September 24, 2008

By Electronic Mail

Ms. Amy L. Rothstein
Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Supplemental Comments on Notice 2007-23: Lobbyist Bundling

Dear Ms. Rothstein:

At the hearing on September 17, 2008 in this rulemaking, *see* NPRM 2007-23, 72 Fed. Reg. 62600 (November 6, 2007) ("Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants"), Chairman McGahn stated the record would remain open for one week for the submission of supplemental comments to address questions he posed regarding the design of a reporting form that could be used to disclose bundling at fundraising events hosted by lobbyists.

These supplemental comments are submitted jointly by the Campaign Legal Center and Democracy 21 in response to the Chairman's questions.

As stated in our earlier written comments, dated November 30, 2007, and in testimony by Messrs. Simon and Ryan at the September 17 hearing, our view is that where two or more registrants co-host the same fundraising event, the recipient committee should report the entire amount raised at the event as having been bundled by each of the registrant co-hosts. This interpretation of the statute is consistent with the explicit intent of Senators Feingold and Obama, the two principal Senate sponsors of bundling disclosure provisions. *See* 153 Cong. Rec. at S10699 (daily ed. Aug. 2, 2007).

Accordingly, for example, and in response to a hypothetical presented in the NPRM, if three lobbyists jointly co-host a fundraiser that raises $20,000 in contributions for Senator X, the authorized committee of Senator X should report that each lobbyist provided "bundled contributions" of $20,000 to Senator X. 72 Fed. Reg. 62603.

In order to facilitate bundling disclosure, the Commission should create two different schedules, one to be used in the general case of bundling by lobbyists and which requires the information listed in proposed 11 C.F.R. § 104.22(b)(1), *see* 72 Fed. Reg. 62607, and another to

be used for disclosure specifically in the special case of fundraising events hosted by lobbyists. Given that Form 3 currently includes four schedules, identified as "A" through "D," we will refer to the general disclosure schedule for lobbyist bundling as "Schedule E," and to the lobbyist fundraising event disclosure schedule as "Schedule F."

"Schedule E," the general disclosure form for lobbyist bundling other than through a lobbyist fundraising event, should contain fields requiring disclosure of the following information:

- The name of the lobbyist/registrant or lobbyist/registrant PAC;
- The address of the lobbyist/registrant or lobbyist/registrant PAC;
- The employer of the lobbyist/registrant; and
- The aggregate amount of bundled contributions provided by the lobbyist/registrant or lobbyist/registrant PAC to the reporting committee during the covered period.

See 72 Fed. Reg. 62607 (proposed 11 C.F.R. § 104.22(b)(1)).

"Schedule F," the disclosure form to be used for lobbyist fundraising events, should contain fields requiring disclosure of the following information:

- The name of the lobbyist/registrant or lobbyist/registrant PAC;
- The address of the lobbyist/registrant or lobbyist/registrant PAC;
- The employer of the lobbyist/registrant;
- The date of the fundraising event;
- The total amount of contributions received by the reporting committee as a result of the fundraising event; and
- A list of the other lobbyist/registrant co-hosts (if any) for the same fundraising event.

At the September 17 hearing, Chairman McGahn expressed concerns that the public record will reflect a "double counting" of receipts from co-hosted fundraising events if the recipient committee reports the full amount of the contributions received at the event for each lobbyist co-host. Thus, for instance, in the NPRM example discussed above, if Lobbyist A, Lobbyist B and Lobbyist C co-host a fundraising event that raises $20,000, the recipient committee would report that each lobbyist had bundled $20,000 as a co-host of the event. Chairman McGahn's concern was that someone reviewing the disclosure reports would aggregate these amounts and erroneously conclude that the recipient had received $60,000 in bundled contributions from the event, instead of $20,000 bundled jointly by three lobbyist co-hosts.

In order to address this concern, and to ensure the accuracy of the public record, we indicated in our written comments and in our testimony that the Commission should provide a specific disclosure form to report contributions bundled through fundraising events – what we refer to here as the proposed Schedule F – and that the form and its instructions should make

clear that the funds are reported as bundled contributions jointly raised by the lobbyist co-hosts for the fundraising event.

