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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

AGENDA DOCUMENT NO. 24-15-A
AGENDA ITEM
For meeting of Apr. 18, 2024

April 11, 2024

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *NFS for LJS*
Acting General Counsel

Neven F. Stipanovic *NFS*
Associate General Counsel

Robert Knop *RMK*
Assistant General Counsel

Luis Lipchak *LML*
Attorney

SUBJECT: REG 2015-03 (Contributions from Corporations and Other Organizations) - Draft NOD

Attached is draft Notice of Disposition for REG 2015-03 (Contributions from Corporations and Other Organizations). One or more Commissioners have asked for this draft to be made public and placed on the agenda for the Commission's April 18, 2024, Open Meeting.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Parts 102, 104, 110**

3 **[NOTICE 2024-XX]**

4 **Contributions from Corporations and Other Organizations to Political Committees**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Notification of Disposition of Petition for Rulemaking.

7 **SUMMARY:** The Commission announces its disposition of a Petition for Rulemaking
8 filed on May 14, 2015. The Petition asks the Commission to revise existing rules
9 concerning the reporting of contributions to political committees from corporations and
10 other organizations. For the reasons described below, the Commission is not initiating a
11 rulemaking at this time.

12 **DATES:** [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

13 **FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Knop, Assistant
14 General Counsel, or Mr. Luis M. Lipchak, Attorney, 1050 First Street, NE., Washington,
15 D.C. 20463, (202) 694-1650 or (800) 424-9530.

16 **SUPPLEMENTARY INFORMATION:** The Federal Election Campaign Act, 52
17 U.S.C. 30101-45 (the “Act”), and Commission regulations require all political
18 committees to abide by certain organizational, record-keeping, and reporting
19 requirements.¹ This includes maintaining records of contribution receipts and
20 disbursements, reporting independent expenditures, and filing periodic disclosure reports
21 that identify the source of each contribution exceeding \$200.² Commission regulations

¹ See 52 U.S.C. 30102, 30103, 30104; 11 CFR 102.1, 102.2, 102.7, 104.3.

² See 11 CFR 104.3(a)(4)(i), 104.4, 104.5(c).

1 also require every person who makes electioneering communications aggregating in
2 excess of \$10,000 in a calendar year and every person (other than a political committee)
3 that makes independent expenditures in excess of \$250 with respect to a given election in
4 a calendar year to report certain information to the Commission.³

5 On May 14, 2015, the Federal Election Commission received a Petition for
6 Rulemaking from Make Your Laws PAC, Inc. and Make Your Laws Advocacy, Inc.
7 (“Petition”). The Petition asked the Commission to modify its regulations requiring
8 disclosure of contributions from corporations and other organizations to political
9 committees. The Petition requested that the Commission establish a new rule requiring
10 that “any person, other than a natural person, contributing an aggregate of more than
11 \$1,000 in any calendar year to any political committee, whether directly or indirectly”
12 (emphasis omitted), must do so from an account subject to certain reporting requirements.
13 Specifically, the Petition asked the Commission to require that these accounts disclose
14 “the original source of all election-related contributions and expenditures, traceable
15 through all intermediary entities to a natural person, regardless of the amounts or entities
16 involved” (emphasis omitted). The Petition also asked the Commission to apply to these
17 accounts the identification requirements of 11 CFR 100.12; the Act’s prohibition on
18 foreign national contributions, 52 U.S.C. 30121; allocation rules for administrative
19 expenses; and, in some circumstances, the Act’s limitations on contributions to political
20 committees.

21 The Petition argued that for disclosure requirements to be effective, disclosure
22 must be required for “the *original* source of *all* election-related contributions and

³ 11 CFR 104.20(b)-(c), 109.10(b), (e); 52 U.S.C. 30104(c)(1)-(2), (f).

1 expenditures, traceable through *all* intermediary entities to a natural person, regardless of
2 the amounts or entities involved” (footnote omitted).⁴ The Petition asserted that under
3 existing regulations independent expenditure only political committees can hide the
4 “original source” of contributions because they are permitted to receive contributions
5 from corporations, including 501(c)(4) corporations, that are not subject to reporting
6 obligations under the Act.⁵ The Petition argued that these sources can make political
7 contributions while hiding the “true source” of contributions because “the FEC only
8 requires political committees to report the identity of the *proximate* source of a
9 contribution, rather than the *original* source.”⁶ Furthermore, the Petition asserted that
10 foreign nationals could circumvent the prohibition on indirect political contributions by
11 foreign nationals by making contributions to 501(c)(4) corporations knowing that their
12 funds will be used to make contributions to political committees.⁷

13 The Commission published a Notice of Availability (“NOA”) on July 29, 2015,
14 asking for public comment on the Petition.⁸ The Commission received 13 substantive
15 comments on the Petition and one non-substantive comment (from an individual
16 commenting on a tangential matter). Of the 13 substantive comments, three were from
17 individuals supporting the Petition and 10 were from commenters who opposed the
18 Petition. The three comments supporting the Petition included a broad statement of

⁴ Petition at 4.

