United States Senate

WASHINGTON, DC 20510

September 13, 2002

Mai T. Dinh
Acting Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: Federal Election Commission's Proposed Revisions to 11 C.F.R. § 110 Implementing the Bipartisan Campaign Finance Reform Act ("BCRA"); 67 Fed. Reg. 54366 (August 22, 2002)

Dear Ms. Dinh:

We are writing to comment on a particular issue raised by the FEC in the preamble to its August 22, 2002, proposed rule implementing certain provisions of the Bipartisan Campaign Finance Reform Act. Specifically, the FEC notes that BCRA modified existing 2 U.S.C. § 441e(a) to prohibit political contributions made by foreign nationals "directly or indirectly." The statute previously banned contributions made "directly or through any other person." 67 Fed. Reg. at 54372. The FEC questions the significance of the language change, concluding that there is no clarifying legislative history and inviting comments on potential interpretations. The FEC then asks whether the word "indirectly" should be read more broadly than the previous phrase "through any other person," and therefore should result in broader prohibitions than those currently in force. Specifically, the FEC asks comments to address whether BCRA should be read to prohibit political contributions from United States subsidiaries of foreign corporations.

The legislative history of BCRA makes clear that Congress did intend to impose additional restrictions on contributions from foreign nationals, including contributions in state and local elections and to various kinds of political organizations. The proposed rule addresses these clearly intended changes. However, as explained below, we do not believe Congress intended to expand the ban to include contributions otherwise legally made by U.S. subsidiaries of foreign corporations.

The banning of all political contributions from U.S. subsidiaries of foreign corporations would be a major departure from existing federal election law and the regulations of the

Commission. Corporations organized under the laws of one or more of the states of the United States are not typically treated as foreign nationals under state or federal law, but rather as corporate "persons" with a "presence" in the state of incorporation and in their principal place(s) of business. There are at least several such corporations with a significant presence in our State of Nevada; they pay millions of dollars in federal and state taxes, employ thousands of Nevada workers and put millions of dollars into the local economies of the communities in the state. They also organize political action committees and make political contributions in compliance with federal law and the rules of the Commission.

Neither Congress nor the FEC has ever treated such entities as foreign nationals, though both have taken other regulatory steps to ensure that the contributions of foreign nationals do not support the political activities of such U.S. subsidiaries. For instance, under 2 U.S.C. §441e, a foreign national who is a shareholder, executive or other employee of a U.S. subsidiary, or a family member, may not make contributions to the subsidiary's political action committee and may not be asked to contribute. Further, Commission rules bar foreign nationals from forming political committees (11 C.F.R. 100.6 and 114.1(a)(2)(iii)).

If Congress had intended to make a change of this significance in the campaign finance laws of the United States, it certainly would have done so explicitly or would have explained its intent in the voluminous legislative history of BCRA, as was the case with the many other changes we made in existing law. The Commission itself notes in the preamble to the proposal that there is no clarifying legislative history. To our knowledge there is not a single aspect of the BCRA legislative history that would establish this significant change as the real intent of Congress.

Besides the fact that there is no legislative history supporting a ban on political contributions from U.S. subsidiaries, the language of BCRA itself does not support this interpretation. In other words, it is by no means automatically the case that a political contribution from a U.S. subsidiary originates "indirectly" with the foreign parent. In fact, under existing law it seems that the reverse is true. Any contribution from a political action committee of a U.S. subsidiary would be required to come only from individual contributors who are themselves U.S. citizens. Likewise, corporate contributions otherwise legally made must come from the revenues of the U.S. subsidiary to meet existing Commission requirements.

As members of the United States Senate who participated in many discussions with the primary sponsors of BCRA and who were present for much of the debate of the bill on the Senate floor, we are confident that the interpretation posited by the Commission in the proposed rule was never intended or even considered by the authors of the legislation. It was simply never raised as an issue that needed to be addressed. Existing law and Commission rules are fully adequate to keep foreign corporations from contributing to federal election campaigns through their U.S. subsidiaries, and there was never any suggestion to the contrary during the long efforts to enact campaign finance reform.

We, therefore, respectfully urge the Commission not to adopt any interpretation of BCRA that would ban or burden political contributions by U.S. subsidiaries.

Sincerely,

HARRY REID
United States Senator

JOHN ENSIGN
United States Senator