



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2005 APR 19 P 1:29

APR 19 2005

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon *JAP*  
Staff Director

FROM: Lawrence H. Norton *LHN*  
General Counsel

Rosemary C. Smith *RCS*  
Associate General Counsel

Brad C. Deutsch *BCD*  
Assistant General Counsel

Jonathan M. Levin *JL*  
Attorney

Subject: Draft AO 2005-02

AGENDA ITEM  
For Meeting of: 4-21-05

**SUBMITTED LATE**

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for April 21, 2005.

Attachment

2  
3 Marc E. Elias, Esq.  
4 Brian G. Svoboda, Esq.  
5 Perkins Coie LLP  
6 607 14<sup>th</sup> Street, N.W.  
7 Washington, D.C. 20005-2011

8  
9 Dear Messrs. Elias and Svoboda:

10  
11 We are responding to your advisory opinion request on behalf of United States Senator  
12 Jon Corzine and Corzine for Governor, Inc., concerning the application of the Federal Election  
13 Campaign Act of 1971, as amended (the "Act"), and Commission regulations to fundraising  
14 activities by Senator Corzine in connection with his current candidacy for Governor of New  
15 Jersey and also for the benefit of other non-Federal candidates and committees in New Jersey.

16 ***Background***

17 The facts of this request are presented in your letters dated February 11 and 23, 2005, as  
18 well as in reports on file with the Commission and publicly available materials.

19 Senator Corzine is a United States Senator from New Jersey, elected in 2000. On  
20 December 2, 2004, he announced his intention to run for Governor of New Jersey in the 2005  
21 primary election. Corzine for Governor, Inc., is his State campaign committee. In early May  
22 2001, Senator Corzine became a candidate, as defined in 2 U.S.C. 431(2), for re-election to the  
23 U.S. Senate in 2006. You indicate that, after announcing his gubernatorial candidacy, Senator  
24 Corzine is no longer seeking re-election to Federal office.

25 The primary election for New Jersey governor and other State and local offices will take  
26 place on June 5, 2005, and the general election for those offices will take place on November 8,  
27 2005. Neither of those elections will involve either the nomination or election of any candidates

1 for Federal office; unlike most other States, New Jersey elects candidates to statewide office, the  
2 State legislature, and other State and local offices during odd-numbered years.

3 Senator Corzine “would like to be able to act like any other gubernatorial candidate,  
4 notwithstanding his status as a United States Senator.” As a gubernatorial candidate, he wishes  
5 to raise funds, both by himself and through his agents, for Corzine for Governor, for other New  
6 Jersey State and local candidates, for New Jersey State political action committees (“PACs”),  
7 and for the non-Federal accounts of State and local party committees – all within the limits  
8 prescribed by New Jersey State law. You indicate that Senator Corzine and his agents “would  
9 like to participate in the spending activities undertaken by New Jersey State and local party  
10 committees to the maximum extent permitted by New Jersey State law.”

11 Briefly stated, 2 U.S.C. 441i(e)(1)(B) and 11 CFR 300.62 provide that a Federal  
12 candidate or officeholder may raise and spend funds in connection with a non-Federal election  
13 only in amounts and from sources that are consistent with State law *and* that do not exceed the  
14 Act’s limitations or come from sources prohibited by the Act. An exception to the application of  
15 the Act’s limitations and prohibitions, at 2 U.S.C. 441i(e)(2) and 11 CFR 300.63, applies when  
16 the Federal candidate or officeholder raises funds “solely in connection” with his own State  
17 election and the “solicitation, receipt, or spending” refers only to himself or to his non-Federal  
18 opponent. You note that the source restrictions and donation limits of New Jersey law differ  
19 significantly from those of Federal law. Significantly, New Jersey law permits donations by  
20 labor organizations and most types of corporations, and New Jersey donation limits differ from  
21 the Act’s limits at 2 U.S.C. 441a(a).<sup>1</sup>

