July 10, 2019

Submitted electronically to dkersey@wvsos.gov

West Virginia State Election Commission
State Capitol, Bld. 1, Ste. 157-K
Charleston, WV 25305

Dear Secretary Warner and Members of the Commission,

The Campaign Legal Center ("CLC") and W.V. Citizens for Clean Elections respectfully submit these written comments to the State Election Commission ("Commission") regarding the proposed rule amendments to implement S.B. 622 ("proposed rule").[1]

CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening American democracy across all levels of government. Since the organization's founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court and in numerous other federal and state court cases. CLC's work promotes every citizen's right to participate in the democratic process and to know the true sources of funds spent to influence our elections.

W.V. Citizens for Clean Elections is a coalition of local organizations working to increase political transparency and accountability in West Virginia. The coalition supports reforms that strengthen democracy and ensure fairness and impartiality in our courts.

CLC and W.V. Citizens for Clean Elections appreciate the opportunity to provide input on this important rulemaking. We are submitting these comments in an effort to ensure the Commission adopts a final rule that judiciously implements the provisions of S.B. 622. Our comments and recommendations are organized according to the sections and subsections of the proposed rule to which they relate. In final part of the comments, we have itemized minor and technical corrections that should be made in the rule.

[1] Notice of Public Comment Period, Amendment to C.S.R. § 146-3, "Regulation of Campaign Finance," Vol. XXXVI W. Va. Reg., Issue No. 23 (June 7, 2019).

I. § 146-3-2. "Definitions"

a. Subsection 2.8. "Committee"

The proposed rule introduces the term "committee," defined to include an "entity" or group "composed of one or more persons for the purpose of engaging in, overseeing, managing, or otherwise operating in support, on behalf or against any certain or specific matters under the authority provided by contract, operation, law, statute, and/ or designation by another person, group of persons, entity or entities." S.B. 622 did not include a standalone definition of "committee," and the term is not otherwise defined in § 3-8-1a of the Code.

The proposed rule's "committee" definition is indistinct, and it does not specify whether a "committee" is authorized by a candidate or is otherwise engaged in election-related activity governed by Article 8, Chapter 3 of the West Virginia Code. As worded, the definition could apply to a range of entities operating outside the scope of West Virginia's campaign finance law. Because the purpose of the term is unclear, we recommend either clarifying the "committee" definition or removing it from the rule.

b. Subsection 2.10. "Coordinated Expenditure"

The proposed rule's definition of "coordinated expenditure" includes "an expenditure made with, in cooperation with, or at the request or suggestion of the referenced candidate or candidate's committee, political party committee or caucus campaign committee and meeting the criteria provided in 146-CSR 3-15 of this rule." S.B. 622 also added a definition of "coordinated expenditure" to the Code.[2]

We support the rule's inclusion of expenditures coordinated with political party committees and caucus campaign committees. Importantly, this addition will help to prevent the circumvention of contributions limits applicable to political parties and caucus campaign committees,[3] as donors could otherwise evade the limits by making substantial coordinated expenditures with those entities.

In addition to covering coordination with parties and caucus campaign committees, the rule's definition of "coordinated expenditure" should explicitly include "electioneering communications" made in coordination with a candidate, political party committee, or caucus campaign committee. While electioneering communications are not subject to limits under the Code, these communications often take a clear position on a candidate's fitness for elected office, even if they do not include express advocacy for or against the candidate's election.[4] Moreover, electioneering communications are publicly disseminated in the immediate

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[2] W. Va. Code § 3-8-1a(9).
[3] *See* W. Va. Code § 3-8-5c(2)(b).
[4] W.Va. Code § 3-8-1a(14) (defining "electioneering communication" as a paid communication made via certain media that "refers to a clearly identified candidate" and is "publicly disseminated within" thirty days of a primary or sixty days of a general or special election).

timeframe before a primary or general election, increasing the likelihood the communications will affect voters' decisions at the polls.[5]

