



July 23, 2020

The Honorable Edward A. Buchanan  
Wyoming Secretary of State  
122 W 25<sup>th</sup> Street  
Cheyenne, WY 82002

Dear Secretary Buchanan,

Campaign Legal Center (“CLC”) respectfully submits these comments to the Wyoming Secretary of State (“Secretary”) regarding the Notice of Intent to Adopt Rules defining “direct coordination” for purposes of the statutory amendments made by Senate File 20.<sup>1</sup>

CLC is a nonpartisan, nonprofit organization that advances democracy through law at the federal, state, and local levels. Since its 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 proceedings. Our work promotes every American’s right to transparency and accountability in the electoral process.

One of the main focuses of CLC’s campaign finance practice is improving the legal standards that define coordination between candidates and outside groups making expenditures to support them. CLC has previously provided guidance and recommendations for addressing coordination issues to both federal and state election authorities,<sup>2</sup> and the following comments are intended to assist the Secretary in promulgating a final regulation that effectively precludes corporations

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<sup>1</sup> Proposed ARR 20-044 (filed May 29, 2020), <https://wyoleg.gov/arules/2012/rules/ARR20-044P.pdf>; 2020 Wyo. Sess. Laws at 309, <https://wyoleg.gov/2020/SessionLaws.pdf>.

<sup>2</sup> See Comments from Campaign Legal Ctr. & Democracy 21 to Fed. Election Comm’n (Dec. 16, 2015), [https://campaignlegal.org/sites/default/files/Letter to FEC Commissioners re Agenda Doc. 15-54-A %28Dec. 16, 2015%29.pdf](https://campaignlegal.org/sites/default/files/Letter%20to%20FEC%20Commissioners%20re%20Agenda%20Doc%2015-54-A%20Dec%2016%202015.pdf); Comments from Campaign Legal Ctr. to N.M. Sec’y of State (Aug. 14, 2019), at 3-4, [https://campaignlegal.org/sites/default/files/2019-08/CLC%20Written%20Comments%20on%20Proposed%20Campaign%20Finance%20Rule .pdf](https://campaignlegal.org/sites/default/files/2019-08/CLC%20Written%20Comments%20on%20Proposed%20Campaign%20Finance%20Rule.pdf); Comments from Campaign Legal Ctr. & W.V. Citizens for Clean Elections to W.Va. State Election Comm’n (July 10, 2019), at 2-3, [https://campaignlegal.org/sites/default/files/2019-07/CLC WV CCE Comments on Proposed Rulemaking for CSR 146-3.pdf](https://campaignlegal.org/sites/default/files/2019-07/CLC_WV_CCE_Comments_on_Proposed_Rulemaking_for_CSR_146-3.pdf).

from using political parties or political action committees (“PACs”) as conduits for circumventing state law’s prohibition against corporate campaign contributions.<sup>3</sup>

Part I of the comments gives an overview of the U.S. Supreme Court’s case law concerning coordination restrictions, highlights common ways that candidates and outside groups have coordinated in federal elections, and describes the background of the Wyoming Election Code’s new coordination restriction. Part II then makes recommendations for defining “direct coordination” in accordance with best practices, and Part III sets out draft regulatory language incorporating our recommendations for the Secretary’s final regulation.

## **I. Constitutionality and Importance of Coordination Rules**

Wyoming’s new statutory prohibition against corporations making contributions to political parties or PACs that “directly coordinate” with candidates addresses a critical issue in contemporary elections: ensuring that legal restrictions on campaign contributions are not circumvented through extensive cooperation and collaboration between candidates and outside groups—including political parties, PACs, and other organizations—that spend money to support the election of those candidates.

Beginning with its seminal decision *Buckley v. Valeo*, the U.S. Supreme Court has consistently maintained that third-party expenditures “controlled by or coordinated with a candidate” may be constitutionally limited in the same manner as direct contributions to the candidate’s campaign.<sup>4</sup> Because coordinated expenditures are essentially indirect contributions to candidates, *Buckley* reasoned that limiting expenditures made in coordination with candidates furthers the same anti-corruption interests served by limits on direct campaign contributions and, critically, “prevent[s] attempts to circumvent the [limits] through prearranged or coordinated expenditures amounting to disguised contributions.”<sup>5</sup>

