UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

CHRISTOPHER SHAYS & MARTIN MEEHAN,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civil Action No. 02-1984 (CKK)

BRIEF *AMICUS CURIAE* OF MICHIGAN DEMOCRATIC PARTY AND MICHIGAN REPUBLICAN PARTY

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This brief *amicus curiae* is submitted on behalf of the Michigan Democratic Party and Michigan Republican Party ("Michigan Parties").

I. INTERESTS OF AMICI

The Michigan Parties are state political parties that are part of the official party structure of the Democratic and Republican Parties of the United States. They are state committees within the meaning of 2 U.S.C. § 431(15) (2004) and 11 C.F.R. § 100.14 (2004).

The Michigan Parties, while large in comparison to the state political committees of smaller states, are relatively small and underfunded organizations compared to commercial businesses, or compared to national political parties. Most of the work done on behalf of the state party committees is performed by volunteers, who are the lifeblood of any political party. The Parties also represent even smaller local party committees and the campaigns of state and local candidates, many of which do not have paid staff at all.

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Few who work for state or local parties or candidates do so for pecuniary gain. The hours are long, the work is hard, and the salaries are low or nonexistent. And yet these individuals and their organizations are engaged in "core political speech," which receives the most rigorous First Amendment protection. *McIntyre v. Ohio Election Comm'n*, 514 U.S. 334, 334 (1995). There is a present danger that if state and local parties and campaigns are regulated too severely, many will effectively cease to exist, or will exist in name only, crippled by overregulation. Large organizations, such as national parties and statewide campaigns, are better able to absorb the tremendous overhead and administrative expenses necessitated by harsh and exacting regulations. Smaller organizations, such as state and local political party committees, are the entities that suffer most from regulations that do not take into account the realities of people oriented grassroots politics.

The danger is not only due to increased expenses and decreased ability to raise contributions, though both affect small organizations greatly. Smaller entities may also fade away because it simply becomes too difficult to maintain the organizational and administrative structure necessary. This is especially true of local political parties. The key personnel in local party committees are not running for office; they are not highly paid, if at all; and they do not hold high positions of responsibility. They serve largely out of a desire to advance the interests of candidates and more importantly causes in which they believe. Fear induced by complex and uncertain regulation depresses the desire and the willingness to participate. A burdensome regulatory regime would make it impractical for many of these small organizations to continue to exist.

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II. SUMMARY OF ARGUMENT

The Federal Election Commission, when interpreting the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81, faced a stark choice. It could have simply parroted the language of the statute and adding only the warning signs of illegal behavior, creating regulations that offered little guidance but were virtually immune from challenge. The result would have been a collection of regulations that gave notice to the regulated community only of the behaviors the Commission believed were potentially problematic. When venturing into these uncharted areas, political entities would have had to determine the risks, in consultation with expensive counsel, by divining the Commission's disposition.

The Commission did not take this path. Instead, it crafted a series of regulations that reflected the realities both of how political parties and campaigns function, and what behaviors Congress was most concerned about preventing. Where the Commission could do so, it created bright line tests to serve as a clear indicator, so as not to dissuade any more core political activity than necessary. When possible, the Commission created de minimis exceptions to ease the regulation of small committees and of state and local candidates. By choosing clarity over uncertainty, the Commission recognized that politics should not be a risky business. Understanding that it was regulating "core political speech," the Commission chose bright lines over warning signs, a not unreasonable choice.

In fashioning a set of regulations that would prove prudent and practical for both the regulated community and for the Commission, the agency was working in areas in which Congress had not "directly spoken to the precise question at issue." *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984). The Court should grant the

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Commission the deference due it under *Chevron*, 467 U.S. at 843-44, to determine whether its choices are consistent with the authority delegated. The Court should embrace Plaintiffs' policy preferences only if Congress clearly and unmistakably did. Unless the Court is convinced that Congress foreclosed the choices that the Commission made, there is no legal basis for overturning these regulations.

