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11/20/2009 12:19 PM

To <FEAShays3@fec.gov>
 cc
 bcc
 Subject Comments on Proposed Rules Relating to Federal Election Activity

Dear Ms. Rothstein, Please find, attached to this e-mail, the comments of Ray Buckley, President of the Association of State Democratic Chairs, on the proposed changes to the Commission rules defining "voter registration activity" and "get-out-the-vote activity" under the Federal Election Campaign Act of 1971, as amended. Mr. Buckley would like to request the opportunity for a representative of the Association to testify on December 16 at the Commission hearing on the proposed changes . Sincerely, Karl Sandstrom, Counsel to the Association of State Democratic Chairs.

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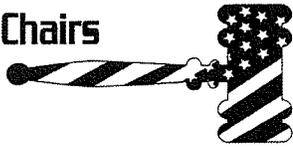
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Association of State Democratic Chairs



Raymond Buckley
President

Comments of Ray Buckley President, Association of State Democratic Chairs On Proposed Rules Governing Federal Election Activity

On behalf of the Association of State Democratic Chairs (“ASDC”), I am submitting the following comments in response to the Commission’s Notice of Proposed Rulemaking of October 20, 2009 on proposed changes in the definition of federal election activity. The ASDC is a national organization representing the interests of state and local party committees of the Democratic Party. The proposed changes in the definitions of “get-out-the-vote activity” and “voter registration activity” will have a significant impact on the operations of state and local party committees. The choice for the Commission is whether to regulate these activities as identifiable and distinct undertakings of a party committee or to regulate the day to day operations of the committee. For the reasons given below, the ASDC strongly recommends the first approach.

At every level, party committees devote themselves to organizing volunteers, identifying supporters, informing and motivating voters and developing and disseminating messages designed to persuade voters to support the party’s candidates. That support ultimately takes the form of an individual registering to vote and voting for the party’s candidates. It is true then, as the Court of Appeals pointed out in the *Shays III Appeal* which gave rise to this rulemaking, the Commission could adopt a rule that would prohibit the use of non-federal funds for “any activity designed to get people to register or vote.” Taking this approach, however, would require the Commission to federalize basically all state and local party activity because getting people to vote is essentially what party committees do. There is, however, no reason to believe that this is what Congress intended when it limited the use of non-federal funds in voter registration and get-out-the-vote activity. If that were the goal, Congress could have accomplished it simply by subjecting all state and local party activity to federal limits. Instead Congress chose to single out voter registration and get-out-the-vote activity for special treatment. In doing so, it had in mind a concrete and limited idea of what it was choosing to regulate.

It is the Commission's responsibility to identify more precisely what Congress sought to regulate. Without clear direction in the Commission rules, state and local party committees will be unable to comply with the law. Contrary to the suggestion of the Court of Appeals, it is neither wise nor arguably proper "to leave a large gray area to fill in later through adjudication or advisory opinions." Compliance with the law should not be a product of guesswork or of an unnecessary and costly enforcement action. A few examples of everyday party activity demonstrate the compliance problems that will inevitably arise if the Commission does not clearly demarcate the boundaries of federal election activity.

State and local party committees are continually recruiting people to serve as county, local or precinct chairs. On its website the Texas Democratic Party sets out the responsibilities of these officers. Principal among those responsibilities is "building a network of volunteers and precinct chairs to get out the vote in November." *See* Attachment 1. This accurately describes what state and local party committees do across the country. The question can be fairly asked whether under the Commission's proposed regulation recruiting and organizing volunteers would be deemed "get-out-the-vote activity." Insofar as recruiting and organizing is an integral part of a state or local committee's daily activity, it is difficult to see how a committee would separately account for the associated costs of this activity. Complicating matters even further is the requirement that any state or local party employee who spends more than 25% of his or her time on federal election activity must be paid exclusively with federal funds. If recruiting and organizing volunteers is deemed federal election activity, nearly every state or local party employee may have to be paid exclusively with federal funds.

State and local party committees are a common source for information regarding how to register to vote and the times and places for voting. Voters contact party committees in search of such information. This information is regularly found in committee publications, newsletters, and websites. The California Democratic Party website is a good example of a website that allows a voter to download a voter registration form. *See* Attachment 2. The cost of providing these services is typically minimal and is folded into the general administrative costs of operating the committee. Separating out the costs associated with these services would be difficult if not impossible. If there is no or minimal increased cost entailed in providing the service or information, a committee should not be compelled to treat it as federal election activity. Examples of activity that should not be included are links on a party website to a State or Local

Election office, staff providing answers to inquiries, and making registration and absentee ballot applications available in a party office.