The inclusion of electioneering communications in the rule's definition of "coordinated expenditure" would serve to safeguard against a candidate or political party conducting a substantial electioneering communication advertising campaign in conjunction with an outside group in order to circumvent the Code's contribution limits. At the federal level, the Federal Election Commission ("FEC") has included coordinated "electioneering communications" within its regulations on coordination, in accordance with the coordination standards in federal election law.[6] Thus, we recommend including electioneering communications within the final rule's definition of "coordinated expenditure."

c. Subsection 2.26. "Nonpolitical committee"

The proposed rule defines "nonpolitical committee" as "a committee established with the primary purpose other than to support or oppose the nomination or election of one or more candidates and which does not meet the definition of a political committee per Subsection 2.30.3 of this Rule."

The purpose of this new regulatory definition is somewhat unclear. It is only referenced in two other sections of the proposed rule: once in the rule's definition of "political committee," which states "any committee that does not meet the definition of political committee shall be defined as a nonpolitical committee"; and then in § 146-3-6.9, which specifies a "nonpolitical committee that is responsible for any fine imposed by the Secretary of State will be paid from general treasury funds of the nonpolitical committee." S.B. 622 did not include the term, and "nonpolitical committees" are not mentioned in the Code.

If "nonpolitical committee" is meant to be a catchall for any organization that does not qualify as a "political action committee," it may be preferable to use a more neutral term, such as "entity" or "person,"[7] in order to more clearly distinguish between political committees and non-committee groups within the rule.

d. Subsection 2.29. "Political Action Committee"

The proposed rule defines "political action committee" ("PAC"), in relevant part, as "a committee of one or more persons unrelated by marriage, or any other organization or entity." The definition of "political action committee" in the proposed rule differs from the Code's definition, as amended by S.B. 622, in that it specifies a PAC consists of "one or more persons *unrelated by marriage*."[8]

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[5] *See* W.Va. Code § 3-8-1a(14).
[6] 11 C.F.R. § 109.21(c)(1); *see also* 52 U.S.C. § 30116(a)(7)(C).
[7] The Code broadly defines "person" to include an individual, corporation, partnership, committee, association, and any other organization or group of individuals. W. Va. Code § 3-8-1a(27).
[8] *See* W. Va. Code § 3-8-1a(28).

To prevent creating a gap in the rule's coverage of PACs formed by a group of individuals who *are* related by marriage, we recommend eliminating the "unrelated by marriage" language in the rule's "political action committee" definition. That change would make the regulatory definition of PAC consistent with the term's meaning in the Code, and help to ensure comprehensive regulation of all groups qualifying as PACs in West Virginia.

e. Subsection 2.29.1. "Primary Purpose"

In accordance with S.B. 622's amendments to the statutory definition of "political action committee,"[9] the proposed rule describes three factors relevant in "determining a committee's primary purpose," including (i) "[w]hether the combination of one or more persons receives and manages money or any other thing of value in a common account for the specific purpose of supporting or opposing any candidate, political party or political committee;" (ii) "[w]hether the combination of one or more persons makes, anticipates or should have anticipated engaging in a continuing pattern of expenditures from a common account to support or oppose any candidate, political party or political committee;" and (iii) "[w]hether the combination of one or more persons constitutes a committee that was not in existence for any other primary purpose prior to supporting or opposing any candidate, political party or political committee."

While the three factors listed in the proposed rule may be useful in assessing whether an organization has the "primary purpose" of supporting or opposing state candidates, the Commission should expand the list of factors in the final rule to create a more comprehensive review process for determining whether a particular organization is a PAC in West Virginia.