In the example above, the authorized committee for Senator X should provide a Schedule F that lists Lobbyist A as bundling $20,000 at a fundraising event held on a certain date, and that lists Lobbyists B and C as co-hosts of the event. The committee should file another Schedule F that lists Lobbyist B as bundling $20,000 at a fundraising event held on the same date, and that lists Lobbyists A and C as co-hosts of the event. And it should file a third Schedule F that lists Lobbyist C as bundling $20,000 at the fundraising event held on the same date, and that lists Lobbyists A and B as co-hosts of the event.

Disclosure in this format would make clear that there was a total of $20,000 raised at the one event, that this amount was bundled jointly by the three co-hosts listed on the schedule filed for each co-host, and that the amounts listed on the three schedules should accordingly not be aggregated.

The Commission has experience with crafting its public disclosure regime to guard against potential "double counting" of funds in order to ensure that there is an accurate public record. For instance, the reporting rules that apply to joint fundraising committees require the joint committee to report all of the funds it receives, and also requires each participating political committee to report its share of the same funds. 11 C.F.R. § 102.17(c)(8). Yet the rules guard against double-counting of these funds by, for instance, specifying that the Schedule A filed by the joint committee "shall clearly indicate that the contributions reported on that schedule represent joint fundraising proceeds," *id.* at § 102.17(c)(8)(i)(A), and that "after distribution of net proceeds," the participating committee shall "report its share of the net proceeds received as a transfer-in" and shall "also file a memo Schedule A itemizing its share of gross receipts as contributions from the original contributors…" *Id.* at (i)(B).

On a related question posed by Chairman McGahn, we do not believe that non-registrant co-hosts of a fundraising event should be disclosed, or should affect the proposed disclosure methodology. In other words, if an event is co-hosted by Lobbyist A and Non-Registrant B and it raises $20,000, the recipient committee should file a Schedule F that lists Lobbyist A as bundling $20,000 at a fundraising event on that date. There is no issue of double reporting that is posed since there is no disclosure of the non-registrant as a bundler.

Reporting forms designed in this manner would be consistent with the suggestion of Senator Feingold that the Commission design the reporting forms to allow a committee to report the total amount raised at the fundraising event, attribute that total amount to each co-host registrant, and also to list the other registrant co-hosts that the committee will report for the same event as sharing credit for the total amount raised. *See* 153 Cong. Rec. at S10699.

There is a very good reason to require that the disclosure be done in this manner. The principal alternative – that the amount be pro-rated among the co-hosts – would result in no disclosure of the bundling done in the hypothetical fundraising event discussed above, because the amount attributed to each of the three co-hosts, approximately $7,000, would fall beneath the disclosure threshold for each lobbyist.

As we pointed out in our opening comments, if the Commission adopts the pro-rata alternative, it would be a simple matter for the organizers of a fundraising event to estimate the total amount they anticipate raising at the event, and simply to then add the requisite number of co-hosts to divide the anticipated proceeds among a sufficient number of co-hosts so that the pro-rata share for each co-host falls beneath the $15,000 threshold. If permitted by the Commission, this simple recipe would likely be utilized to entirely negate, in practical effect, the statutory requirement that bundling at fundraising events be subject to disclosure.

This would be contrary to the language of the statute, whose definition of "bundling" certainly encompasses fundraising events whereby lobbyists "raise" money and are given "credit" for doing so, *see* 2 U.S.C. § 434(i)(8)(A); it would be contrary to the explicit statements of the lead authors and sponsors of the bundling provision, who anticipated and expressly disapproved a disclosure methodology that would allow the proceeds of fundraising events be pro-rated among its co-hosts, precisely because "[i]f this evasion were allowed, reporting for any fundraising event could be avoided simply by adding enough lobbyist co-hosts for the event so that all of the lobbyists fall below the threshold," *see* 153 Cong. Rec. S10699 (colloquy of Senators Feingold and Obama); and accordingly, it would be contrary to the statutory directive to the Commission that its bundling regulations should "provide for the broadest possible disclosure … that is consistent with this subsection." 2 U.S.C. § 434i(5)(D).

For the foregoing reason, we urge the Commission to design the bundling disclosure forms in the manner suggested above so that fundraising events will be encompassed within the disclosure regime in a way that guards against easy means for circumvention of the disclosure obligation, and in a fashion that also protects the accuracy of the public record.

We appreciate the opportunity to submit these supplemental comments.

Respectfully,

/s/ Fred Wertheimer

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