---

<sup>1</sup> For example, under New Jersey law, gubernatorial candidates may receive up to \$3,000 per election from each lawful source. Other non-Federal candidates may receive \$2,600 per election from individuals, corporations, and labor organizations, \$8,200 from a State PAC, and unlimited amounts from State party and from county party committees (for candidates within the county). Individuals, corporations, and labor organizations may donate up to

1           Although the proposed solicitations to be made by Senator Corzine and his agents would  
2 not always be for donations payable to his gubernatorial campaign committee, you state that they  
3 would be “in connection with” his gubernatorial campaign and that none of the activities would  
4 be in connection with any Federal election or refer to any Federal candidate. You indicate that  
5 State and local candidates often look to the “top of the ticket” for support, and that the extent of  
6 the cooperation and help the candidates give to Senator Corzine’s gubernatorial bid may depend  
7 upon the extent he is able to offer such support. You also indicate that the success of efforts by  
8 State PACs and party committees on behalf of the November 2005 Democratic ticket may  
9 depend on the support given by the “top of the ticket.” You state that all of the activity described  
10 in your request will be “exclusively for the purpose of influencing” Senator Corzine’s 2005  
11 gubernatorial campaign.

12           In your threshold question, you ask the Commission to confirm that the Act and  
13 Commission regulations allow Senator Corzine and his agents to raise funds within New Jersey  
14 limits, but not subject to the Federal restrictions, for the above-described entities.. If the  
15 Commission concludes otherwise, *i.e.*, that Senator Corzine and his agents would, through 2  
16 U.S.C. 441i(e)(1)(B), be subject to the Act’s limitations and prohibitions, you seek responses to  
17 a number of questions set out below.

18           ***Threshold Question Presented***

19           *May Senator Corzine and his agents raise funds that comply with State law, but not with*  
20 *the limits and prohibitions of the Act, for the campaigns of other New Jersey State and local*  
21 *candidates, State PACs, and the non-Federal accounts of State and local party committee, so*  
22 *long as the Senator and his agents (1) comply with State law; (2) solicit, receive, and spend*  
23 *funds solely in connection with the June and November 2005 elections; and (3) refer to Senator*

---

\$7,200 per calendar year to State PACs, and up to \$25,000 and \$37,000 per calendar year to the non-Federal accounts of a State party committee and county party committee respectively. See New Jersey Statutes Annotated (“NJSA”), 19.44A-1, *et. seq.*; New Jersey Administrative Code (“NJAC”), 19:25-11.2, 15.6, and 16.6.

1 *Corzine only in his capacity as a gubernatorial candidate and do not refer to any other Federal*  
2 *candidate?*

3

4 ***Response to the Threshold Question***

5 No. Senator Corzine and his agents may raise funds for the campaigns of the other New  
6 Jersey State and local candidates, State PACs, and the non-Federal accounts of State and local  
7 party committees *only* in amounts that are not in excess of 2 U.S.C. 441a(a) and from sources  
8 that are permissible under the limitations and prohibitions of the Act.

9 As amended by the Bipartisan Campaign Reform Act of 2002 (“BCRA”), Public Law  
10 107-155, 116 Stat. 61 (2002), the Act regulates certain actions of Federal candidates and  
11 officeholders, their agents, and entities directly or indirectly established, financed, maintained or  
12 controlled by, or acting on behalf, of Federal candidates or officeholders when they raise or  
13 spend funds in connection with either Federal or non-Federal elections. 2 U.S.C. 441i(e); 11  
14 CFR 300.60 through 300.65. In pertinent part, BCRA, and the Commission regulations  
15 implementing BCRA prohibit those persons from soliciting, receiving, directing, transferring,  
16 spending, or disbursing funds in connection with any non-Federal election unless the funds do  
17 not exceed the amounts permitted with respect to contributions to candidates and political  
18 committees under 2 U.S.C. 441a(a)(1), (2), and (3) and do not come from sources prohibited  
19 under the Act. 2 U.S.C. 441i(e)(1)(B); 11 CFR 300.62; *see also* 2 U.S.C. 441a, 441b, 441c,  
20 441e, and 441f. Commission regulations also require such funds to be in amounts and from  
21 sources that comply with State law. 11 CFR 300.62.

