



May 17, 2019

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Acting Associate General Counsel
Federal Election Commission
1050 First St. NE
Washington, DC 20463

Re: REG 2014-10: Party Contribution Limits

Dear Mr. Stipanovic,

The Campaign Legal Center (“CLC”) respectfully urges the Commission to take action on REG 2014-10: Party Contribution Limits, the long-pending rulemaking to define the permissible uses of the national party committees’ so-called “Cromnibus” accounts.

53 months ago, Congress enacted the Consolidated and Further Continuing Appropriations Act of 2015¹ (also known as the “Cromnibus”), which amended the Federal Election Campaign Act to create separate, six-figure contribution limits for each of three types of restricted political party accounts. Those new accounts—for legal proceedings, buildings/headquarters, and party conventions—are codified at 52 U.S.C. § 30116(a)(9).

Shortly after Congress created those new party accounts, CLC and Democracy 21 urged the Commission to “promulgate regulations specifying and limiting the permissible uses of these new funds” “[i]n order to prevent abuse of these new restricted-use funds.”²

In October 2015, the Office of General Counsel prepared an “Outline of Draft NPRM” to begin a rulemaking, but the Commission took no formal action. In

¹ Pub. L. 113-235, 128 Stat. 2130, 2772 (2014).

² Comments of the Campaign Legal Center and Democracy 21, RE: REG 2014-01: Earmarking, Joint Fundraising, Disclosure and Other Issues (McCutcheon) (January 15, 2015) at 15.

May 2016, CLC and Democracy 21 again wrote to the Commission urging it to proceed with a rulemaking.³

31 months ago, the Commission published a notice of availability seeking comment on a petition for rulemaking asking the Commission to adopt regulations interpreting the Cromnibus provisions.⁴ CLC and Democracy 21 filed comments supporting a rulemaking, and yet the Commission did nothing.⁵

Two election cycles later, the Commission has yet to adopt new rules defining the permissible and impermissible uses of these accounts.

In March 2019, the Commission approved an advisory opinion request allowing the transfer of a candidate's restricted-use recount funds to the Democratic Senatorial Campaign Committee ("DSCC") legal proceedings account.⁶ The Commission's conclusion was based in part on its assertion that the funds held in the DSCC's legal proceedings account "would not be used for the purpose of influencing a federal election."⁷ Yet CLC's comments on Draft A of that opinion outlined examples of apparently election-related expenditures made from the national parties' legal proceedings accounts, noting:

In the absence of guidance from the Commission, both major political parties have used funds in their legal proceedings accounts for a variety of purposes that have few if any connections to recount activities, and which likely constitute contributions or expenditures under the Act.⁸

Wide-ranging uses of Cromnibus funds are not limited to the legal proceedings accounts. Reports indicate that the Democratic Congressional Campaign Committee ("DCCC") used its Building/Headquarters account to

³ Letter of May 27, 2016 from Campaign Legal Center and Democracy 21 to Commissioners, at 1-2.

⁴ Notice 2016-10, 81 Fed. Reg. 69722 (October 7, 2016).

⁵ Comments of the Campaign Legal Center and Democracy 21 re: REG 2014-10—Comments on Notice 2016-10: Implementing 2015 Omnibus Appropriation Act (January 30, 2017).

⁶ Advisory Opinion 2019-02 (Bill Nelson for Senate).

⁷ *Id.* at 3.

⁸ Comments of the Campaign Legal Center, Advisory Opinion 2019-02 (Bill Nelson for Senate) Draft A. During the open meeting at which this advisory opinion was discussed, counsel for the requestor mischaracterized CLC's comment as questioning the legality of the cited disbursements. In fact, CLC's comment noted that those election-related disbursements were not contrary to any Commission guidance, and therefore that the disbursements disproved the key assumption of draft Advisory Opinion 2019-02 that spending from the legal proceedings accounts is never election-related.

pay at least 52 Congressional candidate offices' rents in the 2018 cycle.⁹ As *Politico* reported:

The FEC has never issued regulations interpreting the law and saying exactly how the “headquarters funds” can be used, or whether this use of them is appropriate.

....

House Republicans do not have a similar program, and their lawyers have been more conservative in their interpretation of the 2014 law so far, according to two Republican officials.¹⁰

Such reporting suggests that the Commission's failure to issue regulations has created significant ambiguities about the permissible and impermissible uses of these accounts, creating the perverse incentive that the party less willing to push the legal envelope may place itself at a competitive disadvantage.

