

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

2004 MAR 26 A 9: 21

**MEMORANDUM**

MAR 26 2004

**TO:** The Commission

**THROUGH:** James A. Pehrkon  
Staff Director

**FROM:** Lawrence H. Norton  
General Counsel

Rosemary C. Smith  
Associate General Counsel

John C. Vergelli  
Acting Assistant General Counsel

Steve N. Hajjar  
Attorney

**AGENDA ITEM**  
For Meeting of: 4-01-04

**SUBMITTED LATE**

**SUBJECT:** Draft Notice of Proposed Rulemaking on Contributions by Minors

Attached is a draft Notice of Proposed Rulemaking ("NPRM") addressing issues related to contributions and donations by minors.

**Recommendation:**

The Office of General Counsel recommends that the Commission approve the attached NPRM for publication in the *Federal Register*.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 110**

3 **[NOTICE 2004 - >>]**

4 **CONTRIBUTIONS AND DONATIONS BY MINORS**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Notice of Proposed Rulemaking.

7 **SUMMARY:** The Federal Election Commission requests comments on proposed  
8 amendments to its rules governing contributions and donations by  
9 minors to candidates and political committees. These proposed rules  
10 would conform to the Supreme Court's decision in McConnell v FEC  
11 finding unconstitutional section 318 of the Bipartisan Campaign  
12 Reform Act of 2002. BCRA section 318 had forbidden contributions to  
13 candidates and contributions or donations to political party committees  
14 by individuals 17 years old or younger. The Commission rules at 11  
15 CFR 110.19 implement BCRA section 318. No final decision has been  
16 made by the Commission on the issues presented in this rulemaking.  
17 Further information is provided in the supplementary information that  
18 follows.

19  
20 **DATES:** Comments must be received on or before [insert date 30 days after the  
21 date of publication in the Federal Register]. If the Commission  
22 receives sufficient requests to testify, it may hold a hearing on these

1 proposed rules. Commenters wishing to testify at the hearing must so  
2 indicate in their written or electronic comments.

3 **ADDRESSES:**

4 All comments should be addressed to John C. Vergelli, Acting  
5 Assistant General Counsel, and must be submitted in either electronic  
6 or written form. Commenters are strongly encouraged to submit  
7 comments electronically to ensure timely receipt and consideration.  
8 Electronic mail comments should be sent to [Minors04@fec.gov](mailto:Minors04@fec.gov) and  
9 must include the full name, electronic mail address, and postal service  
10 address of the commenter. Electronic mail comments that do not  
11 contain the full name, electronic mail address and postal service  
12 address of the commenter will not be considered. If the electronic mail  
13 comments include an attachment, the attachment must be in the Adobe  
14 Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments  
15 should be sent to (202) 219-3923, with printed copy follow-up to  
16 ensure legibility. Written comments and printed copies of faxed  
17 comments should be sent to the Federal Election Commission, 999 E  
18 Street, N.W., Washington, D.C. 20463. The Commission will post  
19 public comments on its web site. If the Commission decides that a  
20 hearing is necessary, the hearing will be held in its ninth floor meeting  
21 room, 999 E. St. NW, Washington, DC.

21 **FOR FURTHER**  
22 **INFORMATION**

1   **CONTACT:**                   Mr. John C. Vergelli, Acting Assistant General Counsel, or Mr. Steve  
2   N. Hajjar, Attorney, 999 E Street, NW, Washington, D.C. 20463,  
3   (202) 694-1650 or (800) 424-9530.

4   **SUPPLEMENTARY**  
5   **INFORMATION:**                The Bipartisan Campaign Reform Act of 2002, Pub. L. 107-155,  
6   116 Stat. 81 (Mar. 27, 2002) (“BCRA”), contained extensive and detailed amendments to the  
7   Federal Election Campaign Act of 1971 (“FECA” or “the Act”), as amended, 2 U.S.C. 431 et  
8   seq. One of those amendments, BCRA section 318, codified at 2 U.S.C. 441k, prohibited minors  
9   from making contributions to candidates or from making contributions or donations to political  
10   party committees. In 2002, the Commission promulgated rules at 11 CFR 110.19 implementing  
11   section 318. 67 Fed. Reg. 69,928 (Nov. 19, 2002). In McConnell v. FEC, 540 U.S. \_\_\_, 124  
12   S.Ct. 619 (2003), the Supreme Court, however, found unconstitutional section 318, necessitating  
13   these proposed amendments to 11 CFR 110.19. The cumulative effect of these proposed changes  
14   to 11 CFR 110.19, governing contributions and donations by minors, would be essentially to  
15   return these rules to their state prior to BCRA.

