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VIA FAX (202) 208-3333Federal Election Commission
999 E Street NW
Washington, DC 20463**Re: Draft AO 2003-3 Representative Eric Cantor *et al*****Members of the Commission:**

We are writing on behalf of the Center for Responsive Politics and its campaign finance law project FEC Watch to comment on draft AO 2003-3, as set forth in Agenda Documents 03-26 and 03-26-A. Draft AO 2003-3 responds to a request submitted by Representative Eric Cantor and several state and local candidates in Virginia seeking guidance on the application of the Federal Election Campaign Act, 2 U.S.C. § 431 *et seq.* (FECA) and the Bipartisan Campaign Reform Act (BCRA) to Representative Cantor's efforts to raise funds on behalf state and local candidates.

Agenda Document 03-26

While we continue to believe the Commission's regulations too narrowly interpret BCRA, the draft opinion contained in AD 03-26 is generally consistent with those regulations. We also believe several aspects of the draft opinion help to clearly establish important principles that will be useful in the FEC's efforts to enforce BCRA. For example, the response to question 1(b), which requires express statements of qualification in general solicitations, will help to ensure compliance with BCRA's solicitation restrictions. In addition, response 1(c)'s warning against attempts to "inoculate" unlawful solicitations will help to limit efforts to abuse response 1(b)'s qualification requirement. We also believe it is appropriate for the FEC to recognize a safe harbor for candidates and officeholders who include the proper qualification statements in their solicitations, as described in the response to question 2. Finally, we agree with AD 03-26's explicit recognition, on page 14 at lines 14-18, that an agent of a federal officeholder can be acting on that officeholder's behalf even when asking for money on behalf of a third party.

We have concerns about other aspects of AD 03-26. We support the conclusion reached in response 5, which says that if a federal officeholder approves, authorizes or consents to the use of his or her name in a writing that solicits funds, the writing must include an express qualification statement. This response properly assigns responsibility to all persons who allow their names to be included in a solicitation, regardless of whether they actually sign it. Response 5 adopts a similar approach for officers of a campaign or fundraising event. It says that if an officeholder serves as an honorary co-chair of a campaign or sits on the host

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committee for a fundraising event or program, the officeholder "approves the use of his or her name in communications by that campaign, including solicitations for funds by that campaign or in the context of that fundraising event or program." AD 03-26 at 13, lines 3-5. As a result, any solicitation of funds by the campaign or during the campaign event would require a qualification statement.

In contrast, response 3(d) allows an officeholder to speak at an event where nonfederal funds are raised, so long as his or her own speech and conduct do not amount to a solicitation of nonfederal funds. This response differs from response 5 in that it does not assign responsibility to all of the speakers who are part of the program for the event. Instead, each speaker is responsible only for his or her own actions, even if all of the other speakers clearly solicit nonfederal funds.

From the perspective of the attendee-listener, all of the speakers at a fundraising event are part of the program of the event, and their statements are all part of the event's message. To attribute portions of the event's message to some speakers and not others is an artificial distinction. The draft opinion recognizes this artificiality in the context of written solicitations, but ignores it for speakers at fundraising events.

We urge the Commission to treat speakers at a fundraising event under question 3(d) the same as participants in written solicitations under response 5. As with written solicitations, if a federal candidate or officeholder participates as a featured speaker at an event, the formal portions of the program for the event, including the other speakers, should be subject to 2 U.S.C. § 441i(e). This rule could be readily limited to statements made by speakers that are featured on the podium or as part of the program for the event. It need not extend to informal solicitations by attendees or speakers that are made "off-line," i.e., in one-on-one conversations that take place at the event (unless the speaker is a federal candidate or and officeholder).

We are also concerned that the statement on page 6, lines 10-12 of the draft opinion may be interpreted to mean that the Commission will never examine the contents of a non-public conversation to determine whether the conversation constitutes a solicitation of nonfederal funds. This would narrow BCRA (and even FECA) considerably, since many solicitations are made in private conversations rather than in public statements. We understand the Commission's reluctance to attempt to discern intent in an ambiguous private conversation, but do not believe the Commission should take the position that nothing said in a private conversation may be treated as a solicitation. Therefore, we recommend that the Commission clarify this statement before approving the draft opinion.

Agenda Document 03-26-A

The alternative draft of AO 2003-3 has two significant differences from AD 03-26. First, it would allow federal candidates and officeholders to make general solicitations of funds without including qualification statements. Second, by allowing federal candidates' and officeholders' names to appear on a nonfederal candidate's or nonfederal fundraiser's letterhead, it would allow the names of federal candidates to be included on solicitations of nonfederal funds, also without qualification statements.

The alternative draft reflects an unwillingness to impose even the most modest safeguards to ensure compliance with the law. The qualification statement requirement would impose only a minor burden on candidates and officeholders engaged in fundraising activities. They

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would be required to include just one additional sentence in their solicitations. Requiring the qualification statement would not prevent the beneficiary nonfederal candidate from accepting nonfederal funds received in response to a (properly qualified) solicitation, since response 2 allows the candidate or fundraiser to accept nonfederal funds so long as the solicitation is lawfully made.

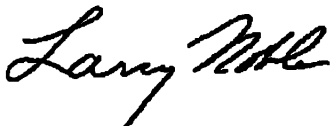
Furthermore, the alternative draft is internally inconsistent. It generally rejects any examination of the subjective intent of a communication. At the same time, it ignores the most objective reading of a solicitation that lists a federal officeholder as the honorary chair of a nonfederal campaign.

If a solicitation for a state candidate's campaign lists a federal officeholder as the honorary chair of state campaign, the most objective interpretation of this communication is that the federal candidate has endorsed the state candidate and the state candidate's solicitation. Most recipients will interpret the solicitation in this way. Nevertheless, the alternative draft would infer into that communication the absence of any intent by the federal officeholder to solicit nonfederal funds. It would make this inference even if no qualification statement were included.

Adopting the alternative draft would allow federal candidates and officeholders to participate in nonfederal fundraising without taking even minimal steps to comply with the law. In doing so, it would render 2 U.S.C. § 441i(e) a virtual nullity. This would violate the intent of Congress and exceed the Commission's statutory authority. For these reasons, we urge the Commission to reject the alternative draft.

Thank you for the opportunity to comment on the draft opinions.

Respectfully submitted,



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