



THE FEDERAL ELECTION COMMISSION
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AGENDA ITEM

For Meeting of: 11-21-02

SUBMITTED LATE

MEMORANDUM TO THE COMMISSION

FROM: CHAIRMAN DAVID MASON *DM*
SUBJECT: DEFINITION OF "CANDIDATE'S FAMILY"
DATE: NOVEMBER 21, 2002

I propose the following amendments:

- (1) Page 67, by striking lines 20-22, and page 68, by striking lines 1-7;
- (2) Page 46, at the beginning of line 10, by inserting:
- 5. 11 CFR 113.1(g)(7) - Definition of "candidate's family"

The Commission is removing the provision formerly included in this regulation that included as a member of the candidate's family "a person who has a committed relationship with the candidate, such as sharing a household and having mutual responsibility for each other's personal welfare or living expenses." The Commission concludes that this provision is unnecessary since the personal use prohibition applies to "any person." Even in those circumstances in which family members are subject to special scrutiny under the personal use regulations, payments to or by a person who is sharing a household or living expenses with the candidate would generally be similarly treated, e.g., mortgage, rent or utility payments for a personal residence of the candidate, 11 CFR 113.1(g)(1)(i)(E), or payments made by persons before the candidacy. 11 CFR 113.1(g)(6)(iii).

The provision encompassing "a committed relationship" was at variance with the Commission's other regulatory definitions of family members at 26 CFR 9003.2(c)(ii) and 9035.2(b) and the statutory provisions those regulations implement, 26 U.S.C. §§ 9004(e) and 9035(b), which are virtually identical to the three elements of the definition of family member remaining in this regulation.

There appears to have been no enforcement history related to this provision in the seven and a half years it was included in the Commission's regulations. Because this provision does not represent a generally-recognized legal test (for instance, most states do not recognize non-marital relationships contemplated by the "committed relationship" provision) it would be difficult for the Commission to ascertain and enforce if called upon to do so.

Finally, the 1995 Explanation and Justification for this provision, 60 Fed. Reg. 7872 (Feb. 29, 1995), stated that persons in this committed relationship category "will be treated as the equivalent of the candidate's spouse." This rendering of the statute appears to be prohibited by the Defense of Marriage Act, 1 U.S.C. § 7, which provides that "[i]n determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."