COMMENT

TO: Ms. Mai T. Dinh, Acting Assistant General Counsel, FEC
FROM: Megan Laser
DATE: May 5, 2003
Re: Notice of Proposed Rulemaking

This comment is made in response to the Notice of Proposed Rulemaking in 68 FR 18484-18522, concerning amendments to 11 CFR Parts 104, 107, 110, 9003, 9004, 9008, 9032 through 9036, and 9038.public financing of presidential campaigns. Although the Commission invited comments on a variety of issues, this comment only concerns public financing of winding down costs, salaries for candidates, and gifts from candidates to supporters and contributors.

Winding Down Costs The Commission seeks comment on whether winding down costs should no longer be qualified campaign expenses. 68 FR 18488. This alternative to the Commission's current treatment of winding down costs as qualified campaign expenses would admittedly leave more money to reimburse candidates for their active campaigns, and would probably be more consistent with 26 U.S.C. 9002(11) (qualified campaign expenses used "to further," candidacy in a general election), and 26 U.S.C. 9032(9) (expenses used "in connection with" a primary candidate's campaign). However, I agree with the rationale of supporters of the current rule that winding down costs are sufficiently connected with the costs of active campaigns (and therefore consistent with the cited statutes) to remain qualified campaign expenses, for which a candidate may receive matching public funds. In addition, this policy indirectly furthers a candidate's active campaign, as a candidate receiving public funds for winding down costs will have to divert fewer funds away from their active campaigns in general elections or primaries. Even if not clearly consistent with the letter of the law, the Commission's policy is certainly consistent with its spirit. Furthermore, the Commission should follow through with its decision to clarify that winding down expenses are qualified campaign expenditures by adding provisions to 11 CFR 9034.4(b)(3) and 11 CFR 9004.4 (b)(3) to that effect.

Although I support the Commission's decision to continue to allow winding down costs as a qualified campaign expense, I also support wholeheartedly the Commission's efforts to impose temporal and monetary restrictions on the payment of these costs. Given the statistics cited by the commission, the proposed 2.5% limitation (either of the expenditure limitation, or the total of the candidate's expenditures subject to the expenditure limitation, whichever is less) imposed on general election candidates (proposed rule 9004.4(a)(4)) seems the correct limitation, as does the limitation on the primary candidates of 5% of the overall expenditure limitation. However, the limitation of primary candidates when calculated based on 5% of the candidates total expenditures seems low, and designed merely for the sake of symmetry, given that four of the six subject to the total expenditure limit exceeded (spending anywhere from 13%-42%) the 5% limit on winding down costs. Since this rule would affect a significant percentage (40%) of primary election candidates, the Commission should consider raising this

percentage limitation slightly to reflect a more average percentage spent by these candidates. Relative to 11 CFR 9034.1(d), which provides that candidates may be matched with public funds up to 50% of the total expenditure limitation, a slightly higher percentage of total expenditures of primary candidates for winding down costs (10%-15%), subject to the 5% overall expenditure limitation, would not be unreasonable. I believe that this will help smaller campaigns defray the rising costs of winding down.

Other Expenses as Qualified Campaign Expenses Although I feel strongly about supporting candidates for the presidency and vice-presidency with public funds, I do not feel that certain expenditures are justified as qualified campaign expenditures. Specifically, the Commission has asked for comments concerning salaries to candidates (section D of the NPRM, 68 FR at 18496-97) and the allowance of gifts and bonuses (section E of the NPRM, 68 FR at 18497-98) as qualified campaign expenditures, although there are currently no proposals for rules covering these topics.

I am not unmindful that a policy of publicly funding of a candidate's salary would perhaps encourage candidates of modest means to run for the presidency. However, I feel this policy is too unlikely to have its intended effect, while at the same time creating the potential for abuse and litigation. Although forgoing a salary for a year is a significant deterrent to would-be candidates who rely on their earned income, salary is not alone among the potential deterrents: candidates face huge hurdles in raising money in contributions (upon which public funds are based) and gathering enough support to mount a serious campaign effort; this support is usually given to candidates who don't rely on earned income. Furthermore, I feel from conversations with others that the public is likely to see such a rule as promoting the personal gain of a candidate, at the expense of the public, for no service rendered but job-seeking. It is possible that negative public perception of such a rule would call into question the legitimacy of any public funding of campaigns.

Currently, gifts are categorized by the Commission as qualified campaign expenses. 11CFR 9004.4(a)(5) and 11 CFR 9034.4(a)(5). While the current limits on gifts, at $150 per person and $20,000 total, is hardly extravagant, I see no justification for these gifts being qualified campaign expenses at all, and encourage the Commission to change its policy with respect to gifts. Gift-giving in recognition for services rendered in connection with a campaign is of course reasonable, but public funds should not be expended for gifts, especially to paid committee employees and consultants. The expense for these extras should be the sole responsibility of the committees or the candidates.

Thank you for the consideration of these comments.

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