



March 11, 2022

Robert M. Knop  
Assistant General Counsel  
1050 First Street NE  
Washington, DC 20463

Re: Form 1 Revisions

Dear Mr. Knop,

Campaign Legal Center (“CLC”) respectfully submits these comments regarding the Federal Election Commission’s improper codification of “hybrid” political committees through the purported adoption of revisions to FEC Form 1. The Commission took this action without notice and an opportunity for public comment, in violation of the Administrative Procedure Act.

The Commission currently does not prohibit so-called “hybrid” committees from making contributions to federal candidates while also accepting unlimited and corporate contributions into a separate “non-contribution account.”<sup>1</sup> But these

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<sup>1</sup> Press Release, FEC, *FEC statement on Carey v. FEC: Reporting guidance for political committees that maintain a non-contribution account* (Oct. 5, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-fec/>.

committees exist only as a result of a press release issued by the FEC in response to a single district court case in which the Commission entered into a stipulated order and consent judgment.<sup>2</sup> That press release, issued on October 5, 2011, stated that “[t]he Commission intends to initiate a rulemaking, and to amend its reporting forms *accordingly*.”<sup>3</sup> More than a decade later, the Commission has apparently decided to skip any rulemaking and instead codify these committees, without an opportunity for public comment, through a purported amendment to FEC Form 1. This was improper. *See* 52 U.S.C. § 30107(a)(8) (granting Commission authority “to develop . . . prescribed forms . . . *pursuant to the provisions of chapter 5 of title 5*” (emphasis added)); 5 U.S.C. § 551(4) (defining “rule” for purposes of notice-and-comment requirements as “an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy”).

Among other things, a rulemaking regarding so-called “hybrid” political committees is necessary to allow the public to ask and weigh in on crucial questions of law and policy, including whether “hybrid” committees are consistent with the Federal Election Campaign Act and Supreme Court decisions interpreting it, and whether they create opportunities for actual and apparent corruption. Indeed, other courts are divided on whether the district court opinion underlying “hybrid” committees was correctly decided, with at least one circuit court explicitly rejecting

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<sup>2</sup> *See id.*

<sup>3</sup> *Id.* (emphasis added).

the argument that hybrid PACs are constitutionally compelled or otherwise lawful. *Compare* *Vt. Right to Life Comm. v. Sorrell*, 758 F.3d 118, 141-42 (2d Cir. 2014) (noting disagreement with *Carey v. FEC*, finding separate bank accounts are insufficient, and “conclud[ing] that, at a minimum, there must be some organizational separation to lessen the risks of coordinated expenditures”), *with* *Republican Party of N.M. v. King*, 741 F.3d 1089, 1100-01 (10th Cir. 2013) (agreeing with *Carey*); *see also* *Stop This Insanity, Inc. Emp. Leadership Fund v. FEC*, 902 F. Supp. 2d 23, 42 (D.D.C. 2012) (upholding restrictions on separate segregated funds), *aff’d*, *Stop This Insanity, Inc. Emp. Leadership Fund v. Fed. Election Comm’n*, 761 F.3d 10 (D.C. Cir. 2014). In disagreeing with *Carey*, another D.C. district court found that “when a PAC gives directly to candidates with its right hand and engages in express advocacy with its left hand, the risk that the PAC's hybrid spending will appear corrupting and corrosive is manifest.” *Stop This Insanity, Inc. Emp. Leadership Fund*, 902 F. Supp. 2d at 40.

CLC accordingly urges the FEC to immediately cease its improper promulgation of revised Form 1 and open a notice-and-comment rulemaking regarding hybrid committees, consistent with the Commission's obligations under the Administrative Procedure Act, 5 U.S.C. § 553.<sup>4</sup>

Sincerely,

/s/ Erin Chlopak

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<sup>4</sup> In so doing, the FEC should also promulgate rules regarding independent-expenditure-only committees. As Commissioner Weintraub observed at the Commission's March 10 meeting, this rulemaking, like a rulemaking on so-called "hybrid" committees, is "long overdue."