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AOR 2005-12

August 4, 2005

Lawrence H. Norton, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

RE: AOR on behalf of the Honorable Chaka Fattah

Dear Mr. Norton:

This Advisory Opinion Request is submitted on behalf of the Honorable Chaka Fattah, Member of the United States House of Representatives from the Second Congressional District of Pennsylvania. Congressman Fattah intends to run for reelection to the House of Representatives in 2006. Furthermore, Congressman Fattah is exploring a possible candidacy for the Democratic nomination for Mayor of Philadelphia in 2007. The primary election for this office will take place on May 15, 2007. In furtherance of this goal, Congressman Fattah intends to establish, finance, maintain and control a state political committee organized in accordance with Pennsylvania law that serves as an exploratory committee for the mayoral election.

Congressman Fattah wishes to confirm that he may raise and spend funds for his exploratory committee that are not subject to the limitations of federal law. Such funds would be spent exclusively in connection with his potential candidacy for Mayor and would not, in any way, be used in connection with any candidacy for federal office. Furthermore, such funds would not be contributed to any other candidate for office, transferred to any other committee, nor used in any way to influence any election other than that of Representative Fattah's potential candidacy for Mayor of Philadelphia.

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## DISCUSSION

As part of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Congress enacted limitations on the ability of candidates for federal office and federal officeholders to raise or spend funds "in connection with" any non-federal election unless such funds are subject to the prohibitions and limitations of federal law. 2 U.S.C. § 441i(e)(1)(B). Thus, a federal officeholder may not solicit a contribution for a non-federal candidate that exceeded \$2,100 per election, nor may he or she solicit treasury funds of any corporation or labor organization for that purpose. Furthermore, a federal officeholder may not solicit non-federal funds for a non-federal political committee in excess of \$5,000 in any calendar year. FEC Advisory Opinion 2004-25.

The BCRA contains a limited exception permitting solicitation, receipt and spending of non-federal funds by candidates and officeholders who are "also a candidate for State or local office solely in connection with such election for State or local office if the solicitation, receipt, or spending of funds is permitted under State law and refers only to such State or local candidate, or to any other candidate for the State or local office sought by such candidate, or both." 2 U.S.C. § 441i(e)(2).

Pennsylvania law does not permit the acceptance of contributions from the treasury funds of labor unions or corporations; individuals and other Pennsylvania political committees however may contribute to a Pennsylvania political committee without limit.<sup>1</sup> Although Representative Fattah is not a declared candidate for Mayor (nor does he intend to declare such candidacy until after the conclusion of his 2006 election for House of Representatives), it is highly likely that he will seek this office, and by establishing this committee he will meet the definition of "candidate" under Pennsylvania state campaign finance law. 25 P.S. § 3241(a).

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<sup>1</sup> It should be noted that once an individual becomes a "declared" candidate for Mayor of Philadelphia, contributions to that candidate are limited by local ordinance to \$2,500 from an individual per calendar and \$10,000 from other persons per calendar year. City of Philadelphia Ordinance § 21-1002; Memoranda of the City Solicitor, December 8, 2003 & October 7, 2004. See also "New campaign-finance rules still a puzzle; Some candidates, \$ raisers in the dark," Philadelphia Daily News, July 18, 2005, p.8.

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Although the section 441i(e)(2) exemption applies by its terms to "candidates," the Commission has previously indicated that this provision would also apply to an exploratory committee established in connection with a potential candidacy for non-federal office. In Advisory Opinion 2005-5, the Commission, in dicta, provided the following guidance to a candidate who had established an exploratory committee for the office of Governor of Illinois:

Although...the requestor has represented that all funds by, and for, the LaHood State Committee have been in amounts and from sources that are in compliance with the limitations and prohibitions of the Act, section 441i(e)(2) of the Act specifically provides an exception that permits Federal candidates or officeholders who are also candidates for a State or local office to solicit, receive, and spend funds outside the limitations and prohibitions of the Act if the funds are solicited, received, and spent solely in connection with their State or local campaigns and refer only to themselves, their opponents or both. 2 U.S.C. 441i(e)(2). Under Commission regulations at 11 C.F.R. 300.63, this exception is applicable if the solicitation, receipt or spending of funds is permitted under State law.

FEC Advisory Opinion 2005.5, fn. 2.

Since Congressman Fattah wishes to solicit and spend funds for his exploratory committee that would exceed the limitations of the BCRA, Congressman Fattah wishes to confirm that the solicitation and spending of funds for his exploratory committee would be covered by the exemption found at 2 U.S.C. 441i(e)(2). Such a determination would be consistent with the guidance provided to Representative Ray LaHood in Advisory Opinion 2005-5.

Thank you for your time and prompt attention to this matter. If you have any questions regarding this request, feel free to contact me at (202) 479-1111.

Sincerely yours,



Neil Reiff

Counsel to the Representative Chaka Fattah