The proposed regulations fail to provide exemptions for activities that do not measurably add to the cost of operating a committee. This problem is compounded by the inclusion in the definitions of both “voter registration activity” and “get-out-the-vote activity” the phrase “but not limited to.” Creating an exemption for activity that does not significantly add to the cost of operating a committee and confining the regulation to activity that the Commission has identified as “voter registration activity” or “get-out-the vote activity” is consistent with the purposes of the Bipartisan Campaign Reform Act (“BCRA”). An exemption for activity that does not measurably add to the costs of operating a state or local committee does not allow for circumvention of the soft dollar limits of BCRA. Defining “voter registration activity” and “get-out-the vote activity” in a precise, as opposed to an open ended manner is consistent with Congress’s choice not to federalize all state and local party election activity. If Congress intended to largely federalize the day to day organizational activities of state parties, it would have accomplished that result by subjecting state and local party committees to the same rules as national party committees.

The Commission should not be overly concerned about not anticipating new forms of voter registration and get-out-the-vote activity. Under inclusion is a mistake that can be easily remedied. The Commission need only amend its regulations to include activity that it did not anticipate but that it believes Congress intended to regulate. Out of a concern that it may be missing something of consequence, the Commission should not chill legitimate core party activity. This concern is most pronounced in the proposed regulation of “exhortations to register to vote” and “exhortations to vote.” The Commission proposes to exempt such exhortations from the definition of “voter registration activity” and “get-out-the vote activity” if included in a speech or at an event provided that exhortation is “incidental to the speech or event.” This exemption is far from adequate to insulate from regulation communications designed to persuade about the virtues of a state or local candidate or a party.

Get-out-the-vote activity is commonly understood in politics to mean efforts directed at a candidate’s or a party’s known supporters to facilitate voting. It is distinguishable from persuasion communications that are devoted to convincing a voter to vote for a particular

candidate or party. Persuasion communications will typically exhort the recipient to vote and may include the date of the election. By limiting the exemption to incidental exhortations to vote at speeches or events, the Commission appears to sweep into the definition persuasion communications solely on the basis that the communication refers to the need to vote. Given that the object of a persuasion communication is to convince the voter to vote for a candidate, it would be rare for such a communication not to refer to voting. To characterize such references as incidental rather than an integral part of the message is to ignore reality. To limit the exemption to speeches and events will make most state persuasion communications on behalf of the party and its state and local candidates subject to Commission regulation.

On both these points, the ASDC strongly recommends that the Commission adopt a regulation that exempts public communications that are intended to persuade voters to support a state or local candidate or the party generally and are not primarily aimed at facilitating the act of voting. For example, absentee ballot campaigns would be covered but a typical television or radio ad promoting the party and a state or local candidate would not. A robocall on or near election day urging the recipient to vote would be covered but an ordinary direct mail piece on behalf of the party and a state or local candidate weeks before an election would not. If an activity is undertaken prior to the election and does not make it appreciably easier to vote by providing a voter with information or services, it should not be considered “get-out-the-vote” activity.

The challenge for the Commission is to develop a standard that distinguishes “get-out-the-vote activity” and “voter registration activity” from the candidate advocacy undertakings and the day to day operations of a state or local party committee. As suggested above, if the Commission’s definition proves too porous and permits soft money to flow into activities that Congress intended to regulate, the Commission can revisit and recalibrate its regulations. The Commission should not feel compelled to promulgate a broad, open ended regulation out of fear that it may be missing a road that state and local party will travel to circumvent Congress’s effort to limit the use of soft money to influence federal elections. The Commission’s regulations should proceed from a recognition that state and local party grassroots organizing activity is not a pathway for corruption but an avenue for ordinary citizens to participate in our democracy. The current regulations have now been in place for seven years and notwithstanding the warnings of some, they have not been used by candidates or parties to circumvent the soft money

limitations of the law.

The Commission should revise its regulations based on its experience and real threats to the integrity of the law and not on the imaginings of others. The meaning that the Commission gives to “voter registration activity” and “get-out-the-vote activity” should be consistent with how those terms are commonly used by those who are regularly engaged in politics and should not be read expansively to reach any party activity that increases the likelihood that people will register and vote. There is simply no reason to assume that Congress intended to regulate more than its own Members would describe as “voter registration activity” and “get-out-the-vote activity” in the context of their own political campaigns. By adopting this understanding of the statute, the Commission would remain faithful to the Congress’s expressed intent and would not extend the law’s reach into day to day operations of state and local party committees which Congress never manifested an intention to regulate.

Attachment 1

Texas Democratic Party: Moving Texas Forward

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Become a County or Precinct Chair

The strength of the Texas Democratic Party springs from the dedication and hard work of people who take a leadership role in their local Democratic Party. Our County Chairs and Precinct Chairs provide critical support to Democratic campaigns and are essential to turning out the Democratic vote and winning electoral victories.

