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Re: Comments in Response to Notice of Proposed Rulemaking 2002-28 ("NPRM")

Dear Mr. Pugh:

These comments are submitted in response to the Commission's Notice of Proposed Rulemaking 2002-28 ("NPRM") regarding Leadership PACs, the three alternative proposals for such regulations and the numerous questions posed by the Commission in the NPRM on the subject of Leadership PACs.

There are certain philosophical principals which, in the view of this commenter, should inform any rules and regulations promulgated by the Commission on the subject of 'Leadership PACs'.

First, there is value in the Commission's promulgation of clear rules and regulations to govern leadership PACs provided that any regulations acknowledge, encourage and validate the important role of Leadership PACs, rather than making it impossible for them to continue. Leadership PACs are both common and legal, having grown up in practice yet outside any specific definitions or governing rules of the Commission. Because there are *no* clear guidelines for Leadership PACs, there is often confusion and inadvertent violation of the law by such entities because of the varying concepts and ideas regarding what is and is not permissible. Both the Commission and the regulated community would be well-served to have clear and simple procedures for establishing Leadership PACs and managing their operations, particularly in light of the changes in the law resulting from the Bipartisan Campaign Reform Act of 2002 ("BCRA").

Second, Leadership PACs should not be allowed to be used by presidential candidates as a means of circumventing the expenditure limits for presidential candidates accepting primary and/or general election financing under 26 U.S.C.§9035, 26 U.S.C. §9003(b)(1), (c)(1) and §9012(a), as well as the Commission's regulations at 11 C.F.R. §9031 *et seq.* or to avoid compliance with the Commission's regulations governing pre-candidacy contributions (11 C.F.R. §100.7(b)(1)(ii)) and expenditures (11 C.F.R. §100.8(b)(1)(ii)).

Third, in light of the restrictions on federal officeholders' ability to raise funds for state and local political parties and candidates, Leadership PACs should be encouraged by the Commission as a means of allowing federal officeholders to raise and contribute funds to other candidates, both state and federal, as well to provide support from federal officeholders to local and state political parties. Because Leadership PACs are subject to the federal contribution limits and all disbursements are reported to the FEC, such entities offer a means whereby federal officeholders can participate with and for their local and state parties and candidates in a manner that is fully disclosed and reported to the FEC.

Fourth, there is confusion and contradiction within the regulations promulgated by the Commission under BCRA with respect to the permissible activities for federal officeholders relative to fundraising and contributions to local and state candidates and political parties. By adopting regulations for Leadership PACs, the Commission should clarify some of the contradictory provisions of the recently enacted BCRA regulations. As a part of such regulations, the Commission should also clarify that it is permissible for federal officeholders to establish and solicit funds for a state PAC, provided the funds solicited are within the source prohibitions of federal law (individual and other PAC contributions *only*, no corporate or labor union contributions) and should also clarify which of the federal limits are applicable – presumably the $5,000 per calendar year limits *total* between a federal and state PAC. The Commission should also clarify which limits apply in terms of contributions from a state PAC established by a federal officeholder or candidate to state political parties and candidates: presumably, the federal PAC contribution limits to state/local candidates and political parties unless state law establishes lower limits. The Commission should specify that all other provisions of state law apply, such as reporting, lower contribution limits, prohibitions or restrictions on solicitations or contributions during legislative sessions, etc. With regard to reporting, the Commission should specify whether a state PAC established by a federal officeholder is required to file its reports with the FEC as well as the state regulatory body.

Fifth, the Commission should specifically acknowledge and indeed, *encourage* the creation of Leadership PACs, provided that such entities are established and operated within the Commission's guidelines for such entities and are within both the letter and spirit of BCRA and other provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Commission should clearly enumerate the rules of operation for Leadership PACs to allow such entities to operate as a separate fundraising mechanism by which federal candidates can raise *federal dollars* without triggering the affiliation rules. With that objective in mind, Leadership PACs will continue to be an important component of 'hard dollar' fundraising for candidates and party committees, which is necessary to replace the loss of non-federal funds resulting from the enactment of BCRA. Rather than *eliminating* Leadership PACs, the Commission should bring such committees into the realm of political committees recognized by and reporting to the Commission as a separate category of non-connected political committee, specifically associated with an individual federal candidate or office-holder.

These five principles necessarily eliminate from the Commission's consideration proposed Alternatives A & B of the NPRM. Alternative C, with modification, could accomplish these objectives. Specific responses to the NPRM follow.

Alternatives A & B.