More recent decisions from the Supreme Court have reiterated that limits on coordinated expenditures are justified because these expenditures “raise[] the risk of corruption (and its appearance) through circumvention of valid contribution limits.”<sup>6</sup> In *FEC v. Colorado Republican Campaign Committee* (“*Colorado Republican II*”), the Court held that coordinated spending between a political party and candidates of that party “may be restricted to minimize circumvention of contribution limits.”<sup>7</sup> Importantly, the Court in *Colorado Republican II* rejected the argument that political parties’ close relationship to candidates necessitates greater First Amendment protection for their coordinated expenditures, finding instead that

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<sup>3</sup> In our comments, we use the term “corporation” to broadly refer to all organizations that are prohibited from making contributions to candidates under Wyo. Stat. Ann. § 22-25-102(a), including unions, partnerships, professional associations, civic or fraternal groups, and other entities.

<sup>4</sup> 424 U.S. 1, 46-47 (1976).

<sup>5</sup> *Id.* at 47.

<sup>6</sup> *FEC v. Colo. Republican Federal Campaign Committee*, 533 U.S. 421, 456 (2001).

<sup>7</sup> *Id.* at 465.

“parties’ capacity to concentrate power to elect is the very capacity that apparently opens them to exploitation as channels for circumventing contribution and coordinated spending limits binding on other political actors.”<sup>8</sup>

Likewise, in *McConnell v. FEC*, the Court declined to strike down part of the federal Bipartisan Campaign Reform Act extending coordination rules to expenditures made in the absence of “an agreement or formal collaboration” with a candidate.<sup>9</sup> The *McConnell* Court noted that the existence of a formal agreement did not establish “the dividing line” between coordinated versus independent spending, and explained that “expenditures made after a ‘wink or nod’ often will be ‘as useful to the candidate as cash.’”<sup>10</sup> Thus, the Court made clear in *McConnell* that an agreement or arrangement between an outside group and a candidate is *not* a constitutional precondition to a finding of coordination.<sup>11</sup>

After the Court struck down bans on corporate independent expenditures in *Citizens United v. FEC*,<sup>12</sup> coordination rules have become especially critical to preserving the efficacy of restrictions on corporations giving money and other assistance to candidates’ campaigns. While the holding in *Citizens United* relied on the assumption that independent expenditures, unlike direct campaign contributions, do not create a risk of “quid pro quo” corruption because they are made without “prearrangement and coordination” with candidates,<sup>13</sup> many campaign finance laws narrowly define “coordination” and leave ample opportunity for outside groups and candidates to engage in a range of collaborative conduct. This kind of extensive interaction belies any commonsense understanding of “independent,” and undermines legal restrictions on campaign contributions that are key to maintaining accountability and preventing corruption in our democratic process.

Examples from recent federal elections illustrate the many ways in which candidate campaigns and outside groups can coordinate activities. For instance, before officially announcing their candidacies for federal office, prospective candidates have set up and raised money for super PACs that subsequently made independent expenditures to boost those candidates once they launched their campaigns;<sup>14</sup> some

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<sup>8</sup> *Id.* at 455.

<sup>9</sup> 540 U.S. 93, 220-23 (2003).

<sup>10</sup> *Id.* at 221 (quoting *Colorado Republican II*, 533 U.S. at 442, 446).

<sup>11</sup> 540 U.S. at 222.

<sup>12</sup> 558 U.S. 310 (2010).

<sup>13</sup> 558 U.S. at 357. The Court in *Citizens United* made a point to distinguish the challenge at hand from its precedent upholding prohibitions on corporate contributions to candidates, which, the Court noted, “have been an accepted means to prevent *quid pro quo* corruption.” *Id.* at 359 (emphasis in original).

<sup>14</sup> See Matea Gold, *Why super PACs have moved from sideshow to center stage for presidential hopefuls*, WASH. POST (Mar. 15, 2015), [https://www.washingtonpost.com/politics/once-the-sideshows-super-pacs-now-at-the-forefront-of-presidential-runs/2015/03/12/516d371c-c777-11e4-a199-6cb5e63819d2\\_story.html](https://www.washingtonpost.com/politics/once-the-sideshows-super-pacs-now-at-the-forefront-of-presidential-runs/2015/03/12/516d371c-c777-11e4-a199-6cb5e63819d2_story.html); Matea Gold, *Now it’s even easier for candidates and their aides to help super PACs*, WASH. POST (Dec. 24, 2015),

federal candidates have fundraised for super PACs and other independent expenditure groups even after formally establishing their campaign committees.<sup>15</sup>

