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September 14, 2007

AOR 2007-21

Thomasenia Duncan, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: **Advisory Opinion Request**

Dear Ms. Duncan:

Pursuant to 2 U.S.C. § 437f, I seek an advisory opinion from the Federal Election Commission on behalf of Congressman Rush Holt, concerning his support for publicly funded state candidates.

Congressman Holt represents the 12th congressional district of New Jersey. He is also a "candidate" under Commission rules, having filed a Statement of Candidacy with the Commission for the 2008 election. Congressman Holt has been asked to serve as honorary chairman of the campaign of the slate of candidates in New Jersey's 14th legislative district: Linda R. Greenstein for Assembly, Wayne DeAngelo for Assembly, and Seema Singh for State Senate. Each of these state candidates is participating in the New Jersey Fair and Clean Elections Pilot Project. See New Jersey P.L. 2007, c.60 and WWW.NJCLEANELECTIONS.COM. As part of this pilot project for public funding, participating candidates accepted contributions of \$10 from between 400 and 800 individuals, and contributions of \$500 or less from a limited number of individuals as "seed money," in order to qualify for a grant of public funds from the State of New Jersey. They qualified for this public funding before asking Representative Holt to serve as honorary chair of their campaign. The election for these state candidates will be held on November 6, 2007.

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Congressman Holt seeks confirmation from the Commission that 2 U.S.C. § 441i(e) and other provisions of the Federal Election Campaign Act of 1971, as amended (the "Act") permit him to serve as an honorary chairman and lend his name and political support to these publicly funded state candidates. In practice, this would mean he would allow his name to appear on their respective campaign letterhead and in other communications to the public that express his support for their candidacies. Congressman Holt does not intend to promote or support his own candidacy in public communications on behalf of these state candidates.

DISCUSSION

Among the provisions of the Bipartisan Campaign Reform Act of 2002 ("BCRA") is a restriction on raising and spending soft money by federal candidates and officeholders. Now codified in section 441i(e)(1) of the Act, this restriction requires that:

A candidate, individual holding Federal office . . . or an entity established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office, shall not . . . solicit, receive, direct, transfer, or spend funds in connection with any election other than an election for Federal office or disburse funds in connection with such an election unless the funds (i) are not in excess of the amounts permitted with respect to contributions to candidates and political committees under paragraphs (1), (2), and (3) of [2 U.S.C. § 441a(a)]; and (ii) are not from sources prohibited by this Act from making contributions in connection with an election for Federal office.

2 U.S.C. § 441i(e).

The purpose of BCRA's core soft money restrictions was "to prevent the actual and apparent corruption of federal candidates and officeholders" that resulted from donations made by others. *McConnell v. Federal Election Comm'n*, 124 S. Ct. 619, 660 (2003). It was not to curtail in any way the pilot projects that may be conducted at the state level to move away from private contributions towards publicly funded elections.

While § 441i(e) prohibits federal candidates and officeholders from soliciting, receiving, directing, transferring, or spending certain types of funds, the Commission has described this statute as placing "limits on the amounts and types

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of funds that can be *raised* by Federal candidates and officeholders". *Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 Fed. Reg. 49,064, 49,106 (2002) (emphasis added). There is nothing to suggest that 2 U.S.C. § 441i(e) or 11 CFR §§ 300.61 and 300.62 were intended to inhibit a candidate or Federal officeholder's support for a publicly funded state candidate. As the Commission has noted,

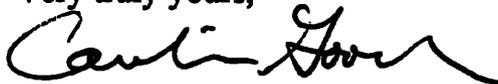
[I]n discussing BCRA's restrictions on the solicitations and spending of non-Federal funds by Federal candidates and officeholders, the co-sponsors stated that these provisions were part of a "system of prohibitions and limitations on the ability of Federal officeholders and candidates, to raise, spend and control soft money" in order "to stop the use of soft money as a means of buying influence and access with Federal officeholders and candidates." See 148 Cong. Rec. S2139 (Daily ed. March 20, 2002) statement of Sen. McCain).

Id. at 49107. When a candidate or Federal officeholder supports the efforts of a publicly funded state candidate, it is hard to see how that would be considered "a means of buying influence and access with Federal officeholders and candidates."

It does not appear, therefore, that interpreting 2 U.S.C. § 441i(e) to restrict a federal candidate or officeholder's support of a publicly funded state candidate would be consistent with the statutory scheme of BCRA or the policy concerns underlying its soft money restrictions. For these reasons, Congressman Holt respectfully requests the Commission's confirmation that he is permitted under the Act to serve as an honorary chairman for these publicly funded state candidates.

In light of the time-sensitive nature of this request, with the state election less than two months away, Congressman Holt respectfully requests the Commission's prompt attention to this matter.

Very truly yours,



Caroline P. Goodson
Counsel to Congressman Rush Holt