III. ARGUMENT

A. Section 100.14: Definition of State, District, and Local Committee

Section 100.14(a) and (b) defines state committees and district or local committees. Both subsections define political party committees as those "part of the official party structure." Plaintiffs complain that this definition permits unofficial party committees that could be used to circumvent the regulation of political party committees. The language of which Plaintiffs complain is crucial, both for the state party and for the political committees that might otherwise be defined as party committees. Without it, the definition of state, district and local party committees would be vastly overbroad.

We note first that while the definition excepts committees that are not part of the official party structure, the exception is only available for entities without certain organizational ties to the party structure, however unofficial. Section 100.14(c) defines subordinate committees as those "directly or indirectly established, financed, maintained, or controlled by the State, district, or local committee." Furthermore, the definition of state committees themselves, includes entities "directly or indirectly established, financed, maintained, or controlled" by state committees. These entities need not be in the official party structure to be regulated as party committees. It is difficult to see how state or local

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parties could effectively circumvent the law by using organizations they cannot financially support or control in any way.

This limitation on the definition of state and local committees is important, because it permits political parties *themselves* to determine for which organizations they wish to take responsibility. The requirements of the new federal election laws are exceedingly complex, and many state and local organizations may be unaware of what is required of party committees. Without the qualification that party committees must be either in the official party structure, or in some way created, supported or controlled by the party structure, there is the danger that wholly separate but partisan organizations may be defined as party committees. This result would eliminate the ability of the political party to control its own liability. Small or unorganized partisan entities could violate the regulations and subject the entire state party to discipline. For example, partisan political clubs are common throughout the country. Often formed by partisans to influence policies of their own party, they are by their very nature outside the control of the party. The definition permits political parties to use their party bylaws to ensure that they are not forced to assume legal responsibility for clubs, associations, and committees over which they exercise no control.

Moreover, the exclusion for unofficial organizations is also important to these small partisan entities. Note that unlike the definition of "political committee," which includes an expenditure threshold, *see* 11 C.F.R. § 100.5(a), there is no threshold for party committees. All party committees must meet the stringent allocation requirements, no matter how small the committee's activity. Without the language of which Plaintiffs complain, a small but partisan organization could be defined as a political party committee, be forced to allocate expenses, and to report monthly to the Commission. Had the Commission adopted plaintiff's policy preference, the Commission would have decreed the demise of such organizations..

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B. Section 100.24: Definition of Federal Election Activity

1. Section 100.24(a)(1): In Connection With a Federal Election

Section 100.24(a)(1) defines "In connection with an election in which a candidate for Federal office appears on the ballot" to mean the "period of time beginning on the date of the earliest filing deadline for access to the primary election ballot for Federal candidates." Plaintiffs complain that the regulation permits activity before this period and that it therefore allows circumvention of the statute.

The statute itself includes in the definition of Federal election activity "voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot." 2 U.S.C. § 431(20)(A)(ii). If Congress wished to ban these activities during the entire two-year cycle, it would not have included this qualifying phrase. "An endlessly reiterated principle of statutory construction is that all words in a statute are to be assigned meaning, and that nothing therein is to be construed as surplusage." *Qi-Zhuo v. Meissner*, 70 F.3d 136, 139 (D.C. Cir. 1995). The Commission was required to give meaning to this qualifying phrase. It could not determine whether the activity was in connection with a federal election based on content, because the defined activity includes generic campaign activity. The only other option was a limitation based on time.

In addition, the Commission's definition allows state and local elections taking place in odd-numbered years, or much earlier in the year than the federal elections, to escape the yoke of the federal election regulatory regime. The intent of Congress was not to federalize every state and local election, an intent made clear in the language at issue here. The statute acknowledges the possibility that there can be voter identification, get-out-the-vote activity,

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and generic campaign activity wholly separated from federal elections. The Commission wisely permits state parties to participate in off-year elections on the same basis as other political actors.

