H. R. 425

To amend the Federal Election Campaign Act of 1971 to clarify the treatment of coordinated expenditures as contributions to candidates, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 21, 2015

Mr. Price of North Carolina (for himself and Mr. Van Hollen) introduced the following bill; which was referred to the Committee on House Administration

A BILL

To amend the Federal Election Campaign Act of 1971 to clarify the treatment of coordinated expenditures as contributions to candidates, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Stop Super PAC-Candidate Coordination Act”.

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SEC. 2. CLARIFICATION OF TREATMENT OF COORDINATED EXPENDITURES AS CONTRIBUTIONS TO CANDIDATES.

(a) Treatment as Contribution to Candidate.—Section 301(8)(A) of the Federal Election Campaign Act of 1971 (52 U.S.C. 30101(8)(A)) is amended—

(1) by striking “or” at the end of clause (i);

(2) by striking the period at the end of clause (ii) and inserting “; or”; and

(3) by adding at the end the following new clause:

“(iii) any payment made by any person (other than a candidate, an authorized committee of a candidate, or a political committee of a political party) for a coordinated expenditure (as such term is defined in section 324) which is not otherwise treated as a contribution under clause (i) or clause (ii).”.

(b) Definitions.—Section 324 of such Act (52 U.S.C. 30126) is amended to read as follows:

“SEC. 324. PAYMENTS FOR COORDINATED EXPENDITURES.

“(a) Coordinated Expenditures.—

“(1) In General.—For purposes of section 301(8)(A)(iii), the term ‘coordinated expenditure’ means—
“(A) any expenditure, or any payment for a covered communication described in subsection (d), which is made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, an authorized committee of a candidate, a political committee of a political party, or agents of the candidate or committee, as defined in subsection (b); or

“(B) any payment for any communication which republishes, disseminates, or distributes, in whole or in part, any video or broadcast or any written, graphic, or other form of campaign material prepared by the candidate or committee or by agents of the candidate or committee (including any excerpt or use of any video from any such broadcast or written, graphic, or other form of campaign material).

“(2) Exception for payments for certain communications.—A payment for a communication (including a covered communication described in subsection (d) shall not be treated as a coordinated expenditure under this subsection if—

“(A) the communication appears in a news story, commentary, or editorial distributed through the facilities of any broadcasting sta-
tion, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate; or

“(B) the communication constitutes a candidate debate or forum conducted pursuant to regulations adopted by the Commission pursuant to section 304(f)(3)(B)(iii), or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

“(b) COORDINATION DESCRIBED.—

“(1) IN GENERAL.—For purposes of this section, a payment is made ‘in cooperation, consultation, or concert with, or at the request or suggestion of,’ a candidate, an authorized committee of a candidate, a political committee of a political party, or agents of the candidate or committee, if the payment, or any communication for which the payment is made, is not made entirely independently of the candidate, committee, or agents. For purposes of the previous sentence, a payment or communication not made entirely independently of the candidate or committee includes any payment or communication made pursuant to any general or particular under-
standing with, or pursuant to any communication
with, the candidate, committee, or agents about the
payment or communication.

“(2) No finding of coordination based
solely on sharing of information regarding
legislative or policy position.—For purposes
of this section, a payment shall not be considered to
be made by a person in cooperation, consultation, or
concert with, or at the request or suggestion of, a
candidate or committee, solely on the grounds that
the person or the person’s agent engaged in discus-
sions with the candidate or committee, or with any
agent of the candidate or committee, regarding that
person’s position on a legislative or policy matter
(including urging the candidate or committee to
adopt that person’s position), so long as there is no
communication between the person and the can-
didate or committee, or any agent of the candidate
or committee, regarding the candidate’s or commit-
tee’s campaign advertising, message, strategy, pol-
icy, polling, allocation of resources, fundraising, or
other campaign activities.

“(3) No effect on party coordination
standard.—Nothing in this section shall be con-
strued to affect the determination of coordination
between a candidate and a political committee of a
political party for purposes of section 315(d).

“(4) No safe harbor for use of fire-
wall.—A person shall be determined to have made
a payment in cooperation, consultation, or concert
with, or at the request or suggestion of, a candidate
or committee, in accordance with this section with-
out regard to whether or not the person established
and used a firewall or similar procedures to restrict
the sharing of information between individuals who
are employed by or who are serving as agents for the
person making the payment.

“(c) Payments by Coordinated Spenders for
Covered Communications.—

“(1) Payments made in cooperation, con-
sultation, or concert with candidates.—For
purposes of subsection (a)(1)(A), if the person who
makes a payment for a covered communication, as
defined in subsection (d), is a coordinated spender
under paragraph (2) with respect to the candidate
as described in subsection (d)(1), the payment for
the covered communication is made in cooperation,
consultation, or concert with the candidate.

“(2) Coordinated spender defined.—For
purposes of this subsection, the term ‘coordinated
spender’ means, with respect to a candidate or an authorized committee of a candidate, a person (other than a political committee of a political party) for which any of the following applies:

“(A) During the 4-year period ending on the date on which the person makes the payment, the person was directly or indirectly formed or established by or at the request or suggestion of, or with the encouragement of, the candidate (including an individual who later becomes a candidate) or committee or agents of the candidate or committee, including with the approval of the candidate or committee or agents of the candidate or committee.

“(B) The candidate or committee or any agent of the candidate or committee solicits funds, appears at a fundraising event, or engages in other fundraising activity on the person’s behalf during the election cycle involved, including by providing the person with names of potential donors or other lists to be used by the person in engaging in fundraising activity, regardless of whether the person pays fair market value for the names or lists provided. For purposes of this subparagraph, the term ‘election
cycle’ means, with respect to an election for Federal office, the period beginning on the day after the date of the most recent general election for that office (or, if the general election resulted in a runoff election, the date of the runoff election) and ending on the date of the next general election for that office (or, if the general election resulted in a runoff election, the date of the runoff election).