For example, the Montana Commissioner of Political Practices ("COPP") has issued a regulation that describes factors relevant in determining whether an organization has the "primary purpose" of supporting or opposing state candidates or ballot issues.[10] Montana's regulation lists eleven distinct factors that COPP reviews to determine an organization's "primary purpose," including its budget, allocation of staff activity, date of founding, reportable election activity, coordination with a candidate, and any "ordinary business" conducted by the organization.[11] After evaluating an organization under the criteria in the regulation, COPP makes a final decision regarding the organization's "primary purpose" based on a "preponderance of evidence."[12]

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[9] *Id.* (defining "political action committee" as a committee, "*the primary purpose* of which is to support or oppose" the nomination or election of West Virginia candidates) (emphasis added).
[10] Mont. Admin. R. 44.11.203. Under Montana's campaign finance law, an organization that is not organized for the "primary purpose" of supporting or opposing state candidates or ballot issues may still qualify as an "incidental committee." Mont. Code Ann. § 13-1-101(23). Although considered political committees under state law, incidental committees are subject to more relaxed disclosure requirements than other types of political committees with the "primary purpose" of influencing Montana elections. Mont. Code Ann. § 13-37-232.
[11] Mont. Admin. R. 44.11.203(2)-(3).
[12] Mont. Admin. R. 44.11.203(5).

The Commission should review Montana's regulation, and, in the final rule, include a similarly broad range of factors for determining whether an organization has the "primary purpose" of supporting or opposing candidates in West Virginia.

f. Subsection 2.33. "Political Purposes"

The proposed rule defines "political purposes" more narrowly than the Code. The statutory definition of "political purposes" encompasses "supporting or opposing the nomination, election, or defeat of one or more candidates or the passage or defeat of a ballot issue," among other activities. By contrast, the proposed rule restricts the term, in relevant part, to "expressly advocating" the election or defeat of one or more candidates.[13] Further, the definition in the Code covers advocacy for or against ballot issues, while the proposed rule does not. We recommend aligning the meaning of "political purposes" in the rule with the more comprehensive definition in the Code to provide consistency and prevent confusion.

g. Subsection 2.35. "Restricted Group"

In the proposed rule, "restricted group" is defined as "the membership organization's members and the executive or administrative personnel of the membership organization and their families." The definition marks the limited class of individuals from whom membership organizations may solicit and receive contributions for their separate segregated funds, in accordance with the Code's requirements.[14] However, the Code also includes analogous requirements for a separate segregated fund established by a corporation, which may only solicit and receive political contributions for the fund from its stockholders, executive or administrative personnel, and the immediate family members of those individuals.[15]

Because the definition of "restricted group" is relevant for corporations as well for membership organizations, we recommend amending the definition in the final rule to clarify that it includes certain individuals employed by or affiliated with a corporation, including its executive or administrative personnel, shareholders, and the immediate family members of those individuals. Elsewhere, § 146-3-5.3.1.d of the proposed rule defines "restricted classes," for purposes of contribution restrictions for corporations and membership organizations, to include a corporation's stockholders and executive or administrative personnel, along with their family members; § 146-3-5.3.1's definition of "restricted classes" does not

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[13] The West Virginia Code defines "expressly advocating" to cover communications that overtly support or oppose a candidate by using language like "vote for" or "vote against." W. Va. Code § 3-8-1a(15). By comparison, "supporting or opposing" a candidate or ballot issue embraces a wider range of election-related communications that may not amount to express advocacy.

[14] *See* W. Va. Code § 3-8-1a(10) (defining "corporate political action committee" as a "a separate segregated fund of a corporation that may only accept contributions from its *restricted group* as outlined by the rules of the State Election Commission.") (emphasis added); *see also id.* § 3-8-8(c)(2)(D)-(E).

[15] W. Va. Code § 3-8-8(c)(2)(D)-(E).

explain who comprises the "restricted classes" of membership organizations, however.

Accordingly, the final rule should include a single, comprehensive definition that sets forth the meaning of "restricted group or classes" for both corporations and membership organizations.[16] For guidance in formulating this definition, we suggest the Commission review the FEC's regulation defining restricted classes of corporations and membership organizations.[17]

II. § 146-3-5. "Contribution Limitations, Sources, and Restrictions"

a. Application of Contribution Limits to Candidates in Nonpartisan Elections

In general, the proposed rule does not specify how limits on contributions apply to candidates in nonpartisan elections, including individuals running for judicial office. While the proposed rule, in § 146-3-3, describes how candidates in partisan races should attribute contributions received toward either a primary or general election in a variety of circumstances, it does not specify how candidates in nonpartisan elections should attribute contributions made to their campaigns, nor does the proposed rule specifically address whether candidates in nonpartisan elections are subject to limits on contributions.