Soon after ending their employment with candidates, many former campaign staffers also have gone on to work for super PACs that support those same candidates, bringing valuable, non-public information about the candidates' electoral strategy and needs along with them.<sup>16</sup> Additionally, the frequent use of common vendors by candidates and outside groups has helped to ensure that independent expenditures most effectively complement spending by candidates' campaigns.<sup>17</sup> And federal candidates and outside groups have routinely exploited gaps in the Federal Election Commission ("FEC") regulations' coverage of online communications to exchange campaign-related materials and information on public websites, with the understanding that the materials will be used for supportive electioneering.<sup>18</sup>

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[https://www.washingtonpost.com/politics/now-its-even-easier-for-candidates-and-their-aides-to-help-super-pacs/2015/12/24/d8d1ff4a-a989-11e5-9b92-dea7cd4b1a4d\\_story.html](https://www.washingtonpost.com/politics/now-its-even-easier-for-candidates-and-their-aides-to-help-super-pacs/2015/12/24/d8d1ff4a-a989-11e5-9b92-dea7cd4b1a4d_story.html).

<sup>15</sup> See FEC Advisory Op. 2011-12 (concluding that federal candidates and officeholders may solicit annual contributions of up to \$5,000 per donor on behalf of independent expenditure-only political committees); Alexander Burns, *Romney addressing super PAC fundraisers*, POLITICO (July 28, 2011), <https://www.politico.com/story/2011/07/romney-addressing-super-pac-fundraisers-060143>.

<sup>16</sup> See Maggie Severns, *Pro-Buttigieg super PAC hired Buttigieg finance staffer amid ad blitz*, POLITICO (Feb. 21, 2020), <https://www.politico.com/news/2020/02/21/pete-buttigieg-super-pac-staffer-116607>; see also Ashley Balcerzak, *Candidates and their super PACs sharing vendors more than ever*, OPENSECRETS.ORG (Dec. 21, 2016), <https://www.opensecrets.org/news/2016/12/candidates-super-pacs-share-vendors/> (reporting that there were 632 instances where super PACs and the candidates they supported had hired the same individual or company during the 2016 federal election cycle).

<sup>17</sup> Mike Spies, *Documents Point to Illegal Campaign Coordination Between Trump and the NRA*, THE TRACE (Dec. 6, 2018), <https://www.thetrace.org/2018/12/trump-nra-campaign-coordination/> (reporting that "the NRA and the Trump campaign employed the same operation — at times, the exact same people — to craft and execute their advertising strategies for the 2016 presidential election," and noting that the common vendors "executed ad buys for Trump and the NRA that seemed coordinated to enhance each other.").

<sup>18</sup> The FEC has exempted online communications from regulation unless they are "placed for a fee on another person's website." 11 C.F.R. § 100.26. Thus, an outside group's republication of a candidate's campaign materials on the group's own website generally is not considered a "coordinated communication" under the FEC's rules. Fed. Election Comm'n, *Internet Final Rules* (May 1, 2006), <https://www.fec.gov/updates/internet-final-rules/>. See also Matea Gold, *How a super PAC plans to coordinate directly with Hillary Clinton's campaign*, WASH. POST (May 12, 2015), <https://www.washingtonpost.com/news/post-politics/wp/2015/05/12/how-a-super-pac-plans-to-coordinate-directly-with-hillary-clintons-campaign/>.

In recent Wyoming elections, coordination has also become an issue. Shortly before the 2016 general election, the Wyoming Republican Party filed several complaints with the Secretary of State alleging that various Democratic candidates for the state legislature had used a political consulting firm, ELLA WY, Inc., to coordinate with nonprofit organizations that made independent expenditures to benefit those candidates at the upcoming election.<sup>19</sup> The Wyoming Attorney General's office ultimately dismissed the Republican Party's complaints on the technical grounds that state law, at the time, only permitted "qualified electors" to file complaints regarding election code violations.<sup>20</sup>

Following the 2016 cycle, Wyoming officials began to review potential election code changes to clarify legal restrictions on coordination, among other election reforms.<sup>21</sup> In 2019, the Secretary of State's office formulated the new restriction on "direct coordination" and other amendments to the election code as part of a draft legislative proposal, which was presented by the Secretary's Election Division staff at an interim meeting of the Joint Committee on Corporations, Elections and Political Subdivisions last September. That committee subsequently voted to sponsor a bill, introduced as Senate File 20, containing the Secretary's recommended statutory revisions during the 2020 legislative session.<sup>22</sup>

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("The FEC rules specifically permit some activity—in particular, activity on an organization's website, in email, and on social media—to be legally coordinated with candidates and political parties"); Andrew Gripp, *How Super PACs and Candidates Legally (And Illegally) Coordinate Their Efforts*, INDEPENDENT VOTERS NEWS (Oct. 26, 2016), <https://ivn.us/2016/10/26/super-pacs-evaded-rules-coordinating-campaigns>.

