committee' applies to contributions to local party committees." Draft at 9. It further says that "Senator Corzine and his agents may solicit no more than \$5,000 per year from an individual for any one affiliated local party committee's non-Federal account" and "up to \$5,000 per calendar year from an individual for [an unaffiliated] ... committee's non-Federal account ..." Draft at 10. Finally, it says that "Senator Corzine and his agents may solicit up to \$5,000 from an individual donor for an unregistered local party committee's non-Federal account ..." Draft at 11. The Commission's prior statements on the matter suggest that the applicable solicitation limit in each of these instances should be \$10,000, and not \$5,000.

We appreciate the opportunity to provide you with these comments, and look forward to the Commission's consideration of the request.

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Very truly yours,



Marc E. Elias

Brian G. Svoboda

Counsel to Senator Corzine

and Corzine for Governor, Inc.

cc: Chairman Scott E. Thomas  
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