

COALITION FOR TAX EQUITY

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September 24, 2008

VIA Facsimile – 202-219-3923

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

Dear Ms. Rothstein:

These supplemental comments are submitted on behalf of the Coalition for Tax Equity in response to the Commission's request for additional input on the proposed "bundling" regulations following the hearing of Wednesday, September 17th.

These comments focus on three areas that were addressed in detail during the hearing: (1) How the Commission will define who qualifies as a "bundler;" (2) How fundraising involving multiple "bundlers" will be allocated; and, (3) How to address the "agency" circumstance.

Qualification As A "Bundler"

Regarding the issue of qualifying as a bundler, many of the Commission's questions appropriately focused on the language in the statute that covers disclosure of bundled contributions "reasonably known" by the recipient to have been raised by a lobbyist or registrant or PAC of a registrant. The applicable standard (when a covered entity is not acting as a conduit) is when contributions are credited, "through records, designations, or other means of recognizing that a certain amount has been raised by the person." Honest Leadership and Open Government Act of 2007, Pub. L. No. 110-81.

The statutory language indicates that a reasonable level of knowledge is required in order for candidate committees, leadership PACs or party committees to be responsible for disclosing the applicable contributions. This would include honoring titles within the committees, access to events based upon meeting certain fundraising thresholds and any other clear means of recognition, including records or designations (i.e., tracking numbers on checks or transmittal

letters enclosing checks).¹ This standard should extend to any agent of the reporting entity, including campaign staff or fundraising consultants, even if the candidate has no knowledge.

Drawing the “reasonably known” line any more expansively ignores a plain reading of the statute and creates enormous practical difficulties for compliance and enforcement. In many cases, especially in high-profile and expensive federal elections, fundraising solicitations are very widely disseminated and often not in connection with an identifiable event (especially with the explosion of internet and email fundraising). A mere verbal expression of support by a lobbyist or covered PAC representative to a candidate or agent thereof to the effect that “I will try to raise X amount of dollars” should not trigger reporting obligations unless records of the candidate support the assertion. In short, some clear written documentation, including on fundraising invitations, steering committee lists, campaign committee records or other designations, should be required to compel reporting.

Multiple Bundlers of Fundraisers

The most important element of the rulemaking is the issue of the trigger for reporting multiple bundlers involved in fundraising. At last week’s hearing, some witnesses maintained that any fundraising event involving a registered lobbyist or PAC of a registrant where \$15,000 or more in the aggregate is raised triggers the reporting obligation and requires that each participant be credited with raising the entire amount collected. This position is in direct contrast to the statutory language, it ignores the clear intent of Congress as evidenced by the evolution of the bundling provision in the context of the Honest Leadership and Open Government Act (HLOGA) debate, and it is contradicted by the most salient legislative history.

The bundling provision is unambiguous on the issue of the disclosure threshold. First, it established that disclosure is required for “each person who provides 2 or more bundled contributions to the committee in the aggregate amount greater than the applicable threshold” (\$15,000) (emphasis added). Pub. L. No. 110-81 at §204(a). “Person” is defined in relevant part as an “. . . individual listed as a registrant under the Lobbying Disclosure Act (LDA), or a “PAC established or controlled by such registrant” (emphasis added). *Id.* “Bundled contribution” means contributions credited to the person through records. . . .” (emphasis added). *Id.* Finally, the statute establishes the threshold at \$15,000, “except that any contribution by the person or person’s spouse are excluded from the threshold calculation” (emphasis added). *Id.*

The bundling provision is replete with references to a “person” meaning an individual who is a registered lobbyist or a single PAC of a registrant. The term is applied in the context of the \$15,000 threshold and is further qualified by the exclusion of an individual’s personal contribution from the \$15,000 threshold. Nowhere in the provision is there any reference to more than one person or individual for the \$15,000 threshold purposes, nor is there any

¹ This comports with the section-by-section analysis of the authors of the final version of S.1, Senators Feinstein and Lieberman and Majority Leader Reid. (Cong. Rec. 10,709 (2007)).

suggestion that amounts that are bundled by more than one person be combined or aggregated. The plain reading of the statute must control the Commission's implementation.²

Supporting this "plain meaning" conclusion is the evolution of the bundling provision over the months of Congressional consideration of reporting of bundling.³ The original Senate bill, S.1, would have required a registrant under the Lobbying Disclosure Act to report bundling activity as follows:

(D) the name of each Federal candidate or officeholder, leadership PAC, or political party committee for whom a fundraising event was hosted, co-hosted, or sponsored by the lobbyist, the registrant, or a political committee established or administered by the registrant within the quarter, and the date, location, and total amount (or good faith estimate thereof) raised at such event. S.1, 110th Cong. §212 (2007).