22 The aim of these provisions is to limit the ability of Federal candidates and officeholders  
23 to raise or spend soft money in connection with State and local elections, but not to eliminate the

1 activity entirely. *See McConnell v. Federal Election Commission*, 540 U.S. 93, 182.<sup>2</sup> Unlike  
2 other sections of BCRA specifically dependent upon the appearance of a Federal candidate on  
3 the ballot (*see, e.g.*, 2 U.S.C. 431(20)(A)(i) and (ii)), the limitations and prohibitions in 2 U.S.C.  
4 441i(e)(1)(B) apply to a Federal officeholder at any time, regardless of whether any Federal  
5 candidate appears on the ballot for the relevant election.

6 In 2 U.S.C. 441i(e)(2), BCRA provides a limited exception for the situation in which a  
7 Federal candidate or officeholder is seeking election to a State office. Specifically, section  
8 441i(e)(2) provides that the restrictions of 2 U.S.C. 441i(e)(1)(B) do not apply to the solicitation,  
9 receipt, or spending of funds by a Federal officeholder who is also a candidate for a State or  
10 local office *solely* in connection with such election, if the solicitation, receipt, or spending of  
11 funds is permitted under State law *and refers only to the Federal officeholder* who is also a State  
12 or local candidate, *and/or to his opponents*. *See* 11 CFR 300.63; *see also* Explanation and  
13 Justification for Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money;  
14 Final Rule (“Soft Money Final Rules”), 67 FR 49064, 49107 (July 29, 2002).<sup>3</sup> Thus, any  
15 solicitation, receipt, or spending of funds by a Federal officeholder that refers to State or local  
16 candidates running for entirely different offices does not come within the exception.

17 Therefore, the Commission concludes that, as a Federal officeholder, Senator Corzine,  
18 his agents, and Corzine for Governor may solicit donations to other State and local candidates

---

<sup>2</sup> In *McConnell*, the Supreme Court upheld 2 U.S.C. 441i(e), stating:

Large soft-money donations at a candidate’s or officeholder’s behest give rise to all of the same corruption concerns posed by contributions made directly to the candidate or officeholder. Though the candidate may not ultimately control how the funds are spent, the value of the donation to the candidate or officeholder is evident from the fact of the solicitation itself.

540 U.S. at 182.

<sup>3</sup> Neither 2 U.S.C. 441i(e)(2) nor 11 CFR 300.63 contains an express allowance for fundraising or spending by an officeholder’s agents. The Commission concludes that, in view of the kinds of activities that all campaigns normally engage in, the exception described in 2 U.S.C. 441i(e)(2) and 11 CFR 300.63 applies to all individuals described in 2 U.S.C. 441i(e)(1) and 11 CFR 300.60, and hence applies to the activities of agents and to entities established, financed, maintained, or controlled by, or acting on behalf of, the Federal officeholder.

1 only in accordance with the limitations and prohibitions of the Act, as well as with State law  
2 (“Federally permissible funds”). 2 U.S.C. 441i(e)(1)(B) and 11 CFR 300.62.<sup>4</sup> This includes  
3 solicitations by Senator Corzine for donations to State PACs or party committees, regardless of  
4 whether the solicitations refer to other non-Federal candidates, because solicitations for such  
5 entities will be, as you indicate, for the purpose of raising funds to be used “in efforts to support  
6 the November 5, 2005 Democratic ticket,” which includes other non-Federal candidates.

7 *Additional Questions*

8 You ask several additional questions in the event the Commission concludes that,  
9 pursuant to 2 U.S.C. 441i(e)(1)(B), there are circumstances under which Senator Corzine and his  
10 agents are limited to raising and spending funds that comply with the Act’s limitations and  
11 prohibitions by virtue of Senator Corzine’s status as a Federal officeholder.

