




THE FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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MEMORANDUM TO THE COMMISSION

**AGENDA ITEM**

**FROM:** CHAIRMAN DAVID MASON   
**SUBJECT:** PERSONAL USE AND FUNERAL EXPENSES  
**DATE:** NOVEMBER 21, 2002

For Meeting of: 11-21-02

**SUBMITTED LATE**

I propose the following amendments:

- (1) Page 63, line 9, by inserting after "expenses":

"except those incurred for a candidate (as defined in 11 CFR 100.3) or an employee or volunteer of an authorized committee whose death arises out of, or in the course of, campaign activity."

- (2) Page 35, line 11 (E & J), after "slogans":

"Notwithstanding a principal sponsor's statement that the BCRA codifies the Commission's personal use regulations, amended section 439a failed to include two per se examples of personal use contained in 11 CFR 113.1(g). One of these, funeral, cremation or burial expenses, is being retained with significant exceptions. These would include such expenses for a candidate, employee or volunteer of authorized committees whose death arises out of, or in the course of, campaign activity. While there is no legislative history pertaining to this particular category of personal uses, it is at least a permissible construction of the BCRA to conclude that Congress deliberately excluded funeral expenses from its list of excluded uses of campaign funds. NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION § 47.23 (6<sup>th</sup> ed. 2000) ("When 'include' is utilized, it is generally improper to conclude that entities not specifically enumerated are excluded. . . . It has also been assumed that when the legislature expresses things through a list, the court assumes that what is not listed is excluded.").

In any event, limiting the use of campaign funds for funeral expenses resulting from a death that arises out of, or in the course of, campaign activity meets the Commission's "irrespective" test now codified in 2 U.S.C. § 439a(b)(2). The phrase, "arises out of, or in the course of," is a term of art employed in workers' compensation statutes and insurance contracts and would cover, for instance, deaths resulting from injuries suffered during campaign activity.

In addition, with respect to funeral expenses for authorized committee staff and volunteers who die in the course of campaign activity, public policy considerations counsel the permission of the payment of such expenses from campaign funds as campaign volunteers and staff, unlike officeholders and their staff, generally do not receive any fringe benefits that would cover the cost of funeral expenses.