2. Section 100.24(a)(2): Voter Registration Activity

Section 100.24(a)(2) defines "Voter registration activity" as "contacting individuals by telephone, in person, or by other individualized means to assist them in registering to vote." Plaintiffs complain that this definition permits general encouragements to register to vote outside the scope of the regulation.

Congress left this term wholly undefined. It had readily available language that would capture general encouragements to vote: that language is in 2 U.S.C. § 431(9)(B)(ii), which excepts from the definition of expenditure "nonpartisan activity designed to encourage individuals to vote or to register to vote." Instead, Congress chose the more neutral term "voter registration." *See id.* § 431(20)(A)(i). The Commission was correct to interpret the statute, as a whole, as not intending to prevent state parties from making general encouragements to vote or to register to vote. Even corporations and labor unions, which are generally forbidden from participating in federal elections, *see id.* § 441b, may engage in such nonpartisan encouragement.

Due to the reach of the other statutes and regulations at issue, the only general encouragements a party may make are either wholly nonpartisan ones, or ones mentioning only state and local candidates, such as "Register to Vote to Support City Councilman Jones!" Encouragements that support a political party generally would be generic campaign activity, and therefore defined as Federal election activity. *See* 11 C.F.R. §§ 100.24(b)(2)(ii), 100.25. Encouragements that mention a federal candidate are otherwise defined as Federal

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election activity. *See id.* § 100.24(b)(3). It would be nonsensical to permit corporations and labor unions to conduct nonpartisan encouragement while forbidding political parties from doing so. And the statutory definition of Federal election activity indicates a preference to exclude purely state and local activity. *See* 2 U.S.C. § 431(20)(B). Therefore, all of the potential types of voter encouragement are either subsumed by other statutes and regulations, or are types of communications the statute excludes from regulation.

The Commission concluded that Congress in choosing to regulate voter registration was regulating the act of registering and not the speech that promoted it. To conclude otherwise would mean that Congress intended to subject to stringent Federal regulation every occasion when a State or local party official spoke on the subject. Absent a clear Congressional directive, the Commission prudently refrained from extending its jurisdiction to parsing and policing the speeches of party officials.

3. Section 100.24(a)(3): Get-Out-The-Vote Activity

Section 100.24(a)(3) defines "Get-out-the-vote activity" as "contacting registered voters by telephone, in person, or by other individualized means, to assist them in engaging in the act of voting." Plaintiffs challenge this regulation on three different grounds.

a) Voter Encouragement

First, Plaintiffs worry that § 100.24(a)(3) will permit general voter encouragement. The same arguments exist against this position as were made above in defense of § 100.24(a)(2). Corporations and labor unions may conduct nonpartisan voter encouragement, and the only other type of voter encouragement not regulated elsewhere is encouragement that exclusively mentions state and local candidates. Any definition of "get-out-the vote" that comprehends encouraging voting would capture all election-related speech.

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Persuading a citizen of a candidate or a party's merits is valueless unless the message drives the person to vote. Esscntially all political speech is intended to encourage voting.

b) 72 Hours

Second, Plaintiffs complain that the regulation includes only information provided to voters in the 72 hours before an election. The answer to this challenge is an obvious one: the regulation is not so limited. The regulation expressly states that get-out-the-vote activity "includes, but is not limited to" activity 72 hours before an election. 11 C.F.R. § 100.24(a)(3). Plaintiffs do not challenge the fact that get-out-the-vote activity in the hours before an election is of special concern, and the Commission assures that activities at this time will be carefully scrutinized. The temporal limit is intended to assist the Commission in distinguishing "get-out-the-vote" from other campaign activity.

c) State & Local Organizations

Third, Plaintiffs argue that the regulatory exception for "any communication by an association or similar group of candidates for State or local office if such communication refers only to one or more State or local candidates." 2 C.F.R. § 100.24(a)(3). As noted above, the statutory definition of Federal election activity contains many exceptions that imply that Congress wished not to regulate purely state and local candidate activity. *See* 2 U.S.C. § 431(20)(B). Get-out-the-vote activity by state and local candidates is the heart of low-dollar retail politics. The challenged regulation only exempts groups outside the political party structure, and it forbids mention of federal candidates. To regulate this activity is to federalize all state and local elections, a result not suggested by the statute. If the Commission did not adopt this exception, a slate of candidates for a non-partisan school board election could not engage in a voter turnout program without becoming subject to

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Federal limitations and reporting requirements. The Commission was well within its authority to remove this activity from the vague term "get-out-the-vote activity."