12 1. *New Jersey law permits two State or local candidates to conduct their activities together*  
13 *through a “joint candidates committee.” May Senator Corzine raise only up to \$2,100 per*  
14 *election from an individual donor for such a joint candidates committee (in which Senator*  
15 *Corzine is not involved), or may he raise up to \$4,200 per election because there are two*  
16 *candidates?*

17  
18 Pursuant to 2 U.S.C. 441i(e)(1)(B) and 11 CFR 300.62, Senator Corzine and his agents  
19 may raise up to \$2,100 per election<sup>5</sup> from an individual donor for a candidate for State or local  
20 office. *See* 2 U.S.C. 441a(a)(1)(A); Advisory Opinion 2003-03. Under New Jersey law, a “joint  
21 candidates committee” (“JCC”) is a committee that is established by two or more candidates  
22 running “in the same election [but for different offices] in a legislative district, county,

23 \_\_\_\_\_  
<sup>4</sup> Federally permissible funds are funds that could have been deposited in a federal account of a political committee. Thus, in terms of solicitations for candidates, they are donations from individuals in amounts up to \$2,100 per election. In terms of solicitations for State PACs, individuals may donate up to \$5,000 per calendar year.

<sup>5</sup> Similar to the Act, a primary election and a general election are separate elections under New Jersey law. *See* NJAC 19:25-1.7.

1 municipality, or school district . . . .” NJSA 19.44A-3(r). A candidate may establish his own  
2 single candidate committee while also co-establishing a JCC. Donations to a JCC are  
3 attributable on an equally divided basis among the candidates, and the amounts attributable to a  
4 candidate must be aggregated with the amounts received by his single candidate committee for  
5 the purpose of determining whether the donor has exceeded the New Jersey limits on donations  
6 to candidates. *See* NJAC 19:25-11.4 and 11.5.<sup>6</sup>

7       Using your example of a JCC for two candidates, the Commission views such a  
8 committee as equivalent to an additional authorized committee for each of the two candidates.  
9 Accordingly, Senator Corzine may raise up to \$4,200 per election from an individual donor for  
10 the JCC, if he raises no other funds for the participating candidates’ campaigns or single  
11 candidate committees from that individual. If Senator Corzine raises funds from an individual  
12 donor for either of the two candidates, other than funds raised for the JCC, such donations must  
13 be taken into account when determining how much Senator Corzine can raise for the JCC to  
14 ensure that he does not raise more than \$2,100 per election in the aggregate from the individual  
15 for either candidate.

16 *2. Questions regarding raising funds for State and local party committee non-Federal accounts.*

17

18       You ask a series of questions pertaining to the solicitation by Senator Corzine and his  
19 agents for the non-Federal accounts of the New Jersey State and local Democratic party  
20 committees. In accordance with 2 U.S.C. 441i(e)(1)(B) and 11 CFR 300.62, the responses to  
21 these questions implicate the limits on contributions to party committees in 2 U.S.C. 441a(a), the  
22 affiliation of State and local party committees, and the effect of previous contributions by an  
23 individual to a party committee’s Federal account.

---

<sup>6</sup> Thus, under “equal attribution,” the limit for donations to one of the candidates in a JCC committee can compel a



1 We address your specific questions below. As a preliminary matter, however, we note  
2 that the Act, as interpreted by Commission regulations, provides a complete exemption from the  
3 restrictions at 2 U.S.C. 441i(e)(1)(B) and 11 CFR 300.62 under one set of circumstances.  
4 Specifically, 2 U.S.C. 441i(e)(3) states that “[n]otwithstanding [2 U.S.C. 441i(e)(1)], a candidate  
5 or an individual holding Federal office may attend, speak or be a featured guest at a fundraising  
6 event for a State, district, or local committee of a political party.” Under 11 CFR 300.64(b),  
7 candidates and Federal officeholders may speak at such events “without restriction or  
8 regulation.” Therefore, Senator Corzine may appear at a fundraising event for a State or local  
9 party committee and solicit donations at that event exceeding the amount limitations and without  
10 regard to the source prohibitions of the Act. *See* Soft Money Final Rules, 67 FR at 49108  
11 (describing the manner in which the name of the Federal candidate or officeholder may appear in  
12 pre-event publicity and explaining the circumstances where solicitation restrictions would attach,  
13 notwithstanding the exception described above).<sup>7</sup>