16       Former 11 CFR 110.1(i)(2) (2002) provided that individuals under 18 years of age  
17   (“minors”) could make contributions to candidates or political committees in accordance with the  
18   limits of the Act so long as the minor knowingly and voluntarily made the decision to contribute,  
19   and the funds, goods, or services contributed were owned or controlled exclusively by the minor.  
20   Additionally, the contributions must not have been made from the proceeds of a gift given to the  
21   minor for the purpose of making a contribution or in any other way controlled by an individual  
22   other than the minor. The proposed rules at 11 CFR 110.19 would return to the former  
23   regulations at 11 CFR 110.1(i)(2). The only difference between the pre-BCRA rules and the

1 Commission’s proposed rules would be to substitute “an individual who is 17 years old or  
2 younger” or “individual” for “minor” or “child.”

3 The Commission proposes to remove paragraphs (a) and (b) of current 11 CFR 110.19,  
4 which implement the prohibitions of 2 U.S.C. 441k. Paragraph (a) of 11 CFR 110.19 prohibits  
5 contributions by minors to Federal candidates and specifies that this prohibition encompasses  
6 contributions to a candidate’s principal campaign committee, any other authorized committee of  
7 that candidate, and any entity directly or indirectly established, financed, maintained, or  
8 controlled by one or more federal candidate. Paragraph (b) of 11 CFR 110.19 prohibits minors  
9 from making contributions and donations to national, State, district, and local party committees.  
10 Because the Supreme Court struck down 2 U.S.C. 441k in its entirety, McConnell, 540 U.S. at  
11 \_\_\_, 124 S.Ct. at 711, the statutory basis for these paragraphs no longer exists, and the  
12 Commission proposes to eliminate them.

13 Current paragraph (c) specifies that minors may make contributions to political committees  
14 not described in current paragraphs (a) and (b) as long as the minor voluntarily and knowingly  
15 makes the decision to contribute; the funds, goods or services contributed are owned or  
16 controlled exclusively by the minor; the contribution is not made from the proceeds of a gift  
17 given to the minor to make a contribution or is not in any way controlled by an individual other  
18 than the minor; and the contribution is not earmarked or otherwise directed to one or more  
19 Federal candidates, political committees, or organizations described in current paragraphs (a) and  
20 (b). 11 CFR 110.19(c)(1) through (c)(4).

21 Because the Commission proposes to eliminate current paragraphs (a) and (b), which prohibit  
22 minors from making contributions to candidates or from making contributions or donations to  
23 political party committees, the resulting proposed section 110.19 would differ from current

1 110.19(c) in two respects. First, proposed section 110.19 would allow minors to make  
2 contributions that do not exceed the Act's limitations to any candidate or political committee.  
3 Second, proposed section 110.19 would eliminate current paragraph (c)(4), which prohibits  
4 minors from making contributions that are earmarked or otherwise directed to entities described  
5 in current paragraphs (a) and (b). The provisions of current paragraphs (c)(1) through (c)(3)  
6 would be renumbered as paragraphs (a) through (c) of proposed section 110.19 and would apply  
7 to all contributions and donations by minors.

8 The Commission also proposes to remove paragraphs (d) and (e) of current section 110.19.  
9 Paragraph (d) provides that minors are not prohibited from volunteering their services to Federal  
10 candidates, political party committees or other party committees, notwithstanding BCRA's  
11 restrictions on political giving by minors. Because the prohibitions at 2 U.S.C. 441k no longer  
12 exist, McConnell, 540 U.S. at \_\_\_, 124 S.Ct. at 711, the rationale for this paragraph has also  
13 ceased to exist, and the Commission proposes to eliminate it.

14 Current paragraph (e) defines an entity "directly or indirectly established, financed,  
15 maintained, or controlled" by a candidate for purposes of the prohibition on contributions by  
16 minors to candidates as one that meets the definition of "directly or indirectly establish, finance,  
17 maintain or control" at 11 CFR 300.2(c). Because the Supreme Court has struck down the  
18 prohibition on minors contributing to candidates, this provision is no longer necessary and the  
19 Commission proposes to eliminate paragraph (e).

20 The Commission seeks comment regarding whether it has authority to establish a minimum  
21 age, lower than had been set by BCRA section 318, for the making of contributions. If so,  
22 should the Commission prohibit individuals below a certain age from making contributions,  
23 recognizing that those individuals lack the capacity to dispose of property and therefore could

1 not knowingly and voluntarily contribute on their own behalf? What would be the appropriate  
2 minimum age? Should the Commission instead establish a rebuttable presumption that  
3 individuals below a certain age could not make contributions? If the Commission chooses this  
4 approach, what should the Commission require from that individual and his or her parents or  
5 guardian to rebut that presumption? Or should the Commission combine a categorical  
6 prohibition with a rebuttable presumption similar to the approach adopted by some jurisdictions  
7 with regard to the tort liability of children? See, e.g., RESTATEMENT (THIRD) OF TORTS § 10 cmt.  
8 b (Tentative Draft No. 1, 2001) (“[F]or children above 14 there is a rebuttable presumption in  
9 favor of the child's capacity to commit negligence; for children between seven and 14, there is a  
10 rebuttable presumption against capacity; children under the age of seven are deemed incapable of  
11 committing negligence”).

