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cc  
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Subject EMILY's List Comments - Attached

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Thank you

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Comments on Proposed Rulemaking.doc



**EMILY's List**

*Winning today, building for tomorrow*

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January 13, 2006

Mr. Brad C. Deutsch  
Assistant General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington DC 20463

**RE: Comments to Notice of Proposed Rulemaking on Coordinated Communications**

Dear Mr. Deutsch:

EMILY's List submits these comments on the Notice of Proposed Rulemaking on Coordinated Communications, published at 70 Fed. Reg. 73,946 (Dec. 14, 2005).

**Introduction**

Founded in 1985, EMILY's List is a political organization dedicated to electing Democratic, pro-choice women to office at the federal, state and local level. It is registered with the Commission as a multicandidate political committee, and maintains both federal and non-federal accounts.

EMILY's List has reviewed the comments on the Notice submitted by the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee and concurs with the views expressed in them.

In addition, EMILY's List wishes to highlight several particular areas of concern for its organization. First, overly broad regulation of a federal candidate's communications on behalf of other candidates can cause substantial harm to EMILY's List, which relies heavily on federal candidates' willingness to use their name recognition to build support for new and lesser known candidates in federal, state and local races. Second, in light of the unnecessary obstacles to employment that the current temporal limits on common vendors and former employees have created, the Commission should tailor these rules to more closely track how



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campaign activity works in practice. Finally, having been the target of a groundless coordination complaint during the 2004 election cycle, EMILY's List

supports incorporation into the pending rules of a safe harbor for committees that maintain an effective firewall between independent and coordinated activities.

### **Endorsements by Federal Candidates**

EMILY's List strongly urges the Commission to clarify that endorsements alone cannot trigger the coordination rules. For EMILY's List, increasing the number of women in office inherently requires supporting challengers, who typically lack the name recognition of their incumbent opponents. EMILY's List strives to level the playing field by using an endorsement from a well-known, popular federal candidate to direct attention to a candidate who is entering politics for the first time. This practice is for the benefit of the challenger, not the endorsing candidate.

This activity is not undertaken for the benefit of the candidate providing the endorsement. EMILY's List is witness to countless examples of candidates, with nothing to gain in their own campaigns, taking time from their schedules to lend support to the candidacies of others. The Commission should not treat this healthy political practice as an "in-kind contribution" to the endorsing candidate. It is improbable that Congress had these kinds of communications in mind when it included in BCRA the directive that this agency develop new "coordination" rules. No suggestion has ever been made that these practices represent a threat to the meaningful enforcement of the contribution limits or source restrictions.

We strongly urge the Commission to make clear that endorsements in and of themselves do not constitute a coordinated communication – neither between the endorsing candidate and challenger, nor between the endorsing candidate and EMILY's List.

### **Solicitations by Federal Candidates for Others**

Similarly, the Commission would severely undermine EMILY's List's successful operations over the last two decades if it were to treat, as a coordinated expenditure, a federal candidate's solicitations of hard money on behalf of another



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candidate or an organization such as EMILY's List. As evidenced by its name -- Early Money is Like Yeast (it helps the dough rise) -- one of EMILY's List's main goals is to convince donors to contribute to a new and relatively unknown challenger. This early financial support is crucial to the challenger's ability to

build momentum and ultimately prevail. As more and more female candidates have developed fundraising prowess, their willingness to use their talents to help other fledgling candidacies in furtherance of the mission of EMILY's List should not be in any way discouraged. Were the Commission to restrict this kind of fundraising, the adverse impact on EMILY's List would be devastating.

The Commission should therefore exempt solicitations by candidates that are made in accordance with 2 U.S.C. § 441i(e) from the coordination regulations.

### **Common Vendor and Former Employee Conduct Standards Should Cover a 60-Day Time Frame**

EMILY's List encourages the Commission to reduce the temporal limit on common vendors and former employees to 60 days or less. As an organization that devotes significant time and resources to training campaign employees and consultants, EMILY's List objects to the artificial barrier to hiring experienced campaign workers that the current rule has created. A temporal limit of an entire election cycle creates significant and unnecessary legal risks for individuals who are not in a position to violate the coordination rules, and should be replaced with a more reasonable time period.

### **Provide a Safe Harbor for Entities with Firewalls**

During the 2004 election cycle, EMILY's List was the target of a groundless complaint that alleged coordination with the campaign committee of Betty Castor, a Senate candidate in Florida. In MUR 5506, the Commission found no reason to believe that EMILY's List made, or that the Castor Committee knowingly received, excessive contributions in the form of coordinated television advertisements. EMILY's List maintained internal policies and procedures that, in the Commission's view, "ensured that no coordination occurred." First General Counsel's Report at 6. The employees, volunteers, and consultants who worked on



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independent expenditures were "barred, as a matter of policy, from interacting with federal candidates, political party committees, or the agents of the foregoing. These employees, volunteers and consultants are also barred from interacting with others within EMILY's List regarding specified candidates or officeholders." *Id.* at 6-7.

Having found the internal policies and procedures of EMILY's List to be a satisfactory safeguard against improper coordination, the Commission should use EMILY's List's policies and procedures as the framework for a safe harbor, so that other organizations that may be targeted with baseless charges of improper coordination may more easily demonstrate their compliance with the law.

### **Conclusion**

EMILY's List appreciates the opportunity to comment on these proposed rules, and requests the further opportunity to testify at the public hearing on these issues scheduled for January 25 or 26, 2006.

Very truly yours,

A handwritten signature in black ink that reads "Ellen R. Malcolm".

Ellen R. Malcolm  
President  
EMILY's List