14 a. *With respect to donations to a Federally registered party committee, must the prospective*  
15 *donor’s previous contributions to the committee’s Federal account be considered by*  
16 *Senator Corzine in determining the amount he may solicit for the committee’s non-*  
17 *Federal account?*

18  
19 No. The Commission concludes that Senator Corzine does not need to consider a  
20 prospective donor’s previous contributions to a Federally registered party committee’s Federal  
21 account, or any amounts Senator Corzine may have previously solicited from the donor for that  
22 account, in determining the amount he may now solicit from that donor for the party committee’s

---

donor to reduce his donation to the JCC, and the donation cannot be re-apportioned to another candidate whose receipt limit would not be exceeded.

<sup>7</sup> The Commission notes that, in response to *Shays v. FEC*, 337 F. Supp. 2d 28 (D.D.C. 2004), *appeal filed*, No. 04-5352 (D.C. Cir. Sept. 28, 2004), 11 CFR 300.64(b) is the subject of an ongoing rulemaking. *See* Candidate Solicitation at State, District, and Local Party Fundraising Events, Notice of Proposed Rulemaking, 70 FR 9013 (February 24, 2005). The Commission’s current regulation remains in full force and effect pending the outcome of this rulemaking proceeding.

1 non-Federal account. This conclusion is consistent with an explanation of 2 U.S.C.  
2 441i(e)(1)(B) by a principal sponsor of BCRA, stating that “a Federal candidate or officeholder  
3 may solicit up to [the applicable annual limit] for a State party’s non-Federal account, even if  
4 that same individual or PAC has already given a similar amount to the State party’s Federal, or  
5 hard money, account.” 148 Cong. Rec. S2140 (daily ed. March 20, 2002) (statement of Sen.  
6 McCain). Similarly, the Supreme Court, in *McConnell v. FEC*, *supra*, stated that 2 U.S.C.  
7 441i(e)(1)(B), in effect, “doubles” the limit on what an individual can contribute at the behest of  
8 a Federal candidate or officeholder, “while restricting the use of the additional funds to activities  
9 not related to federal elections.” 540 U.S. at 181.

10 b. *May Senator Corzine and his agents solicit up to \$10,000 per individual donor for the*  
11 *non-Federal account of the State, and each local, party committee? Does the solicitation*  
12 *limit apply to each party committee separately, or to all of them collectively? Does a*  
13 *different limit apply if Senator Corzine solicits Federal PACs for donations to those party*  
14 *committees?*

15  
16 The Act and Commission regulations provide that an individual may contribute no more  
17 than \$10,000 per calendar year to a political committee established and maintained by a State  
18 committee of a political party. 2 U.S.C. 441a(a)(1)(D); 11 CFR 110.1(c)(4). A \$5,000 per  
19 calendar year limit on contributions by an individual to “any other political committee” applies  
20 to contributions to local party committees. 2 U.S.C. 441a(a)(1)(C); 11 CFR 110.1(d).

21 Commission regulations at 11 CFR 110.3(b)(3) establish a rebuttable presumption that a  
22 State party committee and the local party committees in that State are affiliated with each other  
23 and hence share one limit on contributions they receive. *See* 2 U.S.C. 441a(a)(5); *see also* 11  
24 CFR 100.14.<sup>8</sup> Hence, the amount that Senator Corzine and his agents may solicit from an

---

<sup>8</sup> This presumption may be rebutted if the party unit in question has not received funds from any other political committee established, financed, maintained or controlled by any party unit and there is no cooperation, consultation or concert between the party unit and any other political party committee or unit regarding the making

1 individual donor for the non-Federal accounts of the State party committee and all affiliated local  
2 party committees is subject to a shared donation limit of \$10,000 per calendar year. Within this  
3 \$10,000 limit, however, Senator Corzine and his agents may solicit no more than \$5,000 per year  
4 from an individual for any one affiliated local party committee's non-Federal account. If a local  
5 party committee is not affiliated with the State committee or other local committees, Senator  
6 Corzine may solicit up to \$5,000 per calendar year from an individual for that committee's non-  
7 Federal account without regard to the amounts he solicits for the other party committees.