Since candidates running in nonpartisan elections generally are subject to the same statutory limits on contributions applicable to candidates in partisan races,[18] the final rule should make clear that contribution limits do apply to candidates in nonpartisan elections, and describe how these candidates should attribute contributions they receive toward the limits.

b. Subsection 5.2.11. Meaning of "Fair Market Value"

In subsection 5.2.11, the proposed rule states that a "non-monetary contribution is to be considered at fair market value for reporting requirements and contribution limitations." The term "fair market value," however, is not defined in the proposed rule or in the Code.

To provide guidance to candidates and political committees regarding the valuation of non-monetary contributions, we recommend adding a definition of "fair market value" in the final rule. In its regulations, the FEC has promulgated a regulation defining "the usual and normal charge for goods and services" for

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[16] Alternatively, since corporate and membership organizations' political activity currently is the subject of a separate rulemaking, the Commission could move provisions applicable to corporations and membership organizations in § 146-3 to § 146-1 as part of its amendments. *See* Notice of Public Comment Period, Amendment to C.S.R. § 146-1, "Corporate & Membership Organization Political Activity", Vol. XXXVI, W. Va. Reg., Issue No. 23 (June 7, 2019).

[17] 11 C.F.R. § 114.1(j).

[18] W. Va. Code § 3-8-5c(a)(1).

purposes of valuing in-kind contributions.[19] The FEC's regulation explains that the "usual and normal charge for goods" is "the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution."[20] Relatedly, the "usual and normal charge for any services" is "the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered."[21]

The final rule should include a comparable definition of "fair market value" to assist candidates and political committees in determining the worth of non-monetary contributions of both goods and services, and to ensure that these contributions are accurately reported and valued.

c. Subsection 5.3.2. Prohibiting Contributions, Independent Expenditures, & Electioneering Communications by Foreign Nationals

Subsection 5.3.2 prohibits a "foreign national" from making a contribution or donation to a candidate, political committee, or political party, or from making an independent expenditure or payment for an electioneering communication in West Virginia. This provision of the proposed rule implements the equivalent prohibition on foreign nationals' contributions and campaign-related spending within the Code, as amended by S.B. 622.[22]

The prohibitions in the proposed rule and in the Code are fairly broad, but they do not foreclose all potential avenues through which foreign nationals could "indirectly" expend funds to influence West Virginia elections.[23] To help guarantee that West Virginia's bar on foreign nationals' contributions and election-related spending is effective, we recommend expanding the prohibition in the rule to help close all channels for foreign national to spend money in connection with state and local elections.

Like West Virginia's Code, federal election law prohibits foreign nationals from making election-related contributions or expenditures.[24] The federal ban, though, includes a catchall provision that prohibits a foreign national, "directly or indirectly," from making a contribution or donation "*in connection with* a Federal, State, or local election."[25] Importantly, the federal prohibition on foreign nationals' contributions and donations is not explicitly limited to contributions or donations given to candidates, political parties, or PACs, and extends to foreign nationals'

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[19] 11 C.F.R. § 100.52(d)(2).
[20] *Id.*
[21] *Id.*
[22] *See* W. Va. Code § 3-8-5g.
[23] For example, the Code's prohibition only refers to a foreign national making a contribution to "a candidate's committee, a political committee, or a political party," and it does not explicitly bar foreign nationals from contributing to other types of entities, such as a 501(c)(4) organization, that might subsequently make campaign-related expenditures in West Virginia elections. W. Va. Code § 3-8-5g(a).
[24] *See* 52 U.S.C. § 30121.
[25] 52 U.S.C. § 30121(a)(1)(A) (emphasis added).

providing funds to a non-committee entity, such as a 501(c)(4) organization, that might make independent expenditures or electioneering communications using the foreign nationals' funds.