4. Section 100.24(a)(4): Voter Identification

Section 100.24(a)(4) defines "Voter identification" as "creating or enhancing voter lists by verifying or adding information." Plaintiffs complain that this definition excludes the purchase of voter identification databases.

Defendant rightly notes that political parties may purchase voter lists for a variety of reasons, including for fundraising or party-building activities. However, a reading of the statute also provides evidence that the purchase of voter lists is not within the definition of Federal election activity. The voter identification must be "*conducted* in connection with" a federal election. 2 U.S.C. § 431(20)(A)(ii) (emphasis supplied). This statutory structure makes little sense if the term "voter identification" can include the purchase of voter lists; while an activity is conducted, a purchase is merely *made*. The statutory definition contemplated only the political party undertaking, or paying to undertake, public activities. The purchase of items could be considered Federal election activity if the purchase was in anticipation of a public activity, such as the purchase of sample ballot cards. The mere purchase of a voter list, however, is not the type of action contemplated by the statute.

C. Section 100.25: Definition of Generic Campaign Activity

Section 100.25 defines "Generic campaign activity" as "a public communication that promotes or opposes a political party and does not promote or oppose a clearly identified Federal candidate or a non-Federal candidate." Plaintiffs complain that this definition permits mailings and telephone calls below 500, and unlimited internet access.

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Without the public communication limitation, the generic campaign activity definition would threaten to overwhelm the party system. Virtually every meeting, letter, telephone call and e-mail a political party makes promotes that party in some way. Putting aside the additional expense from having to pay for each one of these communications with federal and Levin funds, the administrative expense involved in tracking each one of these communications, assigning a value to them, and allocating the cost accordingly would be extreme. The Commission's exception for small-volume mail and telephone calls is thus a perfectly valid use of its right to create exceptions that "may fairly be considered *de minimis*." *Envtl. Def. Fund v. EPA*, 82 F.3d 451, 467 (D.C. Cir. 1996).

The global exception for internet communications is also a de minimis exception. While the exception does not provide an upper limit for the number of communications sent, that is for two reasons. The first is that it would be difficult to assign a number to internet communications. Electronic mail is easily forwarded, and political e-mail often reaches far more people than its list of original recipients. Websites are entirely passive, and a political party would have no way of controlling the number of people that visited it. Second, because of the relative inexpensiveness of internet communications, all such activity is appropriate for a de minimis exception. Apart from the administrative expenses of maintaining a server and internet connection, sending e-mail is essentially free. The Commission's decision to exempt the internet is a proper exercise of regulatory discretion even without reference to the constitutional protections accorded to this unique medium by the Supreme Court. *ACLU v. Reno*, 521 U.S. 844 (1997).

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D. Section 300.2(b): Agent

Section 300.2(b) defines an agent as "any person who has actual authority, either express or implied, to engage in" a list of activities. The activities differ depending on the person or entity. For state and local parties, agents are those with authority to "expend or disburse any funds for Federal election activity . . . [t]o transfer . . . funds . . . for Federal election activity . . . [t]o engage in joint fundraising . . . to pay for Federal election activity . . . [and] [t]o solicit any funds for" a section 501(c) or section 527 nonprofit organization. *See* 11 C.F.R. § 300.2(b)(2). For state and local candidates, agents are those with authority "to spend funds for a public communication." *Id.* § 300.2(b)(4). Plaintiffs complain that this definition of agent does not include the creation of agency through apparent authority.

