August 28, 2020

Robert M. Knop
Assistant General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463
*Submitted electronically to www.fec.gov/fosers*

**RE: Comments on REG 2020-02: Transfers from Candidate's Authorized Committee**

Dear Mr. Knop,

The Campaign Legal Center ("CLC") respectfully submits these comments in response to the notice of availability in REG 2020-02. 85 Fed. Reg. 39098 (June 30, 2020).

CLC urges the Commission to amend its regulations to clarify that an individual cannot transfer unlimited personal funds to a national party committee simply because the funds were first deposited into the individual's campaign account.

The underlying petition was prompted by former Democratic presidential candidate Michael Bloomberg taking the unprecedented step of transferring $18 million from his self-financed campaign to the Democratic National Committee.[1] As CLC noted in its comments on Advisory Opinion Request 2020-03, Mr. Bloomberg relied on a strained reading of existing regulations, and the Commission can and should interpret its existing regulations to bar the making or acceptance of such a transfer.[2] The Commission should additionally amend its regulations to make even more clear that such a transfer is impermissible.

[1] Citizens United, Petition for Rulemaking to Close the Bloomberg Loophole on Transfers to National Party Committees (Apr. 8, 2020), https://sers.fec.gov/fosers/showpdf.htm?docid=410512.
[2] Campaign Legal Center, Comments on Advisory Opinion Request 2020-03 (June 19, 2020), https://www.fec.gov/files/legal/aos/2020-03/202003C_1.pdf.

## Legal Background

FECA provides that a "contribution accepted by a candidate" may be transferred "without limitation" to "a national, State, or local committee of a political party." 52 U.S.C § 30114(a)(4).

A candidate may also make "unlimited *expenditures* from personal funds" in support of their campaign. 11 C.F.R. § 110.10 (emphasis added). However, such expenditures are not "contribution[s] accepted by a candidate" subject to FECA's unlimited party transfer provisions.

The Supreme Court has long regarded a candidate's disbursements of personal funds on their own campaign as "expenditures." *Buckley v. Valeo*, 424 U.S. 1, 52-53 (1976) (per curiam) (rejecting a "ceiling on personal expenditures by a candidate in furtherance of his own candidacy," on grounds that a candidate has a "First Amendment right to . . . advocate his own election," and that, in contrast with contribution limits, such personal *expenditure* limits do not serve the government's interest in preventing actual or apparent corruption); *see also Davis v. FEC*, 554 U.S. 724, 738-739 (2008) (affirming the constitutional treatment of a candidate's use of personal funds on their own campaign as "expenditures").

As a result, a candidate's constitutional right to make unlimited expenditures of personal funds "in furtherance of his own candidacy" does not translate into a right to make unlimited contributions of personal funds to a political party—contributions which implicate a significant risk of corruption. *See*, *e.g.*, *McConnell v. FEC*, 540 U.S. 93, 143-54 (2003) (acknowledging that "large soft-money contributions to national political parties give rise to corruption and the appearance of corruption").

Although FECA provides that only a "contribution accepted by a candidate" is subject to the unlimited party transfer provision, 52 U.S.C § 30114(a)(4), Commission regulations implementing this statutory provision state that "*funds in a campaign account* . . . may be transferred without limitation to any national, State, or local committee of any political party." 11 C.F.R. § 113.2(c) (emphasis added).

Because candidates who make expenditures from personal funds sometimes do so through their authorized committee, 11 C.F.R. § 113.2(c) could be misconstrued as suggesting that such personal funds are subject to the unlimited party transfer provisions.

## Proposed Regulatory Amendments

The Commission should open a rulemaking to amend 11 C.F.R. § 113.2(c) and more explicitly align the regulation with FECA. The regulation should make clear that only a "contribution accepted by a candidate"—and not a candidate's personal funds expended in support of their own campaign—may be transferred without limit to a national, state, or local party committee.

Contributions to party committees are capped to limit corruption and its appearance. Candidates may use their personal wealth on their own campaigns under the theory that candidates generally cannot corrupt themselves. The latter rationale does not negate the former: An individual's ability to buy excessive influence is not diminished simply because they became a candidate before giving the party millions in contributions.

CLC thanks the Commission for the opportunity to submit these comments. If the Commission decides to hold a hearing on this matter, CLC respectfully requests an opportunity to testify at that hearing.

Respectfully submitted,

*/s/ Brendan M. Fischer*

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