“(C) The person is established, directed, or managed by the candidate or committee or by any person who, during the 4-year period ending on the date on which the person makes the payment, has been employed or retained as a political, campaign media, or fundraising adviser or consultant for the candidate or committee or for any other entity directly or indirectly controlled by the candidate or committee, or has held a formal position with the candidate or committee.

“(D) The person has retained the professional services of any person who, during the 2-year period ending on the date on which the person makes the payment, has provided or is providing professional services relating to the
campaign to the candidate or committee, without regard to whether the person providing the professional services used a firewall. For purposes of this subparagraph, the term ‘professional services’ includes any services in support of the candidate’s or committee’s campaign activities, including advertising, message, strategy, policy, polling, allocation of resources, fundraising, and campaign operations, but does not include accounting or legal services.

“(E) The person is established, directed, or managed by a member of the immediate family of the candidate, or the person or any officer or agent of the person has had more than incidental discussions about the candidate’s campaign with a member of the immediate family of the candidate. For purposes of this subparagraph, the term ‘immediate family’ has the meaning given such term in section 9004(e) of the Internal Revenue Code of 1986.

“(d) COVERED COMMUNICATION DEFINED.—

“(1) IN GENERAL.—For purposes of this section, the term ‘covered communication’ means, with respect to a candidate or an authorized committee of
a candidate, a public communication (as defined in section 301(22)) which—

“(A) expressly advocates the election of the candidate or the defeat of an opponent of the candidate (or contains the functional equivalent of express advocacy);

“(B) promotes or supports the candidate, or attacks or opposes an opponent of the candidate (regardless of whether the communication expressly advocates the election or defeat of a candidate or contains the functional equivalent of express advocacy); or

“(C) refers to the candidate or an opponent of the candidate but is not described in subparagraph (A) or subparagraph (B), but only if the communication is disseminated during the applicable election period.

“(2) APPLICABLE ELECTION PERIOD.—In paragraph (1)(C), the ‘applicable election period’ with respect to a communication means—

“(A) in the case of a communication which refers to a candidate in a general, special, or runoff election, the 120-day period which ends on the date of the election; or
“(B) in the case of a communication which
refers to a candidate in a primary or preference
election, or convention or caucus of a political
party that has authority to nominate a can-
didate, the 60-day period which ends on the
date of the election or convention or caucus.

“(3) Special rules for communications in-
volving congressional candidates.—For pur-
poses of this subsection, a public communication
shall not be considered to be a covered communica-
tion with respect to a candidate for election for an
office other than the office of President or Vice
President unless it is publicly disseminated or dis-
tributed in the jurisdiction of the office the can-
didate is seeking.

“(e) Penalty.—

“(1) Determination of amount.—Any per-
son who knowingly and willfully commits a violation
of this Act by making a contribution which consists
of a payment for a coordinated expenditure shall be
fined an amount equal to the greater of—

“(A) in the case of a person who makes a
contribution which consists of a payment for a
coordinated expenditure in an amount exceeding
the applicable contribution limit under this Act,
300 percent of the amount by which the amount of the payment made by the person exceeds such applicable contribution limit; or

“(B) in the case of a person who is prohibited under this Act from making a contribution in any amount, 300 percent of the amount of the payment made by the person for the coordinated expenditure.

“(2) Joint and several liability.—Any director, manager or officer of a person who is subject to a penalty under paragraph (1) shall be jointly and severally liable for any amount of such penalty that is not paid by the person prior to the expiration of the 1-year period which begins on the date the Commission imposes the penalty or the 1-year period which begins on the date of the final judgment following any judicial review of the Commission’s action, whichever is later.”.

(c) Effective date.—

(1) Repeal of existing regulations on coordination.—Effective upon the expiration of the 90-day period which begins on the date of the enactment of this Act—

(A) the regulations on coordinated communications adopted by the Federal Election Com-
mission which are in effect on the date of the enactment of this Act (as set forth in 11 CFR Part 109, Subpart C, under the heading “Coordination”) are repealed; and

(B) the Federal Election Commission shall promulgate new regulations on coordinated communications which reflect the amendments made by this Act.

(2) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to payments made on or after the expiration of the 120-day period which begins on the date of the enactment of this Act, without regard to whether or not the Federal Election Commission has promulgated regulations in accordance with paragraph (1)(B) as of the expiration of such period.

SEC. 3. CLARIFICATION OF BAN ON FUNDRAISING FOR SUPER PACS BY FEDERAL CANDIDATES AND OFFICEHOLDERS.

(a) IN GENERAL.—Section 323(e)(1) of the Federal Election Campaign Act of 1971 (52 U.S.C. 30125(e)(1)) is amended—

(1) by striking “or” at the end of subparagraph (A);
(2) by striking the period at the end of sub-
paragraph (B) and inserting ‘‘; or’’; and

(3) by adding at the end the following new sub-
paragraph:

“(C) solicit, receive, direct, or transfer
funds to or on behalf of any political committee
which accepts donations or contributions that
do not comply with the limitations, prohibitions,
and reporting requirements of this Act (or to or
on behalf of any account of a political com-
mittee which is established for the purpose of
accepting such donations or contributions), or
to or on behalf of any political organization
under section 527 of the Internal Revenue Code
of 1986 which accepts such donations or con-
tributions (other than a committee of a State or
local political party or a candidate for election
for State or local office).’’.

(b) EFFECTIVE DATE.—The amendment made by
subsection (a) shall apply with respect to elections occur-
ing after January 1, 2016.