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Testimony of Paul S. Ryan
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Before the Federal Election Commission
REG 2014-01: Earmarking, Affiliation, Joint Fundraising, Disclosure, and Other Issues
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Panel #3, 1-2pm

Good afternoon Commissioners. Thank you for the opportunity to testify at this hearing. The Campaign Legal Center has filed detailed written comments in this proceeding—some key points of which I will highlight today.

I. Appropriateness of Rulemaking

But first, I am going to take issue with commenters, including Bob Bauer, John Phillippe and others, who urge the Commission not to proceed with rulemaking on the matters discussed in the ANPRM. Mr. Bauer, for example, wrote that these policy questions "are more properly the responsibility of Congress" and that "even on matters that may be within the sphere of the FEC," a rulemaking is premature because the Commission lacks the information upon which to base rule changes.

The argument that the Commission should not proceed with a rulemaking because it presently lacks information misses the whole point of the rulemaking process. A rulemaking notice would presumably invite members of the public to present information specific to the proposed rule—and the Commission itself would presumably dedicate resources to marshalling information specific to the proposed rule, just as it has done in past rulemakings.

In the 2006 "coordination" rulemaking, for example, the Commission licensed data regarding the timing of campaign advertisements from CMAG, invited public comment on the data, and based rule changes on its analysis of the data. This is how the rulemaking process is supposed to work.

And Mr. Phillippe wrote that the *McCutcheon* decision "provides no basis for a further rulemaking" and implied that the Commission lacks the authority to engage in rulemaking unless ordered by a court.

The notion that the Commission must await direction from a court to engage in rulemaking is absurd. Although the decision in *McCutcheon* certainly warranted this proceeding, the Commission's rulemaking scope is in no way limited by the *McCutcheon* decision. The Campaign Legal Center urges the Commission to proceed with rulemaking on the important policy matters identified in the *McCutcheon* decision, as well as other matters addressed in our written comments.

II. Earmarking and Aggregation

Regarding earmarking and aggregation of contributions, the Court in *McCutcheon* based its decision in part on its reading of the Commission's current rules, which define "earmarked" to include"direct or indirect, express or implied" designations.

Yet the Commission only enforces its earmarking rules when there is an express documented agreement to circumvent the contribution limits. The Commission needs to change this practice and begin enforcing the earmarking rules as written.

Also, the Court in *McCutcheon* cited approvingly the Commission's contribution aggregation regulation at section 110.1(h)—which provides that a person may only contribute to a candidate and also to a PAC that supports the same candidate if the "contributor does not give with the knowledge that a substantial portion will be contributed to, or expended on behalf of, that candidate[.]"

The *McCutcheon* Court suggested that the Commission might "strengthen" section 110.1(h) by "defining how many candidates a PAC must support" under the aggregation rule.

The Commission should heed the Court's advice and, based on the current statutory definition of "multicandidate committee," establish five as the minimum number of candidates a PAC must support in order not to trigger the aggregation rule. The Commission should also set 20% as the maximum percentage of a PAC's funds that can be contributed or expended to support a single candidate in order not to trigger the aggregation rule.

Yes, this would restrict single candidate super PACs. And yes, this interpretation is required by a plain reading of existing regulations cited by the Court in *McCutcheon*.

III. Joint Fundraising Committees

The Court in *McCutcheon* also suggested limiting the size of joint fundraising committees to prevent circumvention of the base contribution limits. The Commission could, by regulation, limit the composition and, therefore, size of joint fundraising committees as suggested by the Court.

The governing statute states only that "candidates may designate a political committee established solely for the purpose of joint fundraising by such candidates[.]" The Commission's joint fundraising committee regulation, however, permits any political committee to "engage in joint fundraising with other political committees."

We urge the Commission to amend its joint fundraising committee regulation to make it consistent with the statute by permitting only candidate committees to form joint fundraising committees.

IV. Disclosure

When it comes to disclosure, the Commission's job could not be clearer. The public wants effective disclosure. The Supreme Court and lower courts have repeatedly and consistently supported disclosure. Yet the Commission's disclosure regulations have permitted hundreds of millions of dollars of independent expenditures and electioneering communications to be made in recent years without the spenders disclosing the sources of their funding.

You know what you need to do. The Commission needs to repeal its federal-court-invalidated electioneering communication regulation and replace it with a rule that effectively implements the statutory requirement that any group making electioneering communication disbursements exceeding $10,000 disclose the"names and addresses of all contributors who contributed an aggregate amount of $1,000 or more" to the group.

The Commission also needs to amend its flawed "independent expenditure" disclosure regulation, which impermissibly narrows the requirements of two overlapping statutory provisions. The Campaign Legal Center has included

proposed "independent expenditure" disclosure regulatory language in our written comments—language that is completely consistent with existing statutes.

V. New Party Accounts for Presidential Nominating Conventions, Party Headquarters and Recounts

Rulemaking is also warranted with respect to the omnibus appropriations bill amendment that permits national party committees to accept $100,000 contributions into each of three new types of segregated accounts used to pay for conventions, party headquarters, and election recounts.

Though the amendment purports to restrict the use of these funds for specified purposes, the amendment contains no definitions of such purposes and no disclosure provisions specific to funds spent out of these new accounts.

We urge the Commission to promulgate regulations specifying and limiting the permissible uses of these new funds, prohibiting transfer of these funds between party accounts, and requiring detailed disclosure of these funds. As we explain in detail in our written comments, failing to do so will predictably and undoubtedly lead to the misuse and abuse of these new accounts.

VI. Coordination

Finally, we urge the Commission to revise its ineffective coordination regulations. As the amount of outside spending in federal elections has skyrocketed, there is mounting evidence of collaboration and cooperation between groups funding ostensibly "independent" expenditures and the candidates they support—amounting to coordination under any common sense definition of the term, but not under the Commission's regulations.

The Commission must fix the disconnect between its coordination regulations and the governing statute. FECA provides that any "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate" are coordinated with that candidate.

The Commission could, for example, follow the lead of Minnesota, which last year interpreted a nearly identical statutory provision to make clear that candidate fundraising constitutes "cooperation"—so as to render any expenditures made with funds solicited by a candidate to be coordinated with that candidate.

The Commission should conduct a rulemaking to explore ways to capture the range of coordinated activity actually occurring between candidates and outside groups, and bring the regulations in line with the Supreme Court's expectation that expenditures deemed "independent" under law are truly independent.

VII. Conclusion

I appreciate this opportunity to testify. Thank you.