⁵ Petition at 2.

⁶ *Id.*

⁷ *See id.*

⁸ *See* Notice of Availability, 80 Fed. Reg. 45115 (July 29, 2015).

1 support for the Petition, and two of those individual commenters expressed general
2 concern about the influence of corporate contributions on the political process.

3 The 10 comments opposed to initiating a rulemaking were received from four
4 individuals and six organizations/professionals. Of the four comments from individuals
5 opposing the Petition, one was from an individual who broadly opposed the proposed
6 rulemaking, two were from individuals who contended that the proposed rules were
7 beyond the Commission’s statutory authority, and one was from an individual who
8 believed the proposed rules did not address the issue raised by the Petition of identifying
9 the original source of funds contributed to independent expenditure-only political
10 committees. The primary and common themes of the organizational/professional
11 comments were that the Petition sought to address a problem that does not exist, that
12 promulgating new regulations would lead to confusion and burdens that would
13 unnecessarily implicate the First Amendment, and that the Commission lacked the
14 statutory authority to promulgate the proposed regulations.

15 In deciding whether to initiate a rulemaking in response to a petition, the
16 Commission generally considers five factors: (1) the Commission’s statutory authority;
17 (2) policy considerations; (3) the desirability of proceeding on a case-by-case basis; (4)
18 the necessity or desirability of statutory revision; and (5) available agency resources.⁹
19 After considering these factors and reviewing the comments received on the petition, the
20 Commission has decided not to initiate a rulemaking at this time.

21 First, and most significantly, the Commission lacks the statutory authority to
22 promulgate a rule sought by the Petition. The Act empowers the Commission to “make,

⁹ 11 CFR 200.5.

1 amend, or repeal such rules . . . as are necessary to carry out the provisions of [the]
2 Act.”¹⁰ And as the Petition acknowledges, the Act does not require corporations and
3 other organizations (except for political committees) to make contributions from a
4 separate account subject to the prohibitions and reporting requirements of the Act.¹¹ Nor
5 does the Act require such entities to disclose, as the Petition proposes, “the original
6 source of all election-related contributions and expenditures, traceable through all
7 intermediary entities to a natural person.” The Commission may not impose such
8 requirements without a statutory mandate to do so.

9 Second, the vast majority of the commenters, across the political spectrum,
10 opposed the Petition. Given the public opposition to the Petition, and the fact that the
11 Commission lacks statutory authority to implement the Petition’s proposal, there is no
12 policy interest in pursuing a rulemaking, nor would it be a good use of Commission
13 resources.

14 Furthermore, declining to pursue the proposed rulemaking will not require the
15 Commission to proceed on a case-by-case-basis because political committees are already
16 subject to the reporting requirements, amount limitations, and source prohibitions
17 imposed by the Act and Commission regulations.¹²

¹⁰ 52 U.S.C. 30107(a)(8).

¹¹ Corporations and labor organizations are prohibited from making contributions to candidates and party committees. 52 U.S.C. 30118(a), (b)(2); 11 CFR 114.2(b). Corporations may, however, make contributions to nonconnected political committees that make only independent expenditures and to non-contribution accounts of hybrid political committees. *See, e.g., Citizens United v. FEC*, 558 U.S. 310 (2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*); Advisory Opinion 2011-11 (Colbert).

¹² 52 U.S.C. 30104, 30116, 30118, 30119, 30121, 30122; *see also* 11 CFR 104, 110.1, 110.4, 110.20, 114.2, 115.2.

1 Lastly, the “necessity or desirability of statutory revision” weighs against
2 pursuing the proposed rulemaking because the changes sought by Petitioners would
3 require a statutory revision given that the Commission lacks the statutory authority to
4 promulgate the rules proposed by Petitioners.¹³ Accordingly, after considering the
5 comments received regarding the Petition and in consideration of each of the factors
6 discussed, the Commission declines to initiate a rulemaking in response to the Petition.
7

¹³ 11 CFR 200.5.

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1 Copies of the comments and the Petition for Rulemaking are available on the
2 Commission's website, <http://www.fec.gov/fosers/> (REG 2015-03 Contributions from
3 Corporations and Other Organizations to Political Committees (2015)) and at the
4 Commission's Public Records Office, 1050 First Street NE., Washington, D.C. 20463,
5 Monday through Friday between the hours of 9 a.m. and 5 p.m.

6

7 DATED: _____

8 On behalf of the Commission,

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11

12 **Sean J. Cooksey,**

13 *Chairman,*

14 *Federal Election Commission.*

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