As we noted above, volunteers comprise a large percentage of the political parties' staff. Most of these volunteers are part-time only and are ignorant of the intricacies of federal election law. A definition of agent that included apparent authority would threaten to make the political parties themselves liable for the innocent mistakes of volunteers.

It would be an easy mistake for volunteers to solicit contributions on their own, for example, or to take other actions they believe will help their party or candidate. Moreover, it is not uncommon for volunteers to assert that they have more authority than they do. A volunteer may believe, or may assert to others, that he or she has authority to spend funds for a public communication or for grassroots activity. The definition of agent does not include apparent authority, because that would create liability for the political parties and candidates with no wrongdoing on their part. Mere assertions of volunteers could establish an agency relationship, which could lead to federal election law violations. Plaintiff's suggestion that a broader definition of agent would place a "powerful incentive" on principals to control their

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agents may be correct if the principal had any leverage. A person who freely gives his time to a federal candidate can hardly be asked to refrain from providing his services to a state candidate.

While the definition of agent does not include apparent authority, it does include implied authority. A political party cannot place a staff member or volunteer in a position of responsibility while at the same time expressly declining to grant the accompanying authority. In such a case, the Commission would be free, under the regulations, to find that implied authority had been granted. It is only in the cases in which the political party has done nothing to grant authority that apparent instead of implied authority is at issue.

Because of the complexities of the new regulatory regime, it is crucial that political parties be able to decide for themselves who is and who is not an agent. Under an apparent authority rule, political parties would be at the mercy of errant volunteers. Parties must be given the right to make agency decisions for themselves.

E. Section 300.2(m) & (n): Definition of Solicit and Direct

Section 300.2(m) and (n) define "solicit" and "direct." Both definitions include the description "to ask." Plaintiffs complain that this definition does not include solicitations or the directing of funds based on a "wink and a nod."

This regulation is one of the many situations in which the Commission decided on bright-line rules instead of opaque warning signs. Plaintiffs offer a series of dictionary definitions, each describing a different level of activity and all conflicting with each other. This solution would require individuals and political parties to draw, on their own, the solicitation and directing line. This regulation directly affects political speech, much of which would be chilled by using a vague standard instead of a clear rule.

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The regulation, as written, is also flexible enough to encompass the activity that concerns Plaintiffs. There is nothing requiring that the solicitation or direction employ specific words, just that it be an actual request. Plaintiffs read an "express" or "clear" requirement into the regulation where none exists. Even Plaintiffs' feared requests conducted by a Morse code of winks and nods could be considered solicitation or direction if a decoding manual is available.

Once again, the regulation, as written, permits political parties to have more control over whether or not they conform to the statute. If parties must "ask" for a contribution, then whether a solicitation or direction has taken place will depend on the intent of the person asking. Parties can easily avoid violating the regulation by avoiding an intent to request a contribution. By contrast, under Plaintiffs' preferred scheme, a solicitation would take place if by conduct or words an individual conveyed his approval of a contribution. Under this standard, a candidate who spoke well of an organization would violate the law.

F. Section 300.30(c)(3): Bank Accounts

Section 300.30(c)(3) permits political party committees to deposit Levin accounts into a non-federal account instead of creating a separate Levin account. Plaintiffs worry that this permits the commingling of funds.

The regulation only permits the use of one account for both Levin and nonfederal funds if "a reasonable accounting method approved by the Commission" is used to keep track of the Levin funds in the account, and "must keep records . . . and . . . make such records available for examination by the Commission." 11 C.F.R. § 300.30(c)(3), (d). Plaintiffs give no explanation for their worry that this regulation permits circumvention of the allocation regime.

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More importantly, this regulation greatly eases the transition of political parties into the new federal election laws. For many years, state and local political parties were required to keep only two accounts: a federal account and a nonfederal account, into which were deposited funds legal under state law. It would have been extremely burdensome to require that every political party committee, no matter how small, create a new bank account and actively maintain three separate accounts. For state party committees, such a requirement may be only a minor annoyance. For some small local party committees, it might have become a major administrative burden. It also may have proven to be a significant expense for small party committees, as monthly bank fees are becoming more and more expensive. There was no reason not to allow party committees to use their existing accounts as long as they could prove that they had sufficient Levin funds to pay for any Federal election activity.

