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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA ITEM**  
For Meeting of: 3-21-02

**MEMORANDUM**

TO: The Commission  
FROM: Commissioner Karl J. Sandstrom *KJS*  
DATE: 03/11/2002

**SUBJECT: Statement of Policy Regarding Party Committee Coordinated Expenditures**

I wish to place the attached document on the agenda for the Commission's March 21, 2002 open session.

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Parts 100, 104, 106, 110**

3 **[NOTICE 2002 - ]**

4 **STATEMENT OF POLICY REGARDING PARTY COMMITTEE**

5 **COORDINATED EXPENDITURES**

6 **AGENCY:** Federal Election Commission.

7 **ACTION:** Statement of Policy.

8 **SUMMARY:** During the interim period before completion of an ongoing rulemaking  
9 on coordinated expenditures by party committees, the Commission has  
10 adopted a policy statement that provides further guidance to candidates  
11 and political party committees regarding the Commission's future  
12 enforcement intentions in this area. Further information is provided in  
13 the supplementary information that follows.

14 **EFFECTIVE DATE:** [Insert date of publication in the Federal Register]

15 **FOR FURTHER**  
16 **INFORMATION**

17 **CONTACT:** Rosemary C. Smith, Assistant General Counsel, or Richard Ewell,  
18 Staff Attorney, 999 E Street, NW, Washington, D.C. 20463,  
19 (202) 694-1650 or (800) 424-9530.

20 **SUPPLEMENTARY**  
21 **INFORMATION:**

22 Under 2 U.S.C. § 441a(a)(7)(B)(i), if a person makes an  
23 "expenditure" "in cooperation, consultation, or concert with, or at the request or suggestion  
24 of, a candidate, his authorized political committee, or their agents," it is to be treated as a  
"contribution." Such indirect "contributions" are called "in-kind contributions" to

1 distinguish them from direct gifts of money. See 11 CFR 104.13(a) and 11 CFR 106.1(b).  
2 “Contributions” to candidates by any person, including party committees, are subject to dollar  
3 limits: \$1,000 per election in the case of non-multicandidate committees, and \$5,000 per  
4 election in the case of multicandidate committees. 2 U.S.C. § 441a(a)(1)(A), (2)(A). (There  
5 is a special \$17,500 per election cycle limit for national party committees contributing to U.S.  
6 Senate candidates. 2 U.S.C. § 441a(h).)

7 In addition to limited contributions to candidates, party committees may make  
8 “expenditures” “in connection with the general election campaign of candidates for Federal  
9 office” up to specified limits. 2 U.S.C. § 441a(d). An “expenditure” is defined as “any  
10 purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value,  
11 made by any person for the purpose of influencing any election for Federal office.” 2 U.S.C.  
12 § 431(9)(A)(i). Only expenditures that are coordinated within the meaning of 2 U.S.C.  
13 § 441a(a)(7)(B)(i), i.e., those made “in cooperation, consultation, or concert, with, or at the  
14 request or suggestion of, a candidate, his authorized political committees, or their agents,”  
15 can be subject to the limits of 2 U.S.C. § 441a(d). Colorado Republican Federal Campaign  
16 Committee v. FEC, 518 U.S. 604 (1996). The expenditures that fall under this category are  
17 commonly called “coordinated expenditures.”

18 The Commission recognizes the need to provide additional guidance as to which  
19 types of expenditures by party committees constitute coordinated expenditures for purposes  
20 of 2 U.S.C. §§ 441a(a)(7)(B)(i), 441a(d) and 11 CFR 110.7, and it intends to address this and  
21 related issues in an ongoing rulemaking as soon as practicable. (For a history of the  
22 Commission’s rulemaking in this area, including a petition for rulemaking filed by the  
23 Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign

1 Committee, see General Public Political Communications Coordinated with Candidates and  
2 Party Committees; Independent Expenditures, 65 FR 76138, 76138-39 (December 6, 2000)  
3 (Final Rule); See also General Public Political Communications Coordinated With  
4 Candidates, 64 FR 68951 (Dec. 9, 1999) (Proposed Rule)).

