

For Meeting of 11-17-15

SUBMITTED LATE

2015 NOV 16 PM 5:12

**RESOLUTION OF
THE FEDERAL ELECTION COMMISSION
COMMENCING WORK ON A NOTICE OF PROPOSED RULEMAKING
FOCUSED ON STRENGTHENING POLITICAL PARTIES**

WHEREAS, a growing consensus in political science literature, policy experts and political practitioners recognizes the importance of effective political parties as democratic institutions and the advisability of legal reform to enhance political efficacy of political parties; and

WHEREAS, Congress recently passed legislation aimed at strengthening political parties; and

WHEREAS, in 2014, representatives of several political parties attended a forum on political parties at the Commission and advised the Commission that its current regulatory burdens are onerous, unnecessary, and counterproductive to democratic participation; and

WHEREAS, a majority of Commissioners have expressed interest in assisting political parties through regulatory revision; and

WHEREAS, the Commission has not undertaken a rulemaking focused on political parties in over a decade; and

WHEREAS, initiating a rulemaking and receiving public comment on potential revisions to regulations that burden political parties will benefit political parties and the people of the United States;

IT IS RESOLVED THAT the Commission directs the Office of General Counsel to draft a notice of proposed rulemaking, no later than December 30, 2015, proposing the following revisions to Commission regulations for public comment and further Commission consideration:

- (1) Party Coordinated Communications (11 CFR 109.37):
 - a. Amend 11 CFR 109.37(a)(2)(iii) to eliminate mere candidate references, other than electioneering communications, from the definition of coordinated communications by political parties, leaving only express advocacy communications as coordinated communications;
 - b. Amend 11 CFR 109.37 to provide political parties greater freedom to disseminate candidate materials by either:
 - i. Amending 11 CFR 109.37(a)(2)(i) to permit parties to incorporate parts of candidate campaign materials into party communications, adding the following italicized language "...unless the dissemination, distribution, or republication is excepted under 11 CFR 109.23(b) *or the campaign materials do not expressly advocate the election of the*

candidate and are incorporated as a subordinate part of the political party communication.”; or

- ii. Consistent with 52 U.S.C. 30116(a)(7)(B) (republication constitutes an “expenditure” rather than a “contribution” unless coordinated), amending 11 CFR 109.37(a)(2)(i) to clarify that parties may republish candidate campaign materials and treat the republication costs as expenditures rather than contributions, unless the republication is coordinated with the candidate, his committee, or their agents;
 - c. Amend 11 CFR 109.37(a)(3) to permit candidates to provide political parties, in addition to positions on legislative or policy issues, “*candidate biographical information*” without triggering the conduct prong;
 - d. Amend 11 CFR 109.37(a)(3) to permit candidates to provide political parties “*opinion poll results purchased by the candidate or candidate’s authorized political committee*” without triggering the conduct prong, provided the provision of such polling data is treated as a contribution by the candidate’s authorized committee to the political party and allocated pursuant to 11 CFR 106.4(e);
 - e. Insert a new provision or subsection in 11 CFR 109.37 clarifying that political parties may use all information obtained from any publicly available source, even if such information is material to the creation, production, or distribution of a party communication, without the use of such information constituting coordination;
 - f. Insert a new provision in 11 CFR 109.37 clarifying that costs of political party communications for grassroots campaign materials pursuant to 11 CFR 100.24(c)(4) (e.g., “buttons, bumper stickers, handbills, brochures, posters, and yard signs”) and for Internet communications, that are not public communications under 11 CFR 100.26, are exempt from the definition of party coordinated expenditures.
- (2) Party Volunteer Activity (11 CFR 100.87, 100.88, 100.89, 100.47, 100.148, 100.49:
- a. Amend 11 CFR 100.87, 100.147 (with corresponding edits to 11 CFR 100.88(a), 100.48) to clarify that volunteer phone banks sponsored by political parties are campaign materials exempted from the definition of contribution on the same basis as brochures, newsletters, tabloids and similar communications;
 - b. Amend 11 CFR 100.87, 100.147(a) (with corresponding edits to 11 CFR 100.88(b), 100.148, 100.89(a), 100.149(a)) to clarify what constitutes volunteer mail by adding the following italicized sentence: “*For purposes of this paragraph, the term direct mail means any mailing(s) performed wholly by a commercial vendor.*”;
 - c. Amend 11 CFR 100.87(c) to clarify that a candidate may transfer funds to a political party to engage in volunteer activity benefitting that candidate, by adding the following italicized language at the conclusion of the second sentence: “*...or if the*

funds originate from an authorized committee.” (and make corresponding edits to 11 CFR 100.89(c), 100.149(c));

- d. Amend 11 CFR 100.87 in the first paragraph to clarify that all volunteer activities are exempt from the definition of contribution by inserting the following italicized words: “The payment by a state or local committee of a political party of the costs of *any volunteer activity or* of campaign materials ...” and in subparagraph (d) by inserting the following italicized words in the title: “Distribution of materials *and other activities* by volunteers,” and the following language in the first sentence of text: “Such materials are distributed *or such activities are conducted* by volunteers”

(3) Federal Election Activity (11 CFR 100.24):

- a. Amend 11 CFR 100.24(a)(2)(ii) to narrow the circumstances under which party efforts to register voters constitute federal election activity by editing the language of the regulations as follows: “Activity is not voter registration activity ~~solely because~~ if it ~~includes a brief exhortation to register to vote, so long as the exhortation is~~ incidental to a communication, activity, or event.”;
- b. Amend 11 CFR 100.24(a)(3)(ii) to narrow the circumstances under which party efforts to turn out voters to the polls constitute federal election activity by editing the language of the regulations as follows: “Activity is not get-out-the-vote activity ~~solely because~~ if it ~~includes a brief exhortation to vote, so long as the exhortation is~~ incidental to a communication, activity, or event.”;
- c. Amend 11 CFR 100.24(a)(2)(ii), 100.24(a)(3)(ii) to add a new subsection (C) as follows: “*A mailer or phone call urges the election of one or more state or local candidates and discusses the merits of the state or local candidacy, does not mention a federal candidate, and in connection with the state or local candidate message informs the recipient ‘You should vote on November 4 at the Washington Middle School between the hours of 8 am and 6 pm.’*”;
- d. Amend all regulations regarding the payment of party employees with federal funds (including 11 CFR 106.7(c)(1), 106.7(d)(i), (ii), 300.33(d)(1), (d)(2) and others) to clarify that party employees must be paid with federal funds only if they perform activities “in connection with a Federal election,” a well defined term, by conforming the language of all party employee regulations to the language of 52 USC 30101(20)(A)(iv) and the language of 11 CFR 106.7(e)(2) and 100.24(b)(4), by striking everywhere it appears “on Federal election activities or,” a phrase that does not appear in the statute or the apportionment regulation.

IT IS FURTHER RESOLVED THAT the Office of General Counsel may edit these provisions and other affected regulations as necessary to effectuate the substantive intent of this resolution and harmonize other regulatory provisions.

IT IS FURTHER RESOLVED THAT the Commission, in consultation with the Office of General Counsel, will work together and consider other ways to clarify its regulations to accomplish the objective of strengthening political parties, including but not limited to supplemental explanations and justifications, audit standard setting, enforcement policy, and interpretative guidance.