G. Section 300.32(a)(4): Cost of Raising Levin Funds

Section 300.32(a)(4) permits state and local committees to use Levin funds to pay for the fundraising costs of raising Levin funds. Plaintiffs complain that federal funds should be used for this purpose.

2 U.S.C. § 441i(c) requires that funds spent "to raise funds that are used, in whole or in part, for expenditures and disbursements for a Federal election activity shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act." As Defendant notes, Levin and federal funds are both "subject to the limitations, prohibitions, and reporting requirements." Nothing in the statute prevents the use of Levin funds to raise Levin funds.

Moreover, there is a long tradition of using the type of money raised to pay for fundraising expenses. For instance, the current allocation regulations require that for a

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fundraiser that collects both federal and nonfederal contributions, the costs of that fundraiser should be allocated according to the ratio of funds received. *See* 11 C.F.R. § 106.6(d). Practically, this is by far the simplest method. Otherwise, a political party would have to create a series of interlocking fundraising events. Such a system would not allow the costs of a fundraiser to be paid for by the funds received at that event; the event costs would always have to be raised ahead of time, in a prior event. It would have to host a fundraising event to raise federal funds first, with those funds paying both for that event and for the subsequent Levin funds event. If the first event was not successful enough, the second would have to be cancelled.

Never has either Congress or the Commission required that the costs of a fundraiser raising entirely one category of funds be paid for with another category of funds. The Commission was correct not to violate that precedent.

H. Section 300.32(c)(4): De Minimis Levin Fund Exception

Section 300.32(c)(4) permits disbursements for Federal election activity "that aggregate $5,000 or less in a calendar year" to be paid for entirely with Levin funds instead of allocating between federal and Levin funds. Plaintiffs complain that this is a loophole not permitted by the statute.

As Defendant notes, this regulation does not permit the first $5,000 of every party committee's Federal election activity to be paid for entirely with Levin funds. Instead, it only applies if a committee's entire yearly Federal election activity is $5,000 or less. This is properly seen not as a universal loophole, but as a de minimis exception for small political party committees.

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The purpose of the exception is to permit small committees to operate without a federal account at all. Indeed, this regulation, and § 300.30(c)(3), combine to permit a small committee to operate using just one account, into which it deposits both nonfederal and Levin funds, and to avoid federal reporting requirements altogether. The threshold for Levin fund reporting is $5,000 in a calendar year. 2 U.S.C. § 434(e)(2)(A). Once committees are spending more than $5,000 a calendar year on Federal election activity, they must raise more than $5,000 in either Levin or federal funds, and so they must report their receipts and disbursements. However, if they are spending less than $5,000 on Federal election activity, the exception in 11 C.F.R. § 300.32(c)(4) permits these committees to forego raising federal funds, use only Levin funds, and report only under state law. In contrast, the plaintiff's reading of the law would require a chapter of the College Democrats or College Republicans that operated a voter registration booth on a fall football weekend to register and report to the Commission.

Without this exception, virtually no party committee, down to the precinct level, could avoid having to report to the Commission. Once an entity triggers a reporting obligation under 11 C.F.R. § 100.5(c), it is required to report any receipt of federal contributions, no matter how small the aggregate amount. Only by permitting small party committees to use purely Levin funds for small amounts of Federal election activity could the Commission permit these small committees to avoid the onerous federal reporting system.

I. Section 300.33(c)(2): Employee Compensation

Section 300.33(c)(2) governs allocation for the salaries and wages of state and local party committees. Salaries and wages for employees who spent more than 25 percent of their

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time in a given month on Federal election activity or activities in connection with a federal election must be paid entirely with federal funds; other employees may be paid entirely with nonfederal funds. Plaintiffs complain that the salaries and wages of all employees should be paid in part with federal funds.

