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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA ITEM
For the Meeting of December 11,
2014
(Submitted Late)

December 5, 2014

MEMORANDUM

TO: The Commission

FROM: Lisa Stevenson *LJS by AN*
Deputy General Counsel – Law

Adav Noti *AN*
Acting Associate General Counsel

Joanna S. Waldstreicher *JSW by AN*
Attorney

Emma Lewis *EL by AN*
Law Clerk

SUBJECT: Petition for Rulemaking to Amend 11 C.F.R. § 100.4 — Draft Notice of Disposition

Attached is a draft of the subject notice of disposition. We ask that this be placed on the agenda of the December 11, 2014, open meeting.

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 100.4**

3 **[NOTICE 2014-XX]**

4 **Federal Office**

5 **AGENCY:** Federal Election Commission.

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

7 **SUMMARY:** The Commission announces its disposition of a Petition for Rulemaking

8 (“Petition”) filed on August 28, 2014, by National Convention PBC. The Petition asks the

9 Commission to amend 11 CFR 100.4 to revise the definition of “federal office” to include

10 delegates to a constitutional convention. The Commission has decided not to initiate a

11 rulemaking at this time. The Petition and other documents relating to this matter are available on

12 the Commission’s website, <http://www.fec.gov/fosers/>, and in the Commission’s Public Records

13 Office.

14 **DATES:** [Insert date of publication in the Federal Register].

15 **FOR FURTHER INFORMATION CONTACT:** Ms. Emma K. Lewis, Office of General

16 Counsel, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

17 **SUPPLEMENTARY INFORMATION:** On August 28, 2014, the Commission received a

18 Petition for Rulemaking from National Convention PBC regarding the Commission’s regulation

19 defining “federal office,” 11 CFR 100.4. The regulation provides that “Federal office means the

20 office of President or Vice President of the United States, Senator or Representative in, or

21 Delegate or Resident Commissioner to, the Congress of the United States.” The Petition asks the

22 Commission to amend 11 CFR 100.4 to add “a Delegate to a constitutional convention for

23 proposing amendments to the Constitution of the United States.”

1 The Commission published a Notice of Availability seeking comment on the Petition on
2 October 2, 2014. 79 FR 59459. The Commission received five comments in response to the
3 NOA. Two comments, filed on behalf of a total of four organizations, opposed the Petition,
4 primarily on the grounds that the regulatory change it seeks would be inconsistent with the
5 applicable statutory definition of “federal office.” Three comments from individuals supported
6 the Petition on the grounds that delegates to a constitutional convention should be bound by the
7 campaign finance rules that apply to federal candidates (although one of these comments also
8 objected to certain aspects of National Convention PBC’s proposal).

9 The Commission agrees with the commenters who opposed the Petition. The definition
10 of “federal office” is specifically set by statute: “The term ‘Federal office’ means the office of
11 the President or Vice President, or of Senator or Representative in, or Delegate or Resident
12 Commissioner to, the Congress.” 52 U.S.C. 30101(3) (formerly 2 U.S.C. 431(3)). The
13 Commission’s regulatory definition of “federal office” uses materially indistinguishable
14 language, defining a federal office as “the office of President or Vice President of the United
15 States, Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of
16 the United States.” 11 CFR 100.4. The Petition and the commenters who supported it provide
17 certain policy arguments in favor of including delegates to a constitutional convention within the
18 scope of the regulation, but the statutory definition of “federal office” unambiguously omits such
19 delegates. In situations such as this where the statute contains no relevant ambiguity, the
20 Commission “must give effect to the unambiguously expressed intent of Congress.” Chevron
21 U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 842-43 (1984). The Commission
22 therefore declines to commence a rulemaking to add delegates to a constitutional convention to
23 the definition of “federal office” in 11 CFR 100.4.

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On behalf of the Commission,

Lee E. Goodman
Chairman,
Federal Election Commission

DATED: _____
BILLING CODE: [6715-01-P]