We recommend adding a similar catchall in the final rule to protect against foreign nationals providing donations to non-committee organizations for purposes of influencing West Virginia elections. That addition will help to prevent foreign nationals from eluding the Code's prohibition, and to protect West Virginia's elections from illicit foreign interference.

III. § 146-3-6. "Lawful Expenditures"

Subsection 6.5. Meaning of "Personal Use" of Campaign Funds

The proposed rule provides that a candidate may not "receive any payment of money or other thing of value for personal use from funds solicited or received for political purposes on his or her behalf, except as reimbursement" as permitted by the rule.[26] "Personal use" is not defined in the proposed rule, and the Code also does not describe what constitutes "personal use" of campaign funds.[27]

We recommend defining "personal use" in the final rule to delineate the types of expenses that candidates may *not* make with their campaign funds. For guidance in drafting a "personal use" definition, the Commission should review the FEC's regulation prohibiting federal candidates' personal use of campaign funds.[28] The federal regulation includes a general definition for "personal use," covering any use of campaign funds "to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a federal officeholder," and also lists particular expenses that constitute personal use by candidates, such as purchases of household items, mortgage or utility payments for personal residences, and dues payments for private clubs.[29]

To provide more guidance on the permissible uses of campaign funds, and to prevent candidates from spending those funds for their own private benefit, the final rule should include a definition of "personal use."

IV. § 146-3-10. "Solicitation for Political Purposes"

Subsection 10.9. Solicitations by Federal Committees

In subsection 10.9, the proposed rule provides that a solicitation made by a federal political committee "within the state" is subject to state law if "all or part of

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[26] § 146-3-7.3 of the proposed rule also prohibits any person from using excess campaign assets "for personal economic benefit or use."
[27] The Code does dictate "lawful" election expenses that may be made by a political committee's treasurer or financial agent, but that statutory section does not explicitly address personal use of campaign funds. *See* W. Va. Code § 3-8-9.
[28] 11 C.F.R. § 113.1(g).
[29] *Id.*

any contribution received as a result of the solicitation is used to expressly advocated the election or defeat of a candidate or candidates in non-federal races in West Virginia." This amended language would narrow the coverage of § 146-3-10.9, which is currently applicable to any funds solicited by a federal committee "to support" candidates in non-federal elections, by stipulating that money solicited by a federal committee is subject to state law only if subsequently used "to expressly advocate" for or against a candidate in a West Virginia election.

We recommend against narrowing the rule's coverage of federal committees' solicitations. Otherwise, the rule would allow a federal committee to solicit contributions in West Virginia, then make non-express advocacy expenditures meant to influence state elections without being subject to the state's solicitation requirements. Instead of contracting the coverage of this subsection, we suggest broadening it to cover any solicitations by federal committees if any resultant contributions are then used "for political purposes," as defined by the Code.[30]

V. § 146-3-11. "Procedures for Levying Civil Penalties"

Publishing List of Late Filers

In the proposed rule, § 146-3-11 describes the procedures for the Secretary to assess civil penalties for different reporting violations. This section of the proposal does not address the requirement for the Secretary to publish a list online of certain late filers, pursuant to § 3-8-7(b)(4) of the Code.

In the final rule, the Commission should clarify in § 146-3-11 how the Secretary will publish the list of late filers in accordance with the Code. At a minimum, the rule should clarify who will appear on the list, when and where the list will be posted, and how long the list will be available online.

VI. § 146-3-13. "Joint Fundraising Agreements"

Prohibiting Joint Fundraising Agreements Between Candidates & Independent Expenditure-Only Political Committees

§ 146-3-13 of the proposed rule sets forth the requirements for political committees to establish joint fundraising agreements. While this section of the proposed rule is relatively extensive, it does not include an express prohibition against candidates establishing joint fundraising agreements with independent expenditure-only political committees. Elsewhere in the proposed rule, the definition of "independent expenditure-only political committee" stipulates that these committees may not "participate in joint fundraising agreements with a candidate or candidate's committee." This restriction is not referenced in § 146-3-13, however.