Congress included in the definition of Federal election activity the services of employees who spend more than 25 percent of their time on activities in connection with a federal election. 2 U.S.C. § 431(20)(A)(iv). For some categories of Federal election activities, such as voter registration, voter identification, get-out-the-vote activity, and generic campaign activity, the Commission permits state and local parties to allocate funds between federal and Levin funds. *See* 11 C.F.R. § 300.33(a). The Commission could have permitted a similar allocation for employee salaries and wages under the statute, but instead required that they be paid for entirely with federal funds. *See id.* § 300.33(c)(2). By the same token, the Commission could have required that employee wages and salaries for employees spending less than 25 percent of their time on federal elections be allocated between nonfederal and federal funds, but instead permitted these costs to be paid for entirely with nonfederal funds. *See id.* The Commission created a bright-line rule for political party employees. The regulation is more restrictive than the statute for some employee salaries and wages; in return, the regulation permits other employees to be paid entirely in nonfederal funds, where previously those costs would have been allocated. This was a conscious decision to simplify employee salaries and wages.

It is relatively easy to allocate for one-time expenses, such as mass mailings, television advertisements, or telephone banks. Allocating employee salaries and wages is much more difficult. Not only the employee's pay would have to be allocated; the other myriad employment expenses would also have to be allocated, including federal, state and

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local taxes, healthcare, retirement account payments, and any other benefits provided. The allocation would have to be done for each employee and for each pay period. The Commission chose instead to establish a simpler scheme. It was within its authority to do so.

J. Section 300.64: Exception for Attending, Speaking, or Appearing At a Fundraising Event

Section 300.64 provides that when federal candidates or officeholders appear at a state or local political party fundraiser where Levin or nonfederal funds are raised, they "may speak at such events without restriction or regulation." *Id.* § 300.64(b). Plaintiffs complain that this exception permits federal officeholders and candidates to solicit soft money, which the statute forbids.

As Defendant notes, Congress explicitly provided that notwithstanding the prohibition on soliciting nonfederal funds, candidates and officeholders "may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party." 2 U.S.C. § 441i(e)(3). The Commission, which is charged with interpreting this statute, found that it meant to create an exception to the solicitation ban. Considering the ambiguity of the statute, this was a reasonable interpretation.

As a featured speaker at a state party fundraising event, a candidate would be expected to thank the attendees for their past and future support of the party. It is not unreasonable for the Commission to conclude that Congress did not intend to prohibit such a normal and expected courtesy. Plaintiffs argue that the statutory exemption was intended only to override any conflicting provision. Since the statute contains no prohibition on attendance or speaking at any event, plaintiff suggestion that the provision was intended to resolve a conflict is not persuasive. It may be plaintiff's understanding of the exemption but

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it is not one dictated by the clear language of the statute. Therefore the Commission was not bound to adopt plaintiff's understanding.

IV. CONCLUSION

Congress instructed the Commission to promulgate regulations implementing BCRA. The Commission understood that in carrying out that obligation, it was regulating core political speech. It took its responsibility seriously. It knew whatever rules that it adopted, it must be prepared to enforce. It knew that before it penalized, or referred to the Justice Department for prosecution, a local party official for registering a new citizen to vote, transporting an elderly person to the polls or paying a salary out of the wrong account, that the rules must be clear. Ambiguity might well foster some of the well-intentioned ends of the statute, but the cost would be imposed on well-meaning citizens. There is no reason to believe that Congress preferred, let alone directed, the Commission to take another course.

If experience teaches the Commission that it drew the lines at the wrong place, the Commission is free to redraw the lines. Plaintiff's objections to the lines that the Commission has drawn does not diminish the need to draw lines or the Commission's authority to do so. Should Congress conclude that the Commission has poorly exercised its authority, Congress can withdraw that authority or provide more precise statutory direction. This Court should not assume that responsibility

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