

December 16, 2015

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Dear Commissioners:

By letter to you of October 27, 2015, Democracy 21 and the Campaign Legal Center expressed our strong opposition to Commissioner Goodman's proposal to initiate a rulemaking to provide "regulatory relief for political parties." The Commission deferred action on this matter and the proposal is back on the agenda for the Commission's December 17, 2015 meeting. Agenda Doc. No. 15-54-A.

We are writing to reiterate our opposition to this proposed rulemaking. In substance, the proposed rulemaking would seek to (i) exempt certain categories of party spending from the definition of a "party coordinated communication" and exempt certain activities from triggering the "conduct" prong of the party coordinated spending rules, (ii) liberalize rules related to party volunteer activities, and (iii) narrow the scope of the "federal election activities" that trigger BCRA hard money rules for spending by state parties.

The most alarming suggestion in this proposal is to exempt from the definition of "coordinated" spending any public communication that refers to a candidate unless the communication contains express advocacy or republished campaign materials. Agenda Doc. at 1. While this proposal is made in the limited context of spending that would tally against the party coordinated spending limits, it is an approach to the concept of "coordination" that is invalid and discredited. *See, e.g., Shays v. FEC*, 414 F.3d 76, 97-102 (D.C. Cir. 2005); *FEC v.*

*Christian Coalition*, 52 F. Supp. 2d 45, 88 (D.D.C. 1999). As the Supreme Court has said, “the line between express advocacy and other types of election-influencing expression is, for Congress’ purposes, functionally meaningless.” *McConnell v. FEC*, 540 U.S. 93, 217 (2003). By using a “functionally meaningless” standard to draw the content line between coordinated spending and independent spending for parties, the Commission would be opening the door to generally undermining the coordination standard of the law.

As we also explained in our earlier letter, the Commission should first address more pressing rulemaking priorities. In this regard, we note that the December 17 meeting agenda also includes a meritorious proposal by Commissioner Weintraub and Chair Ravel. Agenda Doc. No. 15-54-D. This proposal directly targets the ongoing abuse of the Commission’s coordination rules by candidate-specific Super PACs that, as a functional matter, operate as arms of the candidate campaigns they support. The practical effect of this de facto coordination is an evisceration of the candidate contribution limits. This is a serious matter and one that the Commission should address on an urgent basis. At a bare minimum, the Commission should undertake a rulemaking to examine the scope of the problem, and to assess possible solutions to it. The Weintraub-Ravel proposal to undertake such a rulemaking warrants the support of all Commissioners.

So too, as we previously said, the Commission has been derelict in failing to revise its rules for disclosure of electioneering communications and independent expenditures, a failure that has resulted in the lack of disclosure of the source of hundreds of millions of dollars now being spent to influence federal elections. This is a major and growing problem, for which the Commission’s inability to muster a majority to even begin a rulemaking is a national scandal.

We strongly urge you to reject Commissioner Goodman’s proposed rulemaking on “regulatory relief” for parties. We also urge you, as a separate matter, to support the Weintraub-Ravel proposed rulemaking on coordination, and also to undertake a rulemaking to fix the Commission’s broken disclosure regime.

Sincerely,

*/s/ J. Gerald Hebert*

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