<sup>19</sup> Nick Learned, *GOP Files Third Complaint of Campaign Finance Violations in Albany County, First Two Referred to Wyoming Attorney General*, KOWB (Nov. 2, 2016), <https://kowb1290.com/gop-files-third-complaint-of-campaign-violations-in-albany-county-first-two-referred-to-wyoming-attorney-general/>; Press Release, Wyo. Republican Party, WY GOP Files Second Complaint Alleging More Democrat Campaign Finance Violations (Oct. 26, 2016), [https://www.wyoming.gop/second\\_campaign\\_law\\_violation](https://www.wyoming.gop/second_campaign_law_violation).

<sup>20</sup> Laura Hancock, *AG will not consider Wyoming GOP complaint against liberal groups*, CASPER STAR TRIBUNE (updated Jan. 20, 2020), [https://trib.com/news/state-and-regional/govt-and-politics/ag-will-not-consider-wyoming-gop-complaint-against-liberal-groups/article\\_7e5dfc96-c813-5e2a-abb8-042aef59ae18.html](https://trib.com/news/state-and-regional/govt-and-politics/ag-will-not-consider-wyoming-gop-complaint-against-liberal-groups/article_7e5dfc96-c813-5e2a-abb8-042aef59ae18.html); see also 2018 Wyo. Sess. Laws at 63 (replacing "Any qualified elector" with "any person" in Wyo. Stat. Ann. § 22-26-121 for purpose of specifying who may file complaints of election code violations with the Secretary).

<sup>21</sup> Joel Funk, *Wyoming election law proposals grow from 2016 controversies*, CASPER STAR TRIBUNE (Sept. 25, 2017), [https://trib.com/news/state-and-regional/wyoming-election-law-proposals-grow-from-2016-controversies/article\\_62e716e0-bedb-5d84-acb5-ff1d830fc1ab.html](https://trib.com/news/state-and-regional/wyoming-election-law-proposals-grow-from-2016-controversies/article_62e716e0-bedb-5d84-acb5-ff1d830fc1ab.html).

<sup>22</sup> See Summary of Proceedings, Meeting of Joint Corporations, Elections & Political Subdivisions Interim Comm. (Sept. 16-17, 2019), at 3, <https://wyoleg.gov/InterimCommittee/2019/07-20190916MeetingMinutes.pdf>.

With respect to the new statutory prohibition against corporations making contributions to political parties or PACs that “directly coordinate” with candidates, a spokesperson for the Secretary’s office explained, “These changes explicitly seek to close a loophole for parties and PACs to no longer be able to function as a conduit for corporations to funnel money directly to a candidate or candidate’s campaign committee.”<sup>23</sup> Importantly, the Wyoming Election Code, as amended by Senate File 20, now more clearly proscribes the kind of activity that gave rise to the Republican Party’s 2016 complaints, and the Secretary’s office is expressly directed to flesh out the meaning of “direct coordination” by regulation.<sup>24</sup>

## II. Recommendations for Defining “Direct Coordination”

To prevent the circumvention of Wyoming’s ban on corporate contributions to state candidates, the Secretary’s final regulation should clearly delineate the meaning and scope of “direct coordination.” As a threshold matter, it is critical that the Secretary’s regulation make clear that “direct coordination” includes a political party or PAC making contributions to a candidate or candidate’s committee; this regulatory clarification would definitively close the statutory loophole that has enabled parties and PACs to funnel corporate funds to candidates despite the prohibition in Wyo. Stat. Ann. § 22-25-102(a).<sup>25</sup> If the final regulation does not cover a political party or PAC making contributions to a candidate, the new restriction on “direct coordination” will do little to disrupt the status quo, as parties and PACs could easily sidestep the restriction by avoiding activities that constitute “direct coordination” while continuing to pass along funds originally provided by corporate entities to candidates.<sup>26</sup>

