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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AGENDA DOCUMENT NO. 17-16-A
AGENDA ITEM
For meeting of March 23, 2017

MEMORANDUM

To: The Commission
From: Commissioner Lee E. Goodman *leg*
Date: March 16, 2017
Re: Political Party Rulemaking

Representatives of various parties have unequivocally informed the Commission about several counterproductive and unduly burdensome aspects of Commission regulations and called upon the Commission to act to provide meaningful reform.¹ While there is much talk about the Commission's disagreements on regulatory issues, political party regulatory reform offers the Commission an opportunity to work together in a bi-partisan way to address the concerns of all political parties. The Commission received and published for public comment two Petitions to open rulemakings with respect to political parties. The first was a Petition submitted by Mr. Ken Martin, Chairman of the Minnesota Democratic Farmer-Labor Party, urging the Commission to open a rulemaking with respect to state and local parties. The second was a Petition submitted by Perkins Coie LLP, urging the Commission to open a rulemaking with respect to new national party accounts. The Commission has received significant public comments in response to both Petitions. At the Commission's next public meeting, I will offer the attached Resolution to open a rulemaking with respect to political parties consistent with the Petitions. I hope that my colleagues will join me in this constructive opportunity to strengthen some of the most grassroots institutions in American politics.

¹ See www.fec.gov/press/press2014/news_releases/20140604release.shtml (including link to audio recording of June 4, 2014 forum) and www.fec.gov/press/press2014/news_releases/20140416release.shtml (announcing forum).

**RESOLUTION OF
THE FEDERAL ELECTION COMMISSION
OPENING A RULEMAKING ON POLITICAL PARTIES**

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

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

WHEREAS, on June 4, 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, on June 15, 2016, Ken Martin, Chairman of the Minnesota Democratic Farm-Labor Party, filed a Petition for rulemaking requesting the Commission to revise its regulations to provide regulatory relief to state and local political party committees; and

WHEREAS, the Petition was published as Notice 2016-11 and the Commission received public comments from Democratic and Republican parties overwhelmingly supporting a rulemaking to provide regulatory relief to state and local political party committees; and

WHEREAS, on January 8, 2016, Perkins Coie LLP filed a Petition for rulemaking requesting the Commission to undertake a rulemaking to issue new regulations governing Party conventions consistent with Advisory Opinion 2014-12, removing regulations rendered obsolete by legislation eliminating public funding for national party conventions, and implementing amendments made to the Federal Election Campaign Act of 1971 by the Consolidated and Further Continuing Appropriations Act, 2015; and

WHEREAS, the Petition was published as Notice 2016-10 and the Commission received public comments; 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 opens a rulemaking in response to the Petition of Mr. Ken Martin and the Petition of Perkins Coie LLP and hereby directs the Office of General Counsel to draft a formal Notice of Proposed Rulemaking no later than April 30, 2017,

proposing the following revisions to Commission regulations for public comment and further Commission consideration:

(1) Party Coordinated Communications (11 C.F.R. § 109.37):

- a. Amend 11 C.F.R. § 109.37(a)(2)(iii) to eliminate from the definition of “party coordinated communications” those communications outside of the electioneering communication windows that merely reference candidates;
- b. Amend 11 C.F.R. §§ 109.37(a)(2)(i), 109.21, 109.23 to clarify that parties may republish candidate campaign materials and treat the republication/dissemination costs as independent expenditures rather than *per se* coordinated expenditures (i.e. contributions), unless the republication/dissemination is in fact coordinated by conforming the regulations with respect to party republications to the statutory language of 52 U.S.C. § 30116(a)(7)(B) (republication constitutes an “expenditure” rather than a “contribution”) and by adding specific language in 11 C.F.R. § 109.37 (in (a)(2)(i) or a new, separate subsection) providing that republication/dissemination expenditures are coordinated expenditures/contributions “only if the candidate requests, suggests, has material involvement in, or engages in substantial discussion regarding the dissemination, distribution, or republication of the candidate material.”;
- c. Amend 11 C.F.R. § 109.37(a)(3) to permit candidates to provide political parties, in addition to positions on legislative or policy issues, “*candidate biographical information*” without satisfying the conduct standards in 11 C.F.R. §109.21(d);
- d. Amend 11 C.F.R. § 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 satisfying the conduct standards in 11 C.F.R. §109.21(d), 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 C.F.R. § 106.4(e);
- e. Insert a new provision or subsection in 11 C.F.R. § 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 C.F.R. § 109.37 clarifying that costs of political party communications for grassroots campaign materials pursuant to 11 C.F.R. § 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 C.F.R. § 100.26, are exempt from the definition of party coordinated expenditures.