This is not an isolated example. For example, funds in the Buildings/Headquarters account are to be “used solely to defray expenses incurred with respect to the construction, purchase, renovation, operation, and furnishing of one or more headquarters buildings of the party or to repay loans the proceeds of which were used to defray such expenses.” 52 U.S.C. § 30116(a)(9)(B). Yet between 2015 and 2018, the Republican National Committee (“RNC”) used funds from its Buildings/Headquarters account to pay:

- At least \$18,611 to Lewis Eisenberg (current ambassador to Italy and former RNC finance chairman and chairman of the Trump Victory Fund) for “travel expenses” and “transportation services,”¹¹ which included the following underlying expenditures:

⁹ Scott Bland, *House Dem Candidates Snag Free Office Rent*, POLITICO (Nov. 5, 2018), <https://www.politico.com/story/2018/11/05/house-free-rent-959983>.

¹⁰ *Id.*

¹¹ Republican National Committee, 2015 September Monthly, FEC Form 3X, at 4555, 4561 (filed Sept. 20, 2015), <http://docquery.fec.gov/pdf/101/201509209002762101/201509209002762101.pdf>; Republican National Committee, 2015 October Monthly, FEC Form 3X, at 5061 (filed Oct. 20, 2015), <http://docquery.fec.gov/cgi-bin/fecimg/?201510209003176475>; Republican National Committee, 2015 November Monthly, FEC Form 3X, at 5910, 5939 (filed Nov. 20, 2015), <http://docquery.fec.gov/pdf/980/201511209003803980/201511209003803980.pdf>.

- \$4,876 to American Airlines, U.S. Airways, and Delta Airlines on August 26, 2015;¹²
- \$2,983 to the charter jet company XO Jet on September 4, 2015;¹³
- \$2,656 to the Four Seasons Hotel in Washington, D.C., on August 26, 2015;¹⁴ and
- \$112 to the Quail Valley Golf Club in Littlestown, PA for “travel expenses” on August 26, 2015.¹⁵
- At least \$420 to trophy supplier Dan Kain Trophies for “office supplies” and “building maintenance.”¹⁶

During that same period, the National Republican Senate Committee (“NRSC”) used its Buildings/Headquarters account to pay \$50,000 to Advertising Analytics for “subscriptions” on September 6, 2016,¹⁷ and at least \$264,790 to Lexis Nexis for “subscriptions.”¹⁸ The National Republican Congressional Committee (“NRCC”), for its part, used its Buildings/Headquarters account to pay at least \$220,345 to Lexis Nexis for “subscriptions” between 2015 and 2018.¹⁹

¹² Republican National Committee, 2015 September Monthly, *supra* note 11, at 4555, 4558, 4559, 4560.

¹³ Republican National Committee, 2015 October Monthly, *supra* note 11, at 5067.

¹⁴ Republican National Committee, 2015 September Monthly, *supra* note 11, at 4556.

¹⁵ *Id.* at 4550.

¹⁶ Republican National Committee, Disbursements to Dan Kain Trophies Inc., 2017-18, FEC.GOV,

https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00003418&recipient_name=dan+kain&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018 (last visited May 13, 2019) (showing three payments in the 2018 cycle to Dan Kain Trophies, all with “headquarters account” in the memo line).

¹⁷ NRSC, 2016 October Monthly, FEC Form 3X, at 4 (filed Oct. 20, 2016), <http://docquery.fec.gov/cgi-bin/fecimg/?201610240200564600>. This was the only payment the NRSC made to Advertising Analytics in the 2016 cycle, but in 2018 the NRSC used its general funds to pay this firm \$48,750 for “polling” and “political strategy consulting.” NRSC, Disbursements to Advertising Analytics, 2017-18, FEC.GOV,

https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00027466&recipient_name=advertising+analytics&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018 (last visited May 13, 2019).

¹⁸ NRSC, Disbursements to Lexis Nexis from “HQ Account” or “Headquarters Acct,” 2017-18, FEC.GOV,

https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00027466&recipient_name=lexis+nexis&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018&disbursement_description=headq&disbursement_description=hq (last visited May 13, 2019).

¹⁹ NRCC, Disbursements to Lexis Nexis from “HQ Acct,” 2017-18, FEC.GOV, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00075820&recipient_name=lexis+nexis&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018

And between 2015 and 2018, the DCCC used its Buildings/Headquarters account to pay:

- At least \$376,200 to polling and consulting firm Greenberg Quinlan Rosner Research in 2017 and 2018 for “headquarters software”;²⁰
- At least \$151,705 to NGP Van Inc., a voter database provider, for “headquarters software” and “headquarters equipment maintenance”;²¹ and
- At least \$51,277 to direct mail campaign firm RWT Production for “headquarters mailing” in July and August 2018.²²

It is not clear how parties using these Buildings/Headquarters accounts to pay for airfare, hotels, voter database subscriptions, or direct mailers relates “to the construction, purchase, renovation, operation, and furnishing of one or more headquarters buildings.” But in the absence of Commission action, Buildings/Headquarters accounts have been used for all of these activities.