As indicated above, the Commission should *not* eliminate or discourage Leadership PACs. Rather, the Commission should encourage members of Congress, other federal officeholders and candidates to bring their fundraising and contribution activities within the parameters, regulation and reporting of the Commission.

Alternatives A & B essentially defeat the purpose of Leadership PACs, which anticipate and require the direct involvement of federal officeholders. Leadership PACs are entities utilized by federal officeholders as the means by which they can engage in fundraising for other political and candidate committees, as well as state and local political parties and candidates. Alternatives A & B are sufficiently onerous that the only conclusion to be drawn from either alternative is that federal officeholders could not and would not establish Leadership PACs at all for fear that such entities would be collapsed into their principal authorized candidate committees, subject to the single candidate committee contribution limits. Because of the severe criminal penalties enacted by BCRA, the regulations proposed in Alternative A & B are sufficient to chill any federal officeholder from establishing or continuing to operate a Leadership PAC.

I respectfully urge the Commission to eliminate from consideration Alternatives A & B.

Alternative C

This proposed alternative, *with revisions*, provides the basis for a reasonable set of criteria defining and governing Leadership PACs, primarily because this is the only three of the alternatives which seems to recognize the important role of Leadership PACs under appropriate circumstances.

In that regard, I would offer the following comments and suggestions for revision to Alternative C, in order to bring this alternative regulation within the five principles enumerated at the outset of these comments.

Amendment #1: Alternative C should be amended to specifically authorize the use of funds raised through a leadership PAC to be contributed to state and local candidates and political parties, within the limits and pursuant to state law. The current language of the NPRM suggests that funds from a leadership PAC could only be contributed to federal candidates and political party committees. Particularly with the BCRA restrictions on fundraising by federal officeholders for state and local political parties and candidates, leadership PACs offer a means by which federal officeholders can adhere to BCRA and still provide support for their local and state parties and candidates – an important responsibility of federal officeholders.

Amendment #2: The two provisions contained in the proposed regulations to prohibit references to the federal candidate/officeholder in solicitations or public appearances should be deleted. It makes no sense to promulgate regulations that allow a federal officeholder to establish a Leadership PAC but to then preclude any references to the federal officeholder in the entity's solicitations or during appearances sponsored or paid for by the entity. Such a provision defeats the entire purpose of Alternative C.

If the Commission is concerned that Leadership PACs are or could be improperly used as a type of 'exploratory committee' whereby a federal officeholder is allowed to campaign for an office other than the one which he/she currently holds, the Commission should review the existing regulations governing 'testing the waters' activities at 11 C.F.R. §§100.7(b)(1)(ii) and 100.8(b)(1)(ii). The Commission could establish more specific parameters to determine if references to another office in a solicitation or event or appearance paid for by a Leadership PAC would constitute an 'announcement' of a candidacy for another office under 11 C.F.R. §§100.7(b)(1)(ii)(C) and 100.8(b)(1)(ii)(C) and, if so, what effect that should have under the 'testing the waters' exemptions, the relating back to reporting, as well as any automatic affiliation with the new candidate committee.

Those are really issues separate from a decision as to whether federal officeholders should be allowed to be associated with a Leadership PAC engaged in what Leadership PACs normally do. I would submit that Leadership PACs should be allowed to continue to exist as long as they do what Leadership PACs are supposed to do and have customarily done, which is to allow federal officeholders to raise funds for other candidates, committees and parties. Should the Commission have concerns about other potential abuses of Leadership PACs, those concerns should be addressed in the 'testing the waters' regulations.

Amendment #3: Federal candidates or officeholders who become candidates for President and subsequently qualify for primary or general election financing should be required to repay to the presidential candidate committee any expenses paid by a leadership PAC for travel, polling, staff, fundraising or other similar activities on behalf of the presidential candidate expended within the presidential election cycle and, further, such expenses should be counted against the expenditure limits for the presidential primaries. Further, the Leadership PAC should be required to disgorge any contributions received by the Leadership PAC during the presidential election cycle in excess of the contributions allowable for candidates for president.

The provisions of 11 C.F.R. §9035.1 prohibit any candidate for President who has qualified for and accepts primary financing for his/her presidential campaign from authorizing expenditures related to his/her presidential campaign in excess of the expenditure limitations established by law. Requiring a Leadership PAC to include on its Statement of Organization the federal candidate or officeholder associated with the Leadership PAC with commensurate approval by the federal candidate or officeholder would tie that officeholder directly to the prohibitions of 11 C.F.R. §9035.1 in the event the Leadership PAC illegally expended funds to promote the presidential candidacy of the associated federal officeholder.

