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11/13/2007 05:35 PM

To <travel07@fec.gov>
cc "Jason Torchinsky" <JTorchinsky@Holtzmanlaw.net>
bcc
Subject NRSC Comment on NPRM for Candidate Travel

Please find attached the NRSC's comment on the NPRM for Candidate Travel.

Sincerely,

Chris K. Gober | General Counsel
National Republican Senatorial Committee
425 2nd St., NE | Washington, DC 20002
202.675.6000 Main | 202.675.6058 Fax



NRSC Comment on NPRM for Candidate Travel.pdf

NRSC

THE • NATIONAL • REPUBLICAN • SENATORIAL • COMMITTEE
Senator John Ensign
Chair

Scott Bensing
Executive Director

November 13, 2007

BY ELECTRONIC MAIL

Amy L. Rothstein, Esq.
Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C.

Re: *Notice of Proposed Rulemaking for Candidate Travel*

Dear Ms. Rothstein:

The National Republican Senatorial Committee writes to comment on the Federal Election Commission's (the "Commission") Notice of Proposed Rulemaking on "Candidate Travel," 72 FR 59954 (October 23, 2007) ("the Notice"). The Notice proposes changes to the rules governing campaign travel in response to the statutory revisions made by the "Honest Leadership and Open Government Act," Pub. L. 110-81, 121 Stat. 735. ("HLOGA").

The NRSC urges the Commission to confine the regulatory changes required by Section 601 of HLOGA to candidates for federal office and those traveling on behalf of a candidate for Federal office and his or her authorized committee,¹ and only in instances where the candidate or an authorized committee of the candidate makes an expenditure for such flight. The Commission should not exceed its authority by attempting to enlarge the statute to include entities not expressly included in the scope of that provision.

A. Statutory and Regulatory Background

Current 11 C.F.R. § 100.93 provides an exception to the definition of "contribution" for non-commercial travel aboard aircraft by, or on behalf of, Federal candidates and political committees, if the candidates and political committees reimburse

¹ The Notice implies that, at the very least, Section 601 of HLOGA applies to non-commercial travel aboard aircraft by Federal candidates as well as travel on behalf of Federal candidates and their authorized committees. Since Section 601 of HLOGA calculates "the pro rata share of the fair market value of [a non-commercial] flight" by dividing the fair market value of the normal and usual charter fare or rental charge for a comparable plan of comparable size by the number of candidates on the flight, it is arguable that Section 601 does not apply to non-commercial flights unless a candidate is on board the aircraft.

the service providers at specified rates. As noted in the Notice, the Commission has provided specific guidance in its regulations regarding the rate of reimbursement that candidates and others must pay to avoid receiving an in-kind contribution for travel aboard such flights.

Section 601 of HLOGA requires to Commission to modify its existing regulations to stipulate that "a [non-House] candidate for election for Federal office..., or authorized committee of such a candidate, may not make any expenditure for a [privately operated flight] unless the candidate, the authorized committee, or other political committee pays to the owner, lessee, or other person who provides the airplane the pro rata share of the fair market value of such flight...within a commercially reasonable time frame after the date on which the flight is taken." This section also prohibits House candidates, their campaign committees, and their leadership PACs² from making payments for flights on private aircraft, but expressly permits expenditures for flights on charter or government aircraft. Section 601 of HLOGA does not, however, mention, address, consider, or even allude to any other type of political committee, such as national party committees, state and local party committees, leadership PACs directly or indirectly established, financed, maintained, or controlled by U.S. Senators or U.S. Senate candidates, and other non-authorized committees.

B. Application to NPRM

Section IV-D of the Notice considers whether the Commission should extend the statute to cover individuals traveling on behalf of political party committees, separate segregated funds (SSFs), and other non-authorized committees. As stated above, Section 601 of HLOGA does not mention, address, consider, or even allude to such committees, and the Commission concedes as much in the Notice. Therefore, the Commission should limit its regulatory changes only to those required by the statute, and should not enlarge the statute by implication or intent beyond the plain and clear language of the provision.

Members of Congress are well aware of the numerous types of existing political committees that do not fall within the categories of political committees specifically enumerated in Section 601 of HLOGA – namely national party committees, state and local party committees, leadership PACs directly or indirectly established, financed, maintained, or controlled by U.S. Senators or U.S. Senate candidates, and other non-authorized committees. Thus, the Commission should presume that Congress acted purposefully rather than carelessly. The NRSC believes, as the Commission inquires, that Congress's silence with respect to other types of political committees does in fact constitute a form of "legislative acquiescence" to the existing reimbursement rate structure.

² Although the term "leadership PAC" is not currently defined in the Commission's regulations, the Commission has proposed in the Notice to define "leadership PAC" as "a political committee that is directly or indirectly established, financed, maintained, or controlled by [a] candidate [for Federal office] or [an] individual [holding a Federal office] but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual, except that such term does not include a political committee of a political party."

The NRSC urges the Commission to adopt Alternative 2 proposed in Section IV-D of the Notice, which would retain the current reimbursement rate structure for all campaign travelers not traveling on behalf of a candidate or that candidate's authorized committee (*i.e.*, campaign travelers traveling on behalf of political party committees, SSFs, and other non-authorized committees). The NRSC also requests that Commission specifically address the following scenarios and interpretations to provide guidance to the regulated community.

Scenario 1: The Executive Director of the NRSC, a non-candidate, travels aboard a privately operated aircraft from Washington, D.C. to New York, New York to serve as the keynote speaker at a fundraiser to benefit the NRSC. Since the traveler flew on behalf of the NRSC and the NRSC is required to make an expenditure for the flight, the NRSC believes it should pay the service provider the rate specified by current 11 C.F.R. §100.93 to avoid receiving an in-kind contribution for travel aboard such flight.

Scenario 2: The Chairman of the NRSC, a candidate, travels aboard a privately operated aircraft from Washington, D.C. to New York, New York to serve as the keynote speaker at a fundraiser to benefit the NRSC. Since the traveler flew on behalf of the NRSC and the NRSC is required to make an expenditure for the flight, the NRSC believes it should pay the service provider the rate specified by current 11 C.F.R. §100.93 to avoid receiving an in-kind contribution for travel aboard such flight.

Scenario 3: The Chairman of the NRSC, a candidate, travels aboard a privately operated aircraft from Washington, D.C. to New York, New York to serve as the keynote speaker at a fundraiser to benefit a joint fundraising committee between the NRSC and the U.S. Senate candidate for the State of New York. Since the traveler flew on behalf of the joint fundraising committee, which is an authorized committee of the U.S. Senate candidate for the State of New York, the NRSC believes it should pay the service provider the rate as dictated by Section 601 of HLOGA.


C. Conclusion

Since Section 601 of HLOGA does not mention, address, consider, or even allude to national party committees, state and local party committees, leadership PACs directly or indirectly established, financed, maintained, or controlled by U.S. Senators or U.S. Senate candidates, or other non-authorized committees, the Commission should not exceed its authority by attempting to enlarge the statute to include such entities. The NRSC urges the Commission to confine the regulatory changes required by Section 601 of HLOGA to those entities and circumstances specifically enumerated in the statute.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris K. Gober".

Chris K. Gober
General Counsel
NRSC

A handwritten signature in blue ink, appearing to read "Jason Torchinsky".

Jason Torchinsky
Holtzman Vogel PLLC
Counsel to NRSC