(2) Party Volunteer Activity (11 C.F.R. §§ 100.87, 100.88, 100.89, 100.147, 100.148, 100.149):

- a. Amend 11 C.F.R. §§ 100.87, 100.147 (with corresponding edits to 11 C.F.R. §100.88(a), 100.148) 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 C.F.R. §§ 100.87, 100.147(a) (with corresponding edits to 11 C.F.R. §§ 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 C.F.R. § 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 C.F.R. §§ 100.89(c), 100.149(c));
- d. Amend 11 C.F.R. § 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 C.F.R. § 100.24):

- a. Amend 11 C.F.R. §§ 100.24(a)(2)(ii), 100.24(a)(3)(ii) to narrow the circumstances under which party efforts to register voters and turn out voters to the polls constitute federal election activity by inserting the following italicized language: “Activity is not [voter registration or get-out-the-vote] activity solely because it includes a brief exhortation to vote *pursuant to subsection (i)(A) above or provision of information pursuant to subsection (i)(B) above* is incidental to a communication, activity, or event.”;
- b. Amend 11 C.F.R. §§ 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.’*”;

c. Amend all regulations regarding the payment of party employees with federal funds (including 11 C.F.R. §§ 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 U.S.C. § 30101(20)(A)(iv) and the language of 11 C.F.R. § 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.

(4) Levin Funds:

Simplify rules governing raising and spending Levin funds.

(5) Affiliation Between State and Local Party Committees:

Eliminate the regulatory presumption of affiliation between state and local party committees in 11 C.F.R. § 110.3(b) and similar regulations.

(6) Gabriella Miller Kids First Research Act:

Remove obsolete provisions of 11 C.F.R. § 9008.

(7) Consolidated and Further Continuing Appropriations Act, 2015:

a. With respect to party convention accounts,

- i. define “expenses incurred with respect to a presidential nominating convention” as any expenses related to a presidential nominating convention, which includes, but is not limited to, the permissible uses of public funds for conventions under current 11 C.F.R. § 9008(a);
- ii. provide for national party committees to use convention account funds (as well as their general accounts) to pay the costs of fundraising for the account;
- iii. establish a list of expenses that are not to be counted toward the \$20 million expenditure limit, including, but not limited to, fundraising costs, legal and accounting services, and expenditures made by host committees and government agencies or municipal funds in accordance with 11 C.F.R. § 9008.52 and 9008.53;
- iv. prohibit national party committees from using convention account funds to make contributions and independent expenditures or pay for general campaign expenses; and
- v. clarify that national party committees may use funds from their general operating accounts to pay for all expenses related to their presidential nominating conventions and may use funds in their convention accounts to reimburse convention-related expenses paid from their general accounts.

b. With respect to headquarters buildings accounts,

- i. define “headquarters buildings of the party” to be all buildings located anywhere in the United States from which operations or activities of a political party are managed, directed, or controlled;
 - ii. clarify that permissible expenditures include all costs associated with constructing, purchasing, renovating, and furnishing headquarters buildings, as well as all expenses related to the operation of, or necessary to administer, headquarters buildings, including, but not limited to, payments of property taxes and assessments, rent and leases, maintenance, hardware, fixtures, furniture, equipment, information technology, file and data storage, software, security, utilities, materials and supplies, and salaries of individuals who operate and service the buildings;
 - iii. clarify that permissible expenditures include payments for mortgages and loans uses to finance permissible building expenses;
 - iv. provide for national party committees to use building account funds (as well as their general accounts) to pay the costs of fundraising for the account;
 - v. prohibit use of building accounts to pay for general campaign expenses;
 - vi. clarify that national party committees may use funds from their general operating accounts to pay for all expenses related to their buildings and may use funds in their building accounts to reimburse building-related expenses paid from their general accounts.
- c. With respect to legal proceedings accounts,
- i. clarify that national party committees may use funds in their legal proceedings accounts for election recounts, election contests, and other legal proceedings, including but not limited to all costs associated with preparation for legal proceedings, legal staff salaries, administrative and overhead expenses related to legal proceedings, attorneys’ fees, settlements, judgments, administrative penalties and fines, and other payments to third parties directly related to legal proceedings;
 - ii. prohibit use of legal proceedings accounts for general campaign expenditures;
 - iii. provide for national party committees to use legal proceedings account funds (as well as their general accounts) to pay the costs of fundraising for the account;
 - iv. clarify that national party committees may use funds from their general operating accounts to pay for all expenses related to their legal proceedings and may use funds in their legal proceedings accounts to reimburse legal-related expenses paid from their general accounts.
- d. With respect to general rules applicable to all segregated accounts,
- i. provide that expenditures made from any of the segregated accounts of national party committees are not allocable to candidates under 11 C.F.R. § 106.1 or treated as coordinated expenditures subject to the coordinated party expenditure limits under 52 U.S.C. § 30116(d)(2)-(4);

- ii. permit national party committees to transfer funds from their general operating accounts to any of their segregated accounts or the segregated accounts of their related national party committees;
- iii. permit national party committees to transfer funds from any segregated account to the same segregated account of any related national party committee;
- iv. permit national party committees to transfer funds from their legal proceedings accounts to the recount or contest funds of state party committees;
- v. permit national party committees to deposit undesignated contributions into any of their accounts, so long as doing so would not exceed applicable contribution limits;
- vi. permit national party committees to obtain redesignations of contributions designated to either their segregated accounts or their general accounts; and
- vii. update 11 C.F.R. § 106.5 to allow national party committees to use reasonable accounting methods to allocate expenses between accounts, provided that party committees need not allocate expenses paid solely from their general accounts.

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.