The House counterpart to the original Senate provision emerged late in the course of the ethics reform debate and it was subsumed in a separate amendment offered by Rep. Van Hollen to the comprehensive package. This provision would also have imposed the reporting obligation on the lobbyist or registrant and it would have established a \$5,000 quarterly aggregate threshold. The provision provided:

(1) IN GENERAL- Not later than 45 days after the end of the quarterly period beginning on the first day of January, April, July, and October of each year, each registered lobbyist who bundles 2 or more contributions made to a covered recipient in an aggregate amount exceeding \$5,000 for such covered recipient during such quarterly period shall file a report with the Secretary of the Senate and the Clerk of the House of Representatives containing—

(A) the name of the registered lobbyist;

(B) in the case of an employee, his or her employer; and

(C) the name of the covered recipient to whom the contribution is made, and to the extent known the aggregate amount of such contributions (or a good faith estimate thereof) within the quarter for the covered recipient. H.R. 2317, 110th Cong. §2 (2007).

² See, Caminetti v. United States, 242 U.S. 470 (1917). [A]s we have already said, and it has been so often affirmed as to become a recognized rule, when words are free from doubt they must be taken as the final expression of the legislative intent, and are not to be added to or subtracted from by considerations drawn from titles or designating names or reports accompanying their introduction, or from any extraneous source." 242 U.S. 470, 490. (Standard known as "plain meaning rule.")

³ S.1 the original bill, was introduced in January of 2007; debate over it and the House version continued through July of 2007. Final passage of S.1 occurred on August 2, 2007.

Although the Van Hollen approach bears at least some resemblance to the final product, it is clear that both of the original approaches were firmly rejected by Congress and the ultimate authors of the final package.⁴ Notably, the reporting obligation was shifted from lobbyists and LDA registrants operating under a good-faith estimating standard to candidates, party committee and leadership PACs who disclose under a strict accounting structure predicated on accuracy. In addition, a \$15,000 threshold was established for each "person," including individual registrants under the LDA. Finally, the original S.1 notion of disclosing "total amounts raised" at fundraisers was rejected.

The ultimate shape of the bundling provision was not the result of anything unintentional or accidental.⁵ The provision was the subject of intensive debate and scrutiny. (See Coalition Comments of November 30, 2007, footnote 8, page 5). The final provision reflects an unequivocal pronouncement by Congress of when and how to disclose bundling by registered lobbyists and PACs of registrants. It is a dramatic departure from, and an affirmative invalidation of the original Senate and House proposals.⁶

4 Mrs. FEINSTEIN. I ask unanimous consent to have printed in the RECORD a section-by-section analysis of the bill we are about to vote on, including legislative history endorsed by the three principal Senate authors of the legislation: myself, Chairman *Lieberman* and Majority Leader *Reid*.

Section 204. Disclosure of bundled contributions. (The disclosure requirement is not triggered by general solicitations of contributions, or where a registered lobbyist attends an event or an event is held on the premises of a registrant. An event hosted by a registered lobbyist may trigger the disclosure requirement if the committee credits the lobbyist with the proceeds of the fundraiser through record, designation or other form of recognition, as described in the preceding paragraph.

This provision covers only contributions credited to registered lobbyists, as defined in subsection 204(a)(7). Contributions credited to others, including others who may share a common employer with, or work for a lobbyist, are not covered by this section so long as any credit is genuinely received by the non-lobbyist and not the lobbyist.) Cong. Rec. 10,709 (2007).

5 The statutory outcome essentially renders moot the legislative history cited by several commentators. Specifically, statements on the Senate floor by Senators Obama and Feingold suggesting that the \$15,000 threshold is tripped by calculating aggregate amounts raised at an event or otherwise by multiple bundlers is contravened by the plain language of the statute, and more pertinent legislative history.

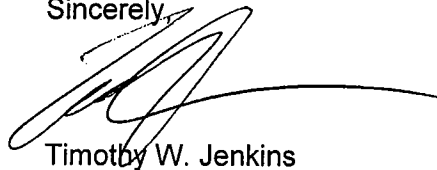
6 The reference in the statute to "broadest possible disclosure" does not justify a "non sequitur" interpretation because it would not otherwise be "consistent with the subsection." Pub. L. No. 110-81, §204.

“Agency” Issue

The Commission also requested additional input on how to treat fundraising by agents or employees of registered lobbyists. I refer back to the Coalition’s written comments and the suggestion that the Commission apply the concept of activity by subordinates acting at the direction of superiors not qualifying as “volunteer activity.” In this case, I recommend a presumption of “agency” action when an individual’s job title suggests they are acting at the direction of a covered entity. For example, bundlers with occupations such as “Legislative Assistant,” “PAC Manager,” “Administrative Assistant” would be presumed to be acting on behalf of a covered entity. This approach is preferable to creating any such presumption for senior executives or CEO’s where the likelihood of independent action is greater.

Thank you for the opportunity to submit these supplemental comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy W. Jenkins', with a long horizontal flourish extending to the right.

Timothy W. Jenkins

TWJ/skp1