Moreover, by clarifying that “direct coordination” includes making contributions to a candidate, the final rule would augment other statutory restrictions, including the

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<sup>23</sup> Nick Reynolds, *Wyoming is looking to close a campaign finance loophole. But it may not matter*, CASPER STAR TRIBUNE (Sept. 21, 2019), [https://trib.com/news/state-and-regional/govt-and-politics/wyoming-is-looking-to-close-a-campaign-finance-loophole-but-it-may-not-matter/article\\_64e48eb9-f998-5bb7-a171-7c20ae292ec6.html](https://trib.com/news/state-and-regional/govt-and-politics/wyoming-is-looking-to-close-a-campaign-finance-loophole-but-it-may-not-matter/article_64e48eb9-f998-5bb7-a171-7c20ae292ec6.html).

<sup>24</sup> See Wyo. Stat. Ann. § 22-25-102(a) (“The secretary of state shall promulgate rules to define direct coordination as prohibited by this section.”).

<sup>25</sup> See Nick Reynolds, *Wyoming is looking to close a campaign finance loophole. But it may not matter*, CASPER STAR TRIBUNE (Sept. 21, 2019), [https://trib.com/news/state-and-regional/govt-and-politics/wyoming-is-looking-to-close-a-campaign-finance-loophole-but-it-may-not-matter/article\\_64e48eb9-f998-5bb7-a171-7c20ae292ec6.html](https://trib.com/news/state-and-regional/govt-and-politics/wyoming-is-looking-to-close-a-campaign-finance-loophole-but-it-may-not-matter/article_64e48eb9-f998-5bb7-a171-7c20ae292ec6.html).

<sup>26</sup> Wyoming’s 2020 Campaign Guide, published by the Secretary’s Election Division, aligns with this reading of state law as amended by Senate File 20. The guide explains that “organizations [] prohibited from making contributions directly to candidates and candidate committees” may only expend funds to “1) Make independent expenditures for speech expressly advocating the election or defeat of a candidate (W.S. 22-25-102(k)(i)); 2) Make electioneering communications pursuant to W.S. 22-25-101(c); 3) Bear any portion of a PAC’s or political party’s

prohibition against any person “solicit[ing] or receiv[ing] a payment or contribution from an organization prohibited from making a contribution under [Wyo. Stat. Ann. § 22-25-102(a)].”<sup>27</sup> Similarly, to guard against some of the most common coordination abuses seen at the federal level, the regulatory definition of “direct coordination” should cover a political party or PAC’s republication of campaign materials originally prepared by a candidate, regardless of whether there has been other collaboration between the party or PAC and the candidate.

Along with including direct contributions and republication of a candidate’s campaign materials within the scope of the regulation, the Secretary’s definition of “direct coordination” should set forth the specific types of conduct that qualify as “consultation, cooperation, or communication” between a candidate and a political party or PAC. For example, the Montana Commissioner of Political Practices (“COPP”), whose office administers campaign finance laws in that state, has promulgated a comprehensive regulation defining “coordination.”<sup>28</sup> Montana’s regulation lists various types of conduct that COPP will consider relevant in determining if a communication or other expenditure is “coordinated” with a candidate, including whether the communication or expenditure was made based on information provided by the candidate or candidate’s agent, whether the person making the communication or expenditure has paid for the services of another person who has also received compensation from the candidate, and whether the candidate or candidate’s agent participated in any decision regarding “the content, timing, location, media, intended audience, volume of distribution, or frequency of placement” of the communication or expenditure.<sup>29</sup> In addition to Montana, other states around the country have adopted statutes or regulations that specify particular kinds of conduct that qualify as coordination.<sup>30</sup>

Based on CLC’s experiences helping to develop coordination rules in federal and state elections, we have identified a range of cooperative conduct that should be covered as part of an effective “direct coordination” regulation in Montana,<sup>31</sup> including:

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administrative costs or costs of soliciting contributions (W.S. 22-25-102(k)(ii)).” Wyo. Election Division, *2020 Campaign Guide* 9, [https://sos.wyo.gov/Elections/Docs/2020/2020\\_Campaign\\_Guide.pdf](https://sos.wyo.gov/Elections/Docs/2020/2020_Campaign_Guide.pdf).

<sup>27</sup> Wyo. Stat. Ann. § 22-25-102(a); *see also id.* § 22-25-102(b) (“No person shall solicit or receive a political payment or contribution from any source other than a natural person, political party, political action committee or candidate’s campaign committee organized under W.S. 22-25-101.”).