We recommend adding another provision within § 146-3-13 to reiterate that candidates may not enter into joint fundraising agreements with independent expenditure-only political committees. Adding the proscription in this section of the

[30] *See* W. Va. Code § 3-8-1a(32).

rule would make clear that candidates and independent expenditure-only political committees may *not* establish joint fundraising agreements.

VII. § 146-3-14. "Coordinated Activity"

a. Subsection 14.1. Definition of "Coordination Expenditure"

In subsection 14.1, the proposed rule again defines "coordinated expenditure," after having already included a definition for the term in § 146-3-2.10. We are concerned that the two definition will create confusion, especially since they vary in their substance. Notably, the "coordinated expenditure" definition under § 146-3-2.10 is more comprehensive, and encompasses coordination not only with candidates, but also with political party committees and caucus campaign committees.

If the rule is going to define "coordinated expenditures" in multiple sections, the definitions should be consistent. Moreover, the term *should* include coordination with political party committees and caucus campaign committees, as it currently does under § 146-3-2.10 of the proposed rule, since party and caucus committees, like candidates, are subject to contribution limits under the Code. In addition to covering coordination with political party committees and caucus campaign committees, we repeat our earlier recommendation to include electioneering communications within the rule's definition of "coordinated expenditure."

b. Subsection 14.3. Types of Expenditures Considered "Coordinated"

Subsection 14.3 lists various expenditures that are considered "coordinated" under the proposed rule. Along with the "coordinated expenditures" already described in subsection 14.3, we recommend including a person or entity's republication of campaign material originally created or prepared by a candidate committee, provided the republication is intended to support that candidate.

An expenditure that republishes a candidate's campaign material or advertising is a relatively easy way to support the candidate and to disseminate their campaign messaging to a wider audience. For this reason, the FEC includes, within the meaning of "coordination," an expenditure for a public communication that "republishes, in whole or in part, campaign materials prepared by a candidate or the candidate's authorized committee," unless the communication is intended to advocate against the candidate's election or otherwise meets another exception in the regulation.[31]

The express addition of republication of a candidate's campaign materials effectively would extend the proposed rule's existing coverage of an expenditure for which a candidate or candidate's committee was involved in the "creation" or "production," under subsection 14.3.2. Accordingly, we recommend adding republication as an example of a coordinated expenditure under subsection 14.3.

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[31] 11 C.F.R. § 109.21(c)(2); *see also* 11 C.F.R. § 109.23.

c. Describing Requirements for Firewalls

In the Code's new section on coordination, added by S.B. 622, an expenditure otherwise qualifying as coordinated will not be treated as such if the person or entity making the expenditure has implemented a "firewall" that meets certain conditions.[32] Pursuant to the statutory exception, a firewall must: (i) "prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to a candidate" supported by the expenditure; and (ii) be memorialized in a written policy "distributed to all relevant employees, consultants, and clients affected by the policy."[33]

The proposed rule does not describe the requirements for implementing firewalls, beyond adding a definition of "firewall" in § 146-3-2.16. Thus, we recommend clarifying the requirements for establishing firewalls in the proposed rule. In addition to the firewall requirements outlined in the Code, the final rule should include additional conditions for creating firewalls to ensure their effectiveness. Specifically, the rule should require that a firewall: (i) separate staff who provide a service related to any expenditure benefiting a candidate from other staff who have engaged, or will engage, in any coordinated activity with that candidate; (ii) prohibit a supervisor or manager from simultaneously overseeing the work of staff members who are separated by the firewall; and (iii) provide for physical and technological separations to help ensure that strategic, non-public information does not, in fact, pass to the candidate or to staff members separated by the firewall.

