Rob Lutts <rlutts@attbi.com> on 05/28/2002 08:31:06 AM

To: BCRAsoftmon@FEC
cc:

Subject: Proposed Rules

Ms. Rosemary C. Smith, Assistant General Counsel
Federal Election Commission
999E Street, NW
Washington, D.C. 20463

May 26, 2002

Re: PROPOSED RULES FOR BCRA

Dear Ms. Smith:

The Commission has made an extraordinary effort. However, it may be impossible to effectively and efficiently administer the sponsors' ill-considered and over-reaching attempt micro-manage the election process.

On page 35656 you ask:

1. Should slate cards, etc. be considered "federal election activities?" This has been an allocated activity. BCRA has clearly redefined all such "allocated" activities as "Federal election activities" that must be funded entirely by "hard money."
2. How should "in connection with an election in which a candidate for federal office appears on the ballot" be construed and implemented? You may be over-analyzing this phrase. The proper frame of reference is the Commission's rule regarding the designation of contributions. The activities in question are always conducted in connection with the next scheduled election. If there is a federal office on the ballot for that election, these are "Federal election activities." The very reasonable presumption is that there will always be at least one candidate for any federal office.

The Levin Amendment creates an untenable situation. If a separate "Levin Account" must be established, who will have oversight responsibility? The FEC is not able to monitor compliance because these funds must be "donated in accordance with State law." The imposition of specific federal conditions renders state laws inadequate. However, BCRA does not and cannot impose this responsibility on state agencies. Some state regulations define "depository" as a single checking account. BCRA cannot force the amendment of state laws and regulations. The disaffiliation of state and local party committees with respect to "Levin activities" is a direct contradiction of the mandated affiliation with respect to FECA contribution limits, and therefore creates an additional and unwarranted complication. Sen. Levin and the BCRA sponsors were sadly mistaken if they thought that "state accounts" could simply be designated as "Levin accounts."
BCRA §323(b)(2)(A) applies the exception "to the extent the amounts expended or disbursed for such activity are allocated (under regulations prescribed by the Commission) among amounts" [emphasis added] The exception will not be available to a national committee because it will have no funds not subject to the Act. By the same logic the exception is not available to a local or district committee that has no funds subject

to the Act.

The proposed revision to §100.14 confirms that state, district and local committees of the same political party are integral parts of a single unified "official party structure." I would suggest that you make clear that committees may be part of the official party structure only if they are organized in the same state as the state committee. This may be contextually obvious, but plain text confirmation is appropriate.

A party committee that but does not qualify as a political committee has no federal funds and should be excluded from "committee" in 2U.S.C. 441i(b)(1) only if it is part of the official party structure of a political party of the state in which it is organized. The disbursement described in the final sentence of proposed 11 CFR 300.32(d) must include funds transferred to other party committees that are part of the same official party structure. This is consistent with current regulations under which a local party committee's contribution to federal candidates does not impact the state party committee's contribution limit if the local committee is not a qualified political committee.

Once a party committee qualifies as a political committee under §100.5(c) it becomes subject to the provisions of §102.5, et al. All qualified political committees that are members of the same official party structure share a single federal contribution limit but must conduct BCRA federal election activity separately. Although funds may not be commingled or transferred between such qualified political committees, the committees may coordinate their independently funded activities.

Separate allocation accounts should be required not merely permitted. Each party committee that qualifies, as a political committee, should be required to establish: (1) a federal account with separate depository accounts for (a) unrestricted federal funds that may be used for any purpose permitted under the Act, including activities defined by BCRA and (b) restricted federal funds that may not be used for BCRA activities. (2) an allocation account that must be used to make all allocated expenditures. Transfers to the allocation account must be made within the specified period established by the Commission. Only unrestricted federal funds may be transferred to the allocation account. Only non-federal funds from an account regulated by state laws that include a reporting and public disclosure requirement may be transferred to the allocation account. The publicly available reports must demonstrate that the applicable non-federal account contained, at the time of the transfer, sufficient funds that met the conditions of BCRA to accomplish the transfer. Both the federal account and the allocation account would be subject to the reporting requirements of Part 104.

You indicate on page 35666 that you have established a fixed formula the federal/non-federal allocation. The proposed regulation, however, simply adds a minimum federal percentage to the ballot composition calculation. The minimum seems to apply only in the even numbered years. This is an unnecessary complication. All allocated expenses should be paid from the allocation account on a single fixed ratio. That ratio for State party committees and their official party structure should be 35% federal; 65% non-federal.

The salient advantage of this regulatory plan is that it keeps the most important elements within the Commission's existing oversight/review process. The missing element, state-regulated non-federal accounts, are available for corroborative review as needed.

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