<sup>28</sup> Mont. Admin. R. 44.11.602, <http://www.mtrules.org/gateway/RuleNo.asp?RN=44.11.602>.

<sup>29</sup> *Id.*

<sup>30</sup> *See, e.g.,* Alaska Admin. Code tit. 2, § 50.405(5)(B); Ariz. Rev. Stat. Ann. § 16-922(C); Cal. Code Regs. tit. 2, § 18225.7(c), (d); Conn. Gen. Stat. § 9-601c(b); Fla. Stat. Ann. § 106.011(12)(b); 970 Mass. Code Regs. 2.21(5), (6); N.Y. Elec. Law § 14-107(1)(d); R.I. Gen. Laws § 17-25-23; W. Va. Code Ann. § 3-8-9a.

<sup>31</sup> The types of coordinated conduct included in CLC’s recommendations overlap in substantial part with those in Montana’s coordination regulation. *See supra* note 28.

- *General coordination with a candidate:* If a political party's or PAC's expenditure is "not made totally independently" of a candidate, it should be treated as coordinated. This would include an expenditure made by the party or PAC pursuant to an express or implied agreement, a general or particular understanding, or a request by or communication with a candidate.
- *Candidate or candidate's family member had a role in creating or running the political party or PAC:* If during the two years preceding when a party or PAC makes an expenditure to support a candidate, the candidate or the candidate's immediate family member established, maintained, controlled, or principally funded the party or PAC, then expenditures supporting the candidate made by the party or PAC in the same two-year period should qualify as coordinated.
- *Candidate has fundraised for the political party or PAC:* If during the two years preceding when a party or PAC makes an expenditure to support a candidate, the candidate has solicited funds for, provided non-public fundraising information to, appeared as a speaker or featured guest at a fundraiser for, or gave permission to be featured in fundraising efforts of the party or PAC, then subsequent expenditures by the party or PAC in support of the candidate should be considered coordinated.
- *Expenditures based on non-public information about the campaign's needs:* If an expenditure is based on non-public information about a candidate's campaign needs that the candidate has provided directly or indirectly to the party or PAC, then the party or PAC's subsequent expenditure to support the candidate should be treated as coordinated.
- *Former employee or common agent or vendor:* If a political party or PAC employs or retains the services of a person who has been a managerial-level employee, key fundraiser, or vendor for a candidate within the previous two years, then expenditures by the party or PAC in support of the candidate should be deemed coordinated. Covered persons should include those who, at any point during the previous two years: (i) had executive or managerial authority for the candidate; (ii) were authorized to raise or expend funds for the candidate and had received non-public information from the candidate about the campaign's plans or needs; or (iii) provided the candidate with professional services (other than accounting or legal services) related to campaign or fundraising strategy.
- *Safe harbor if the political party or PAC has established a firewall:* In recognition of the fact that it may be difficult for a party or PAC to find Montana-based staff or vendors who have not previously worked with candidates in the state, the regulation may exclude from coverage any expenditures involving former employees or common vendors of a candidate if the party or PAC has implemented a firewall policy that satisfies certain criteria meant to ensure there is no flow of strategic, non-public campaign



information from the former employee or common vendor to other staff of the party or PAC who are working directly with the beneficiary candidate.

### III. Suggested Regulatory Text

To assist the Secretary in promulgating a “direct coordination” regulation that includes our best-practices recommendations, CLC has prepared the following draft regulatory language containing our suggestions. We urge the Secretary to consider adopting this draft language for the final regulation.