8         The Commission concludes that the same principles as to aggregation and non-  
9 aggregation for donations by *individuals* to party committees' non-Federal accounts apply to  
10 donations by *Federal PACs* to those accounts at the request of Senator Corzine or his agent.  
11 Hence, the donations must comply with 11 CFR 300.62 with respect to the amounts and the  
12 sources of the funds used for the donations. The Commission also notes that the amount that  
13 Senator Corzine may solicit will depend upon whether the Federal PAC is a multicandidate  
14 committee. Although a non-multicandidate PAC may contribute \$10,000 per year to the State  
15 party committee and \$5,000 per year to a local party committee, the contribution limit on yearly  
16 contributions by a multicandidate PAC to the State party committee is only \$5,000. *See* 2 U.S.C.  
17 441a(a)(1)(C) and (D), and (2)(C).

18 \_\_\_\_\_  
of contributions. 11 CFR 110.3(b)(3)(i) and (ii). Even if the presumption is rebutted, these committees may be  
affiliated under the affiliation factors set out in 11 CFR 110.3(a). *See* Advisory Opinions 1997-18, n.2, and 1978-9.

1 c. *Would a separate limit apply to solicitations for unregistered local party committees?*

2  
3 Yes. Normally, all contributions received by more than one affiliated committee,  
4 *regardless of whether they qualify as political committees* (and are therefore required to register  
5 with the Commission), shall be considered to be received by one committee and must be  
6 aggregated for the purpose of determining whether such contributions comply with the Act's  
7 limits. *See* 11 CFR 110.3(a)(1). In applying 2 U.S.C. 441a(a)(5) and 11 CFR 110.3(b) to State  
8 and local party committees, however, the Commission has concluded that a local party  
9 organization must be a political committee in order for its received contributions to be subject to  
10 such aggregation, even if such a local committee or organization is not "independent" of the  
11 other State or local party committees. *See* Advisory Opinions 1999-4 and 1978-9. Hence,  
12 Senator Corzine and his agents may solicit up to \$5,000 from an individual donor for an  
13 unregistered local party committee's non-Federal account, without regard to the amount he  
14 solicits from that donor for any other New Jersey State or local party committee, so long as the  
15 unregistered committee does not qualify as a political committee under 2 U.S.C. 431(4)(C) and  
16 11 CFR 100.5(c).

17 3. *Questions regarding the involvement of Senator Corzine in certain other non-Federal*  
18 *activities.*

19  
20 You ask several questions about the application of section 441i(e) to activities that may  
21 benefit Senator Corzine's gubernatorial campaign but that do not necessarily involve the  
22 solicitation of funds by him or his agents for his campaign or for other committees.

23 a. *May Senator Corzine and his agents help State and local candidates, State PACs, and*  
24 *State and local party committees plan the structure of their fundraising and spending*  
25 *activities? For example, may Senator Corzine and his agent convey their views about the*  
26 *types of fundraising events non-Federal candidates and committees might schedule and*  
27 *when such events should occur; how these non-Federal candidates and committees might*  
28 *spend funds effectively in support of the entire Democratic ticket; and how such*

1           *candidates and committees might effectively coordinate their activities with the Corzine*  
2           *campaign, subject to New Jersey State law.*