12 **Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

13 The Commission certifies that the attached proposed rules, if promulgated, would not have a  
14 significant economic impact on a substantial number of small entities. The basis of this  
15 certification is that these proposed rules would only apply to individuals age 17 years old or  
16 younger. Such individuals are not small entities. Moreover, these rules remove existing  
17 restrictions in accordance with controlling Supreme Court precedent and do not impose any  
18 additional costs on contributors, candidates, or political committees. Therefore these proposed  
19 rules would impose no further economic burdens on them.

20 **List of Subjects**

21 11 CFR Part 110

22 Campaign funds

23 Political committees and parties

24  
25  
26

1 For the reasons set forth in the preamble, the Federal Election Commission proposes to  
2 amend Subchapter A of Chapter 1 of Title 11 of the Code of Federal Regulations as follows:

3 **PART 110-CONTRIBUTION AND EXPENDITURE LIMITATIONS AND**  
4 **PROHIBITIONS**

5 1. The authority citation for Part 110 would continue to read as follows:

6 **Authority:** 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e,  
7 441f, 441g, and 441h

8 2. Section 110.19 would be revised to read as follows:

9 **§ 110.19 Contributions and donations by minors.**

10 ~~(a) — Contributions to candidates. An individual who is 17 years old or younger shall not~~  
11 ~~make a contributions to a candidate for Federal office, including a contribution to any of the~~  
12 ~~following:~~

13 ~~(1) — A principal campaign committee designated pursuant to 11 CFR 101.1(a);~~

14 ~~(2) — Any other political committee authorized by a candidate under 11 CFR 101.1(b)~~  
15 ~~and 102.13 to receive contributions or make expenditures on behalf of such~~  
16 ~~candidate; or~~

17 ~~(3) — Any entity directly or indirectly established, financed, maintained or controlled by~~  
18 ~~one or more Federal candidates.~~

19 ~~(b) — Contributions and donations to committees of political parties. An individual who is 17~~  
20 ~~years old or younger shall not make a contribution or donation to:~~

21 ~~(1) — A national, State, district, or local committee of a political party, including a~~  
22 ~~national congressional campaign committee;~~



1           ~~(2) Any entity directly or indirectly established, financed, maintained or controlled by~~  
2           ~~a national, State, district, or local committee of a political party, including a~~  
3           ~~national congressional campaign committee; or~~

4           ~~(3) Any account of a committee or entity described in paragraphs (b)(1) and (b)(2) of~~  
5           ~~this section.~~

6           ~~(c) Contributions to political committees that are not authorized committees or committees~~  
7           ~~of political parties. An individual who is 17 years old or younger may make contributions to a~~  
8           ~~political committee not described in paragraph (a) or (b) of this section that in the aggregate do~~  
9           ~~not exceed the limitations or contributions of 11 CFR 110.1 and 110.5, if—~~

10          ~~(1) The decision to contribute is made knowingly and voluntarily by that individual;~~

11          ~~(2) The funds, goods, or services contributed are owned or controlled exclusively by~~  
12          ~~that individual, such as income earned by that individual, the proceeds of a trust~~  
13          ~~for which that individual is the beneficiary, or a savings account opened and~~  
14          ~~maintained exclusively in that individual's name;~~

15          ~~(3) The contribution is not made from the proceeds of a gift, the purpose of which~~  
16          ~~was to provide funds to be contributed, or is not in any other way controlled by~~  
17          ~~another individual; and~~

18          ~~(4) The contribution is not earmarked or otherwise directed to one or more Federal~~  
19          ~~candidates, authorized committees, political party committees, or other~~  
20          ~~organizations covered by paragraph (a) or (b) of this section. See 11 CFR 110.6.~~

21          ~~(d) Volunteer Services. Nothing in this section shall prohibit an individual who is 17 years~~  
22          ~~old or younger from providing volunteer services to any Federal candidate or political~~  
23          ~~committee.~~

1 ~~(e) — Definition of directly or indirectly establish, finance, maintain, or control. Directly or~~  
2 ~~indirectly establish, finance, maintain or control has the same meaning as in 11 CFR 300.2(e).~~

3 An individual who is 17 years old or younger may make contributions to any candidate or  
4 political committee which in the aggregate do not exceed the limitations on contributions of 11  
5 CFR 110.1 and 110.5, if--

6 (a) The decision to contribute is made knowingly and voluntarily by that individual;

7 (b) The funds, goods, or services contributed are owned or controlled exclusively by that  
8 individual, such as income earned by that individual, the proceeds of a trust for which that  
9 individual is the beneficiary, or a savings account opened and maintained exclusively in that  
10 individual's name; and

11 (c) The contribution is not made from the proceeds of a gift, the purpose of which was to  
12 provide funds to be contributed, or is not in any other way controlled by another individual.

13  
14  
15  
16 \_\_\_\_\_  
17 Bradley A. Smith  
18 Chairman  
19 Federal Election Commission

20  
21 DATED: \_\_\_\_\_  
22 BILLING CODE: 6715-01-U  
23