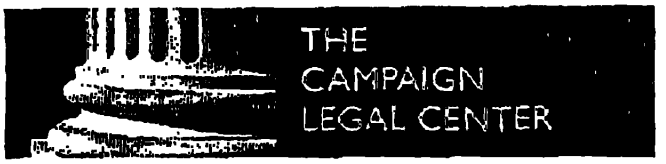

April 14, 2003

VIA FAX AND MAIL

Comment on AOR 2003-10

Lawrence H. Norton, Esq.
Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington,D.C. 20463

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COMMISSION
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COUNSEL
2003 APR 14 P 4:31

Re: Advisory Opinion Request (AOR) 2003-10

Dear Mr. Norton:

I am writing on behalf of the Campaign Legal Center concerning Advisory Opinion Request 2003-10. The Campaign Legal Center is a non-profit, non-partisan organization established to represent the public interest in strong enforcement of the nation's campaign finance laws. Through its legal staff, the organization participates in the administrative and legal proceedings in which campaign finance and campaign-related media laws are interpreted and enforced.

The Nevada State Democratic Party and Rory Reid submitted a request for an Advisory Opinion from the Commission regarding the legality of certain fundraising activities that Rory Reid intends to undertake. The request states that Rory Reid has historically served as an agent of U.S. Senator Harry Reid (D-NV) and expects to do so again for the current cycle in which Senator Reid is seeking reelection to the U.S. Senate. Additionally, Rory Reid is Senator Reid's son. Rory Reid was formerly Chair of the Nevada State Democratic Party and is now a local officeholder in Nevada. He desires to play a prominent role in raising non-Federal funds for the Nevada State Democratic Party (including making fundraising calls to contributors and serving as a draw for and appearing at state party non-Federal fundraising events), while at the same time continuing to serve as an agent of Senator Reid for Federal fundraising. The requestors seek a ruling from the Commission that Rory Reid would not be considered an "agent" of Senator Reid in the course of carrying out non-Federal fundraising for the Nevada State Democratic Party – and thus would not be subject to certain soft money fundraising restraints contained in the Bipartisan Campaign Reform Act of 2002 (BCRA).

BCRA specifically prohibits Federal candidates and officeholders from raising soft money. 2 U.S.C. § 441i(e)(1). The manifest desire of Congress was to cut the tie between Federal officials and the solicitation and spending of unlimited funds in

connection with elections, so as to prevent even an appearance of undue influence upon the Federal political process. As one of BCRA's principal sponsors explained during Senate consideration of the legislation on March 20, 2002:

> These provisions [prohibiting solicitations and spending of soft money by Federal candidates and officeholders] break no new conceptual grounds in either public policy or constitutional law. This prohibition on solicitation is no different from the Federal laws and ethical rules that prohibit Federal officeholders from using their offices or positions of power to solicit money or other benefits. Indeed, statutes like these have been on the books for over 100 years for the same reason that we're prohibiting certain solicitations to deter the opportunity for corruption to grow and flourish, to maintain the integrity of our political system, and to prevent any appearance that our Federal laws, policies, or activities can be inappropriately compromised or sold.

148 CONG. REC. S2139 (daily ed. Mar. 20, 2002) (statement of Sen. McCain).

To prevent evasion of the soft money restrictions applicable to Federal officeholders and candidates and thoroughly guard against "any appearance that our Federal laws, policies, or activities can be inappropriately compromised or sold," BCRA extends these restrictions to "agents" of Federal officeholders and candidates (as well as to entities "directly or indirectly established, financed, maintained or controlled by or acting on behalf of" Federal officeholders or candidates). 2 U.S.C. § 441i(e)(1). Indeed, the inclusion in BCRA of this restraint on the soft money activities of "agents" of Federal officeholders and candidates reflects a wise and practical understanding of common political fundraising methods, logical avenues for attempted evasion of the law, the perceptions of those who are asked to make political contributions, and high prospects for public cynicism about certain campaign fundraising endeavors by close political confidantes of Federal officeholders and candidates.

We believe that, on the facts presented here, Rory Reid would continue to be an "agent" of Senator Reid while raising non-Federal funds for the Nevada State Democratic Party and is thus fully subject to the restrictions of 2 U.S.C. § 441i(e)(1). Rory Reid has been authorized to raise funds on Senator Reid's behalf in the past and anticipates being vested with authority to raise Federally permissible funds on Senator Reid's behalf in the future. Additionally, Rory Reid will raise non-Federal funds for the state party in the state which has elected Senator Reid to his current office, at a time when Senator Reid is actively seeking re-election to that office (the Senator will be on the ballot in Nevada in 2004). As indicated above, Rory Reid is also the son of Senator Reid. In combination, these factors serve to establish that Rory Reid would continue to be an "agent" of Senator Reid in carrying out the proposed non-Federal fundraising for the Nevada State Democratic Party in this two-year election cycle. We emphasize that this determination of agency is not based on any concept that the children of Federal officeholders or candidates are *per se* "agents" under BCRA. Likewise, an individual does not, for purposes of BCRA, become an "agent" of a Federal officeholder or candidate in *all* political contexts solely

on account of having been authorized to raise hard money on behalf of that officeholder or candidate. Rather, the circumstances involved in this request *as a whole* trigger the finding of "agency" with respect to the state party fundraising Rory Reid desires to undertake. Rory Reid should accordingly have to choose between raising any funds for Senator Reid and raising non-Federal funds for the Nevada State Democratic Party in this two-year election cycle.

The Commission may understandably desire expressly to reject the notion that being a child of a Federal officeholder or candidate *by itself* renders one an "agent" under BCRA. However, this desire should neither prevent the Commission from finding agency in this instance based on the combined circumstances outlined above nor more generally dissuade it from taking a hard look at extensive soft money fundraising by children of Federal officeholders for indications of agency. Past experience suggests that this conduct merits some attention. Indeed, on one occasion that helped precipitate these restrictions in BCRA, evidence indicating that the soft money activity of a politically active child of a Federal officeholder was thoroughly intertwined with the political operations of that officeholder (*i.e.*, the officeholder's son ran a non-profit voter registration organization for which the officeholder was the principal fundraiser and which appeared to have been created for partisan purposes, including the electoral benefit of the officeholder) figured prominently in public criticism and official reprimand of a U.S. Senator. *See* SENATE SELECT COMMITTEE ON ETHICS, INVESTIGATION OF SENATOR ALAN CRANSTON, S. REP. 102-223 (1991).

Moreover, the Commission must ensure that the mere offering up of a claim to be wearing a "different hat" does not itself suffice to allow individuals to shed the status of "agent" of a Federal candidate or officeholder. If the inquiry extends no further than to ascertain the existence of such a claim, then BCRA's restrictions on "agents" will be significantly undermined. Indeed, in applying these provisions, the Commission should be mindful of and significantly guided by the wide range of purposes underlying the inclusion of "agents" in the BCRA solicitation restrictions: preventing both obvious and concealed evasion of the ban on Federal officeholder and candidate solicitation of soft money; protecting the public from both express and implicit pressure to donate unlimited sums; and avoiding the cynicism prone to accompany soft money fundraising by close political confidantes of Federal officeholders who will be perceived as speaking for the officeholder.

We appreciate the Commission's consideration of these comments.

Sincerely,

Glen Shor
Associate Legal Counsel