3  
4           Yes, Senator Corzine may engage in these activities. The Supreme Court’s decision in  
5 *McConnell* sheds light on this question. In addressing the conduct of national party officers  
6 under the national party soft money ban at 2 U.S.C. 441i(a), the Supreme Court stated, “Nothing  
7 on the face of [section 441i(a)] prohibits national party officers, whether acting in their official  
8 or individual capacities, from sitting down with State and local party committees or candidates to  
9 plan and advise how to raise and spend soft money. As long as the national party officer does  
10 not personally spend, receive, direct, or solicit soft money, [section 441i(a)] permits a wide range  
11 of joint planning and electioneering activity.” 540 U.S. at 160. Similarly, Senator Corzine and  
12 his agents may consult with non-Federal candidates and committees to help them plan how to  
13 raise and spend non-Federal funds, so long as Senator Corzine and his agents do not solicit,  
14 receive, direct, transfer, spend, or disburse non-Federal funds. *See McConnell v. FEC*, 540 U.S.  
15 93, 160 (citing to Brief for Intervenor-Defendants Sen. John McCain et al. in No. 02--1674 et al.,  
16 p. 22 which stated that “BCRA leaves parties and candidates free to coordinate campaign plans  
17 and activities, political messages, and fund-raising goals with one another”).<sup>9</sup> By themselves,  
18 such consultations do not constitute spending by Corzine for Governor or by any non-Federal  
19 committees.

20           b. *May Senator Corzine and his agents recommend individuals for employment to*  
21           *candidates, PACs, and parties if those individuals’ duties would involve soliciting,*  
22           *receiving, directing, transferring, spending, or disbursing non-Federal funds?*

---

<sup>9</sup> Commission regulations state that to “solicit” means “to ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value,” whether done so directly or through a conduit or intermediary. 11 CFR 300.2(m). Similarly, to “direct” means “to ask a person who has expressed an intent to make a contribution, donation, or transfer of funds, or to provide anything of value, to make that contribution, donation, or transfer of funds, or to provide that thing of value . . .” 11 CFR 300.2(n). *See also McConnell v. Federal Election Commission*, 540 U.S. at 160. The Commission’s definitions of “solicit” and “direct” are the subject of ongoing litigation in *Shays v. FEC*, *supra*, and those definitions are being addressed in the course of the Commission’s appeal of the district court’s decision in that case. The Commission’s current regulations defining “solicit” and “direct” remain in full force and effect pending the outcome of the appeal.

1  
2 Yes. Neither the Act nor Commission regulations prohibit such recommendations. So  
3 long as the recommended individual is not acting as an agent for Senator Corzine or the Corzine  
4 gubernatorial campaign, the individual may solicit, receive, transfer, spend, or disburse non-  
5 Federal funds for the other candidates or committees, without being subject to the restrictions  
6 contained in 2 U.S.C. 441i(e)(1)(B) and 11 CFR 300.62. See 11 CFR 300.2(b)(3) and Advisory  
7 Opinion 2003-10; see also Soft Money Final Rules, 67 FR at 49083 (describing the ability of  
8 individuals to wear “multiple hats”).

9 c. *What specific conduct by Senator Corzine or his agents would result in “spending” or*  
10 *“disbursing” funds under 11 CFR 300.62? In particular, are there limits on what*  
11 *Senator Corzine and his agents can say to State and local candidates, State PACs, and*  
12 *State and local party committees regarding their spending plans?*  
13

14 In the absence of further information regarding specific conduct by Senator Corzine or  
15 his agents or statements by them regarding the spending plans of other specific candidates, we  
16 cannot provide an exhaustive answer to your question. See 11 CFR 112.1(b). However,  
17 *McConnell* has made clear as a matter of law that BCRA does not preclude parties and  
18 candidates from discussing campaign strategy and fund-raising goals with one another.  
19 Therefore, if Senator Corzine or his agents discuss the spending plans of other specific  
20 candidates or committees, such discussions would not, in and of themselves, constitute  
21 “spending” or “disbursing” funds. For example, if Senator Corzine or his agents were to discuss  
22 with the State and local party committees plans to spend \$50,000 on get-out-the-vote (“GOTV”)  
23 efforts, such discussions would not constitute spending or disbursing funds by Senator Corzine.