By formally recognizing Leadership PACs as a subcategory of non-connected political committees under Commission regulations and requiring public disclosure of the entity's association with a particular federal officeholder or candidate, the Commission would have greater access to the information necessary to enforce existing expenditure limits for presidential candidates accepting primary financing.

Specific Questions Raised by the Commission Regarding Alternative C.

The Commission is seeking comments on several questions related to Alternative C. In addition to the specific amendments enumerated above which are required for Alternative C to be workable, the Commission has raised several other questions.

1. What are the policy ramifications of permitting federal candidates or officeholders to establish, finance, maintain, or control separate committees that do not share the same contribution limits of the principal authorized candidate committee?

Response: Federal officeholders have an obligation to support and assist other federal candidates, political parties and, in particular, state and local political party committees and candidates. During consideration of BCRA, Members of Congress were repeatedly assured by its sponsors that Leadership PACs raising 'hard dollars' would not be impacted by the passage of BCRA. At no time was there a suggestion that Leadership PACs raising federal dollars would be subject to elimination.

I believe as a matter of policy that federal officeholders have a responsibility to support and assist others besides themselves. BCRA specifically allows fundraising of federal dollars by federal officeholders and candidates and the Commission should embrace that principle and have as its objective in this rulemaking the enactment of simple rules to assist federal officeholders in knowing what is and is not permissible in terms of their fundraising for other political committees and parties, both federal and state.

The Commission could and should enumerate specific guidelines for establishing and operating Leadership PACs, to enhance disclosure and transparency in their operations.

Such regulations should include:

(1) Defining a Leadership PAC as a separate type of non-connected political committee, associated (but not affiliated) with a specific federal officeholder or candidate;
(2) Allowing each federal officeholder or candidate to establish only one Leadership PAC and publicly disclosing in the Statement of Organization the federal candidate or officeholder with which the Leadership PAC is associated;
(3) Requiring the Leadership PAC to have a separate treasurer and decision-making authority from the principal authorized candidate committee, but recognizing and

allowing the federal candidate / officeholder to be part of the decision-making authority of the Leadership PAC;

(4) Requiring separate record-keeping and reporting by the principal authorized candidate committee and the Leadership PAC, but *not* requiring separate staff, office space, vendors, etc.

(5) Allowing the federal officeholder/candidate to solicit funds for the Leadership PAC and to be involved in decisions as to the use of such funds without triggering affiliation regulations, provided the activities and expenditures of the Leadership PAC are not such as to circumvent existing Commission regulations regarding limits on presidential primary expenditures and other regulations related to 'testing the waters' for an office other than the one the associated federal officeholder currently holds;

(6) Establishing a minimum percentage of the expenditures of the Leadership PAC be used for contributions to other political committees, state and federal, including candidates, political parties, and PACs; a Leadership PAC which only expends its funds to promote the federal officeholder or candidate associated with the PAC without making contributions to other candidates, committees or parties could trigger the affiliation rules; any minimum percentage should take into consideration that direct mail fundraising and other activities to solicit contributions from small individual donations is a much more costly fundraising method than soliciting maximum allowable contributions from other political committees, large donors and federal candidates. Accordingly, if a minimum is required, it should not exceed 20 to 25% of the Leadership PAC's total expenditures during an election cycle. Obviously, no maximum should be established

(7) Define 'Leadership PACs' as a recognized type of non-connected political committee under the existing regulations, thus obviating the need for further rulemaking to define 'political committee' for this purpose

Responses to Additional Questions Posed by the Commission in the NPRM:

(1) Contribution limits to Leadership PACs should be the same as for other non-connected PACs ($5,000 per calendar year).

(2) Minors should be allowed to contribute to Leadership PACs.

(3) Leadership PACs should be established as a new category of 'authorized' committees – associated with a federal candidate or officeholder and publicly recognized as such – but operating within a new category of existing regulations for non-connected PACs rather than as a separate type of candidate committee.

Conclusion.

Leadership PACs are a valuable and important part of the political process and violate neither the letter nor the spirit of BCRA. Because of the confusion and complexity surrounding the permissible fundraising activities by federal officeholders related to state and local candidates and

political parties, now is not the time to eliminate a mechanism whereby federally regulated dollars can be raised and contributed to state and local committees.

Rather, the Commission should take the opportunity to recognize Leadership PACs, articulate simple and straightforward guidelines for their operation and management, and encourage federal officeholders and candidates to assist other candidates and committees, particularly at the state and local level – and to do so with federally regulated and reported dollars.

I would appreciate having the opportunity to testify should the Commission determine that a public hearing on this subject is in order. My email address is and my office address and phone number are:

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Thank you for your attention.

Sincerely,

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