Additionally, as noted in CLC’s comments on Advisory Opinion 2019-02, funds in the legal proceedings account are supposed to be “used to defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings.” 52 U.S.C. § 30116(a)(9)(C). Yet in the absence of guidance from the Commission, both major political parties have used funds in their legal proceedings accounts for

[17&max_date=12%2F31%2F2018&disbursement_description=headq&disbursement_description=hq](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00000935&recipient_name=greenberg+quinlan&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018&disbursement_description=headq) (last visited May 13, 2019).

²⁰ DCCC, Disbursements to Greenberg Quinlan Rosner Research, Inc. for “Headquarters Software,” 2017-18, FEC.GOV, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00000935&recipient_name=greenberg+quinlan&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018&disbursement_description=headq (last visited May 13, 2019).

²¹ DCCC, Disbursements to NGP Van, Inc. for “Headquarters Software” and “Headquarters equipment maintenanc[e],” 2015-16, FEC.GOV, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00000935&recipient_name=ngp+van&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016&disbursement_description=headq (last visited May 13, 2019); DCCC, Disbursements to NGP Van, Inc. for “Headquarters Software” and “Headquarters equipment maintenanc[e],” 2017-18, FEC.GOV, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00000935&recipient_name=ngp+van&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018&disbursement_description=headq (last visited May 13, 2019).

²² DCCC, Disbursements to RWT Production, LLC for “Headquarters mailing,” 2017-18, FEC.GOV, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00000935&recipient_name=rwt+prod&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018&disbursement_description=headq (last visited May 13, 2019).

a variety of purposes that have few if any connections to recounts or other legal proceedings.

Since 2015, the NRSC has used its legal proceedings account to pay:

- \$10,000 on June 15, 2016 for “data purchase” from Cap Square Solutions,²³ a government relations/lobbying firm;²⁴
- \$60,000 on November 1, 2016 to Community Networking Resources, which is apparently a lobbying firm,²⁵ for “consulting”;²⁶
- \$3,750 on November 2, 2016 to political consulting firm EM Campaigns for “consulting”;²⁷ and
- \$7,991 on November 21, 2016 to marketing firm Empire Strategies for “consulting.”²⁸

The NRCC has used its legal proceedings account to pay:

- \$40,000 to Fulcrum Campaign Strategies, a trade name²⁹ for the “high-stakes public strategy firm” Mercury Public Affairs LLC,³⁰ for “legal consulting” on December 21, 2018;³¹ and
- \$30,000 to Convergence Media, a “multi-functional media firm that...help[s] our clients reach their goals and win elections”³² for “fundraising web svc” on October 25, 2018.³³

²³ NRSC, 2016 July Monthly, FEC Form 3X, at 1958 (filed July 20, 2016), <http://docquery.fec.gov/cgi-bin/fecimg/?201607210200295264>.

²⁴ *Cap Square Solutions LLC*, BLOOMBERG, <https://www.bloomberg.com/profiles/companies/0204882D:US-cap-square-solutions-llc> (last visited Mar. 27, 2019).

²⁵ Laura Vecsey, *Commentary: Fundraiser Mike Musser runs Dauphin County commissioners' campaigns*, PENN LIVE (Apr. 25, 2011), https://www.pennlive.com/midstate/index.ssf/2011/04/commentary_fundraiser_mike_musser.html; Itai Vardi, *Exclusive: PA Lawmaker Working to Curb Pipeline Protestors Tied to Shadow Lobbyists for Company Behind Project*, DESMOG (June 22, 2017), <https://www.desmogblog.com/2017/06/22/exclusive-pa-lawmaker-working-curb-pipeline-protestors-tied-shadow-lobbyists-company-behind-project>.

²⁶ NRSC, 2016 Post-General, FEC Form 3X, at 6932 (filed Dec. 8, 2016), <http://docquery.fec.gov/cgi-bin/fecimg/?201612080200681663>.

²⁷ *Id.*; see also *Our Team*, ELECTION MANAGEMENT SOLUTIONS, <http://electionmgmt.com/our-team/> (last visited Mar. 27, 2019).

²⁸ NRSC, 2016 Post-General, *supra* note 26, at 6932, <http://docquery.fec.gov/cgi-bin/fecimg/?201612080200681663>.

²⁹ *Mercury Public Affairs LLC*, OpenCorporates, https://opencorporates.com/companies/us_dc/EXTUID_2880298 (last visited Mar. 27, 2019).

³⁰ *About*, Mercury LLC, <http://www.mercuryllc.com/about/> (last visited Mar. 27, 2019).

³¹ NRCC, 2018 Year-End, FEC Form 3X, at 5318 (filed Jan. 31, 2019), <http://docquery.fec.gov/cgi-bin/fecimg/?201901319144437028>.

³² *About Convergence Media*, Convergence Media, <https://www.convergencemedias.us/about-convergence> (last visited Mar. 27, 2019).

³³ NRCC, 2018 Post-General, FEC Form 3X, at 10707 (filed Dec. 6, 2018), <http://docquery.fec.gov/cgi-bin/fecimg/?201812069134943803>.