County Chairs

The 254 county Democratic parties, which are headed by [our current County Chairs](#), are the focal points of campaign and Party building activities. County Chairs have numerous responsibilities, including leading their county's Executive Committee; working closely with candidates, precinct chairs, and the TDP Staff; conducting primary elections and certifying results; and building a network of volunteers and precinct chairs to get out the vote in November.

Term of Office and Qualifications

To be eligible for the office of county chair, an individual must meet these requirements:

- Be 18 years of age or older
- Be a qualified voter who has voted in the latest Democratic primary (not counting runoffs) in the voting year
- Be a resident of the county from which he or she is seeking election
- Not be a candidate for or holder of an elective office of the federal, state, or county government
- (Optional but highly desirable) have Internet and e-mail capabilities and basic computer skills

Filing for Office

The county chair is a publicly elected party official and is elected by precinct voters in the Democratic Primary Election (or in the runoff election, if no candidate gets a majority in the general primary). A qualified individual interested in running for county chair must do the following:

- Download a filing form, or obtain one from your county chair, the secretary of the County Party, or from the State Party
- Complete the application
- Sign the application before a notary public
- Have the filing form notarized
- Submit the application to the county chair in the period that begins in early December and ends at 6:00 PM on

the first business day in January. The specific opening date is 30 days before the first business day in January of an election year.

The form may be submitted in either of two ways:

- Hand the completed, signed, and notarized application to the county chair; or
- Mail the completed, signed, and notarized application to county chair (*must be received by the filing deadline*)

In very large counties (population greater than 1 million), submit a petition containing the signatures of 15 percent of the current precinct chairs in the county. For a copy of the petition, please contact your County Chair.

If the county chair is running for reelection, the county chair keeps the application.

The names of county chair candidates appear on the Democratic Primary Ballot. Write-in votes are permitted in the primary, whether or not there are other candidates on the ballot, providing the candidates must have filed their write-in candidacies. Write-in votes are not permitted in a runoff.

Precinct Chairs

The 254 counties in Texas are further divided into voter precincts, each led by a Precinct Chair. Precinct Chairs are the lifeblood of the Democratic Party. They sit on their county's Executive Committees, help conduct Party business in their counties, and play a critical role in contacting Democratic voters in their individual precincts. There is no more important job in the Democratic Party.

Term of Office and Qualifications

The precinct chair is a publicly elected party official and is elected by precinct voters in the Democratic Primary Election (or in the runoff election, if no candidate gets a majority in the first primary). The term of office for a precinct chair is two years, beginning on the 20th day following the Primary runoff election. The County Executive Committee fills vacancies for unexpired terms.

A precinct chair should be an outgoing, self-motivated person who likes people. To be eligible for the office of precinct chair, an individual must meet these requirements:

- Be 18 years of age or older
- Be a qualified voter who has voted in the latest Democratic primary (not counting runoffs) in the voting year
- Be a resident of the precinct from which he or she is seeking election
- Not be a candidate for or holder of an elective office of the federal, state, or county government
- (Optional, but highly desirable) have Internet and e-mail capabilities and basic computer skills

Filing for Office

A qualified individual interested in running for precinct chair must do the following:

- Download a [filing form](#), or obtain one from your county chair or county party secretary
- Complete the application
- Sign the application before a notary public
- Have the form notarized
- Submit the application in the period that begins in late October and ends at 6:00 PM on the first business day in January
- Check the filing deadline when you pick up your application. The completed, signed, and notarized application

may be mailed to the county chair, but it must be received by the filing deadline.

Only contested candidates for Precinct chair appear on the Democratic Primary ballot. Write-in votes for precinct chair are permitted in the primary, whether or not there are other candidates on the ballot, but not in a runoff. Write-in candidates must have filed their write-in candidacies.

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The Texas Democratic Party

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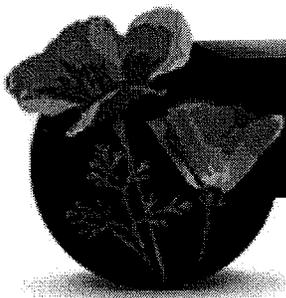
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Attachment 2



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Register to Vote

Use our online form, powered by Credo Mobile, to register to vote.

Contribute

2008 was a historic year for Democrats! Keep the momentum going by making a contribution to the California Democratic Party.

DEM2010

Join our DEM2010 (Donate Every Month) Team to fund voter registration, outreach programs, field training and much more — and bring us victory in 2010!

Take Action

Participate in current online campaigns from the California Democratic Party.

Volunteer

You can volunteer to make a difference on the local level and in your own community. The Democratic Party is proud of its strong grassroots movement of dedicated activists and volunteers.

House Parties

Hosting a House Party fundraiser is an excellent way to support the California Democratic Party while having fun with your friends and family.

Training

Join us for "Learn to Win 2010" -- The CDP's comprehensive two-day grassroots training program for 2009 and 2010.

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