The addition of strong firewall requirements in the rule will serve to prevent de facto coordination between candidates and outside groups making expenditures to support those candidates, as intended by S.B. 622. Accordingly, we recommend the Secretary include requirements for establishing firewalls in the final rule.

VIII. Minor & Technical Corrections

a. *§ 146-3-2.6.* In the proposed rule's definition of "caucus campaign committee," the meaning of the clause stating "which include to support or oppose one or more candidates or slates of candidates for nomination, election, or committee membership" is uncertain.

b. *§ 146-3-2.29.3.* The subsection's specification that "this provision does not act in contrary to the reporting requirements" in state law seems intended to clarify that joint fundraising committees are not exempt from disclosure. However, the wording of the subsection—especially "this provision does not *act in contrary* to the reporting requirements"—makes its purpose less clear.

c. *§ 146-3-4.2.* This subsection explains that a contribution received by a political action committee is made "in connection" with a general election if it

[32] W. Va. Code § 3-8-9a(d).
[33] *Id.*

is received after a statewide primary and "not later than the day of the General Election (for example, from May 13, 2016 to January 1, 2017)." In the parenthetical example, the general election date should be in November, rather than in January.

d. *§ 146-3-7.2.7.* This subsection instructs that "excess campaign assets" may be contributed to a national, state, or local party committee "when that committee is acting in the role of a vendor." However, transfers to political party committees acting as vendors are not among the permissible uses of excess campaign funds under § 3-8-10 of the Code. This subsection instead seems to belong within § 146-3-6 of the proposed rule, which concerns lawful expenditures during a campaign.[34]

e. *§ 146-3-7.5.1.* This subsection refers to filing a final report under §3-3-5 of the Code. The reference to that section of the Code appears to be mistaken, as § 3-3-5 concerns absentee ballots and is not part of the article governing campaign finance.

f. *§ 146-3-8.3.* This subsection explains that candidates, treasurers, and other persons "engaging in other activities permitted by 3-8-5a and 3-8-5b" must keep detailed records of their contributions and expenditures. Since both §3-8-5a and § 3-8-5b concern reporting requirements, the subsection likely would be more clear if it instead said, "Every candidate, treasurer, person, association of persons, organization, or corporation supporting a political committee *required to report activities* under 3-8-5a and 3-8-5b."

g. *§ 146-3-8.6.* The subsection refers to persons "required to keep detailed accounts under subsection (a) of this section." However, § 146-3-8 does not have a subsection (a). Additionally, this subsection does not reference the "itemized sworn statements" that candidates must file pursuant to § 3-8-5(b)(2) of the Code.

h. *§§ 146-3-8.14 & 146-3-8.15.* In addition to referencing §§ 3-8-2 and 3-8-2b, both of these subsections should also refer to § 3-8-5b(b)(1) of the Code, which mandates electronic filing of independent expenditure and electioneering communication reports.

i. *§ 146-3-10.4.* This subsection also should apply to funds solicited in connection with a special election.

Conclusion

S.B. 622's amendments to the Code, as implemented by this rulemaking, will improve disclosure of some campaign-related spending in West Virginia. Nonetheless, S.B. 622 did not address the most glaring loopholes in state law that enable non-PAC organizations to spend substantial sums to influence West Virginia's elections without having to identify their sources of funding to the

[34] *See* W. Va. Code § 3-8-9(a)(16).

public.[35] In conclusion, we urge the Commission to help strengthen political transparency in West Virginia by supporting future legislation to end "dark money" spending in the state.

We thank the Commission for its consideration of our comments. To assist the Commission with promulgating the final rule, we are available as a resource for additional information on the issues covered in this rulemaking.

Respectfully submitted,

/s/
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/s/
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Coordinator
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[35] *See, e.g.*, W. Va. Code § 3-8-2(a)(7) (requiring a person filing an independent expenditure report to disclose the names and addresses of donors who made contributions in excess of $250 only if such contributions "were made *for the purpose of furthering the expenditure*") (emphasis added).