- (a) For purposes of Wyo. Stat. Ann. § 22-25-102(a), “direct coordination” means:
  - i. A political party or political action committee making a contribution of funds or other items of value directly to a candidate or candidate’s campaign committee;
  - ii. A political party or political action committee making an expenditure for a communication that republishes, disseminates, or distributes, in whole or part, any video, audio, written, graphic, or other form of campaign material, created or prepared by the candidate or candidate’s committee, unless the republished material is used for an expenditure to oppose the candidate that created or prepared the material; or
  - iii. A political party or political action committee making an expenditure in cooperation, consultation, or communication with a candidate or candidate’s campaign committee.
- (b) As used in this section, an expenditure is made by a political party or political action committee “in cooperation, consultation, or cooperation with” a candidate or candidate’s campaign committee if:
  - i. The expenditure is not made totally independently of the candidate or candidate’s campaign committee. An expenditure “not made totally independently” includes any expenditure made pursuant to any expressed or implied agreement with, or any general or particular understanding with, or pursuant to any request by or communication with the candidate or candidate’s campaign committee about the expenditure;
  - ii. During the two years preceding the date of the expenditure, the political party or political action committee was directly or indirectly established, maintained, controlled, or principally funded by the candidate, candidate’s campaign committee, or an immediate family member of the candidate. For purposes of the previous sentence, an “immediate family member of the candidate” means a parent, child, sibling, spouse, domestic partner, father-in-law, or mother-in-law;
  - iii. During the two years preceding the date of the expenditure, the candidate solicited funds for the political party or political action committee, provided fundraising information or strategy to the political party or political action committee, appeared as a speaker or featured guest at a fundraiser for the political party or political action committee, or gave permission to be featured in the political party or political action committee’s fundraising efforts;

- iv. The expenditure is based on information about the candidate's campaign needs or plans that the candidate or candidate's campaign committee provided to the political party or political action committee directly or indirectly, such as information about campaign messaging, strategy, fundraising, planned expenditures, or polling data; provided that communications between the candidate and the political party or political action committee solely for the purpose of either engaging in discussions with the candidate regarding the political party or political action committee's position on a policy matter or regarding whether the political party or political action committee will endorse the candidate, and that include no non-public information about the candidate's campaign needs or plans, do not constitute "direction coordination" under this paragraph; or
  - v. During the two years preceding the date of the expenditure, the political party or political action committee employed or retained the services (other than accounting or legal services) of a person who, at any prior point during the same two-year period:
    - 1. Had executive or managerial authority for the candidate or candidate's campaign committee, whether paid or unpaid;
    - 2. Was authorized to raise or expend funds for the candidate or candidate's campaign committee and had received non-public information from the candidate or candidate's campaign committee about the campaign's plans or needs; or
    - 3. Provided the candidate or candidate's campaign committee with professional services (other than accounting or legal services) related to campaign or fundraising strategy.
- (c) Notwithstanding the direct coordination described in subsection (b)(V), an expenditure will not be deemed coordinated if the political party or political action committee creates and implements a firewall policy that meets the criteria in this subsection. A political party or political action committee that relies on a firewall bears the burden of proof that the firewall was in existence and effective at the relevant times. If strategic non-public information passes through a firewall, the resulting expenditures will be deemed direct coordination, regardless of the existence of a firewall, if the criteria for direct coordination in subsection (b)(v) have been met. To satisfy this subsection, a firewall must:
- i. Separate specific staff who provide a service to the political party or political action committee related to its expenditures from distinct, specific staff who have engaged or will engage in any activity defined in subsection (b)(v) with the candidate supported by the expenditures;
  - ii. Forbid each executive, officer, manager, and supervisor within the political party or political action committee to simultaneously oversee the work of staff being separated by a firewall;
  - iii. Prohibit the flow of strategic non-public information between the political party or political action committee and the candidate being supported by the expenditures, and between specific staff being separated by the firewall;
  - iv. Provide for physical and technological separations to ensure that strategic non-public information does not flow between the political

- party or political action committee and the candidate, or between the specific staff who are being separated by the firewall; and
- v. Be memorialized in writing and distributed to all relevant employees and vendors before any relevant work is performed, regarding both the general firewall policy and any specific firewall created pursuant to such a policy, and provided to the Secretary of State upon request.
- (d) For purposes of this section, any reference to a candidate, candidate's campaign committee, political party, or political action committee includes:
- i. An employee or independent contractor, if such employee or contractor has executive or managerial authority for the candidate, candidate's campaign committee, political party, or political action committee at any time during the two years preceding the date of the expenditure;  
or
  - ii. An agent, whether paid or unpaid, of the candidate, candidate's campaign committee, political party, or political action committee at any time during the two years preceding the date of the expenditure.

### **Conclusion**

To conclude, CLC respectfully urges the Secretary to take full advantage of the rulemaking authority provided in Senate File 20 to issue a regulation for “direct coordination” that comprehensively protects against the circumvention of Wyoming’s prohibition against corporate campaign contributions. We appreciate having the opportunity to participate in this important rulemaking, and CLC would be glad to answer any questions that the Secretary has regarding our comments.

Respectfully submitted,

/s/ Austin Graham  
Austin Graham  
Legal Counsel