24 4. *Are there circumstances under which individuals might be agents of Corzine for Governor,*  
25 *Inc. and yet not of Senator Corzine – and thus not subject to the provisions of section*  
26 *441i(e)? Does an individual automatically become an “agent” of Senator Corzine simply by*  
27 *working for his gubernatorial campaign, or even by volunteering for it?*  
28

1 Under 11 CFR 300.2(b)(3), an “agent” of a Federal officeholder is any person who has  
2 actual authority, either express or implied, to solicit, receive, direct, transfer, or spend funds in  
3 connection with any election on behalf of the Federal officeholder.<sup>10</sup>

4 The restrictions contained in 2 U.S.C. 441i(e)(1), as well as the exception in 2 U.S.C.  
5 441i(e)(2), apply to the Federal candidate or Federal officeholder, as well as agents acting on  
6 behalf of the Federal candidate or officeholder and entities directly or indirectly established,  
7 financed, maintained, or controlled by, or acting on behalf of, the Federal candidate or  
8 officeholder. 11 CFR 300.60 through 300.63; *see also* 2 U.S.C. 441i(e)(1). When an individual  
9 is acting as an “agent” for Corzine for Governor, he is acting on behalf of an entity directly or  
10 indirectly established, financed, maintained, or controlled by Senator Corzine for the purposes of  
11 the gubernatorial campaign, and hence the individual’s activities are governed by 2 U.S.C.  
12 441i(e)(1) and (2). The individual is thus Senator Corzine’s agent as well.

13 However, the individual may be an agent of Corzine for Governor for a number of  
14 purposes related to raising and spending funds and yet perform other acts *that are not on behalf*  
15 of Corzine for Governor. For example, a fundraiser, whether professional or volunteer, may be  
16 raising funds for more than one candidate or committee. In explaining the regulation defining  
17 “agent” at 11 CFR 300.2(b), the Commission made clear that a principal may only be held liable  
18 under BCRA for the actions of an agent when the agent is acting on behalf of the principal. Soft  
19 Money Final Rules, 67 FR at 49083. “[I]t is not enough that there is some relationship or contact  
20 between the principal and agent; rather, the agent must be acting on behalf of the principal to  
21 create potential liability for the principal. This additional requirement ensures that liability will

---

<sup>10</sup> The Commission’s regulations defining “agent” are the subject of an ongoing rulemaking. *See* Definition of “Agent” for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, Notice of Proposed Rulemaking, 70 FR 5382 (February 2, 2005). The Commission’s current regulations defining “agent” remain in full force and effect pending the outcome of this rulemaking proceeding.

1 not attach due solely to the agency relationship, but only to the agent’s performance of  
2 prohibited acts for the principal.” *Id*; see also Advisory Opinions 2003-36, 2003-10, and 2003-  
3 03.

4 Whether a specific individual is an agent of Senator Corzine would depend upon a  
5 number of factors, including the individual’s position with the gubernatorial campaign, the duties  
6 he performs, and the scope of the authority that the individual has been granted – either  
7 expressly or impliedly Whether that person is acting on behalf of Senator Corzine in a particular  
8 activity, and thus is subject in that activity to the provisions of section 441i(e)(1) and (2), is also  
9 necessarily a fact-based determination, that will be based on what the Senator and that individual  
10 say and do. As the Supreme Court has recognized, an individual may be subject to BCRA’s  
11 fundraising restrictions in some contexts and not in others.<sup>11</sup>

12 This response constitutes an advisory opinion concerning the application of the Act and  
13 Commission regulations to the specific transaction or activity set forth in your request. See  
14 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or  
15 assumptions presented, and such facts or assumptions are material to a conclusion presented in  
16 this advisory opinion, then the requestor may not rely on that conclusion as support for its  
17 proposed activity.

18 Sincerely,  
19

20  
21 Scott E. Thomas  
22 Chairman  
23

24 Enclosures (AOs 2003-36, 2003-10, 2003-03, 1999-4, 1997-18, and 1978-9)

---

<sup>11</sup> See *McConnell*, 540 U.S. at 161 (holding that “party officials may also solicit soft money in their unofficial capacities”).