5 In the interim, the Commission announces that, in appropriate cases, it intends to  
6 apply the statutory limits on expenditures made by a party committee "in cooperation,  
7 consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized  
8 political committees, or their agents . . ."<sup>1</sup> to expenditures by party committees for "general  
9 public political communications" (as defined in 11 CFR 100.23(e)(1)) that refer to a "clearly  
10 identified candidate" (as defined in 11 CFR 100.17). Conversely, in appropriate cases, the  
11 Commission intends to exercise its enforcement discretion by not pursuing matters that  
12 involve expenditures by party committees for general public political communications that do  
13 not refer to a clearly identified candidate. Similarly, the Commission recognizes that a party  
14 committee may sometimes cooperate or consult with a Federal candidate to produce a party  
15 committee solicitation that refers to a Federal candidate. In such a case, the Commission  
16 does not intend to pursue potential section 441a(d) violations with respect to solicitation  
17 costs incurred by the party committee so long as the party committee solicitation that  
18 references a federal candidate (i) solicits funds only for the party committee, and (ii) is made  
19 through direct mail, by telephone or over the Internet. However, in either of the above  
20 examples party committees and candidates may elect to treat these expenditures as  
21 coordinated expenditures.

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<sup>1</sup> 2 U.S.C. § 441a(a)(7)(B)(i).

1           The following are some examples of circumstances in which a party committee may  
2 be subject to enforcement proceedings if it fails to treat the costs of a general public political  
3 communication that refers to a clearly identified candidate (a "candidate-specific  
4 communication") as a coordinated expenditure under 2 U.S.C. § 441a(d), which must be paid  
5 for with federally permissible funds. The Commission retains its discretion over whether to  
6 initiate enforcement action in response to these or any other types of activities that fall within  
7 2 U.S.C. § 441a(a)(7)(B)(i).

8  
9           Example 1. During the same election cycle and in connection with the same race, a  
10 party committee and a candidate committee use a common vendor who participates in  
11 decision-making regarding the content, timing, location, mode, intended audience, volume of  
12 distribution, cost or frequency of placement of candidate-specific communications paid for by  
13 the party committee and the candidate committee, respectively.

14  
15           Example 2. Candidate A, the candidate's authorized committee, or one of their agents  
16 exercises control or decision-making authority over the content, timing, location, mode,  
17 intended audience, volume of distribution, cost or frequency of placement of a party  
18 committee's candidate-specific communication that refers to Candidate A or one of his or her  
19 opponents, prior to the communication's release. An example of exercising control or  
20 decision-making authority over the content of such a communication would be to allow  
21 Candidate A, the candidate's authorized committee, or one of their agents to review the script  
22 of the communication, or view the communication, prior to its release.

23

1           Example 3. Prior to release, a party committee or its agents discuss with Candidate B,  
2 the candidate's authorized committee, or one of their agents any substantive aspect of the  
3 party committee's candidate-specific communication that refers to Candidate B or one of his  
4 or her opponents, including the content, timing, location, mode, intended audience, volume of  
5 distribution, cost or frequency of placement of the candidate-specific communication.  
6

7           Example 4. Candidate C, the candidate's authorized committee or one of their agents  
8 makes a request or suggestion to the party committee or its agents regarding the content,  
9 timing, location, mode, intended audience, volume of distribution, cost or frequency of  
10 placement of a candidate-specific communication that refers to Candidate C or one of his or  
11 her opponents and is to be paid for by the party committee, and the party committee takes  
12 action consistent with that request or suggestion.  
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18 \_\_\_\_\_  
19 David M. Mason  
20 Chairman  
21 Federal Election Commission  
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23 DATED: \_\_\_\_\_

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