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June 13, 2002

The Honorable David M. Mason
Chairman
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Dear Chairman Mason:

I am writing to provide a further answer to a question that was asked of me during last week's hearings on the proposed rules implementing the Bipartisan Campaign Reform Act of 2002.

Among the many issues discussed during the hearings was whether, under the new Act, Members of Congress could solicit limited funds for the non-federal accounts of their "Leadership PACs." In response I first noted that nothing in the law required the Commission to allow "Leadership PACs" to exist in their current form. If they are established, maintained, financed, or controlled by a federal candidate, or by an agent acting on the candidates' behalf, then they could be considered affiliated with the candidate's principal campaign committee. The effect of affiliation, of course, is that they would share a single, common, contribution limit. This is the approach I urged when I was serving on the Commission.

I also noted that the new Act in general restricts Members of Congress from soliciting funds for any non-federal political candidate or party committees, with certain enumerated exceptions. One exception is that Members may solicit funds, only up to federal limits, for elections to state and local office. 2 U.S.C. 441i(e)(1)(B). I concluded that this provision, when read in conjunction with the legislative history, appeared to allow Members of Congress to solicit strictly limited funds for a non-federal account of a Leadership PAC that then used those funds solely in state and local elections (a category of use far narrower than the current unregulated use of such nonfederal accounts).

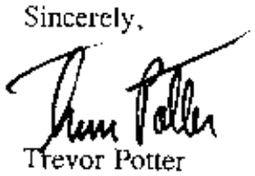
At the time, at least one Commissioner indicated that he was surprised by this view, and believed the Act did not support such nonfederal solicitations by a Member of Congress. Further, during the June 4th hearings, the Commission's General Counsel indicated that "no provision . . . clearly in my view authorizes a second account."

At the outset, it is important to note that neither my statements before the Commission nor any statement in the legislative history expressed a policy preference for allowing Members of Congress to solicit for or control a nonfederal account. Indeed, the legislative history over many years of Congressional consideration of the various versions of the new Act is clear: the purpose of the law is to reduce the size of contributions solicited by Members, and to remove Members entirely from the soft money process.

Accordingly, I would like to supplement my answer of June 4th to the questions put to me on this subject. If the Commission is willing to prohibit solicitations by federal officeholders of funds for nonfederal accounts of Members' "Leadership PACs," then I hope it will do so. Such an outcome is clearly consistent with the over-riding purposes of the Act to eliminate the connection between federal officeholders and the raising and spending of soft money. I believe the Commission could reach this result by construing the permissive language in 2 U.S.C. § 441i(e)(1)(B) as applying only to the raising of limited funds for the campaign accounts of candidates for state and local offices, and state and local party committees, and not for accounts established or controlled by the Members themselves.

I hope this supplemental response is of assistance to the Commission.

Sincerely,



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cc: The Honorable Karl Sandstrom, Vice-Chairman, Federal Election Commission
The Honorable Danny Lee McDonald, Commissioner, Federal Election Commission
The Honorable Bradley A. Smith, Commissioner, Federal Election Commission
The Honorable Scott E. Thomas, Commissioner, Federal Election Commission
The Honorable Michael E. Toner, Commissioner, Federal Election Commission
Lawrence H. Norton, Esq., General Counsel, Federal Election Commission
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