VIA EMAIL: LSTEVENSON@FEC.GOV

April 8, 2020

Lisa J. Stevenson, Esquire
Acting General Counsel
Office of General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

RE: Petition for Rulemaking to Close the Bloomberg Loophole on Transfers to National Political Party Committees

Dear Ms. Stevenson:

The undersigned hereby submits this Petition for Rulemaking pursuant to 11 CFR § 200.2, on behalf of Citizens United and Citizens United Foundation,[1] seeking amendment of 11 CFR § 113.2(c), which permits the transfer of funds "without limitation" from a federal candidate's authorized campaign committee accounts "to any national, State, or local committee of any political party."

Petitioners request that the foregoing regulation be amended to limit the amounts that an authorized committee of a federal candidate may transfer to a committee of a national political party in order to prevent a self-funded candidate from transferring campaign funds derived from his or her personal funds in amounts that exceed the annual limits imposed on an individual's contributions to a national party committee.

[1] Citizens United is an incorporated IRC § 501(c)(4) membership organization. Citizens United Foundation is an incorporated IRC § 501(c)(3) organization. The two entities are related in that they have identity of officers and directors and share office space, staff and other resources. Citizens United and Citizens United Foundation each qualify as a "person" under the Commission's regulations. See 11 CFR § 100.10. Consequently, each entity is eligible to petition the Commission for a rulemaking under the Commission's rules. See 11 CFR § 200.2(a).

Factual Background and Regulatory Framework

Since 1980, the Federal Elections Campaign Act ("FECA") has allowed candidates for federal office to transfer surplus funds in their official campaign accounts to national, State or local party committees without limitation. See Amendments to the Federal Election Campaign Act of 1971, PL 96-187, 93 Stat. 1339, 1366-67 (Jan. 8, 1980). The current regulatory provision governing such transfers states that funds in a campaign account "[m]ay be transferred without limitation to any national, State, or local committee of any political party." 11 CFR §113.2(c). This language closely parallels FECA's relevant statutory provision, which allows "[a] contribution accepted by a candidate" to be "used by the candidate . . . . for transfers, without limitation, to a national, State, or local committee of a political party." 52 U.S.C. § 30114(a)(4).

The practice of transferring surplus campaign committee funds to party committees was carried on without major controversy for the better part of four decades. From 1980 until last month, such transfers were by and large made up to contributions falling within FECA limits on contributions from individuals, multi-candidate PAC and national political party committees.

Last month, however, a major loophole came to light. Michael Bloomberg, who recently withdrew as a candidate for the Democratic Party nomination for President, transferred some $18 million of surplus campaign funds to the Democratic National Committee ("DNC").[2] Those funds, however, were not made up of contributions from sources subject to FECA's contribution limits, but were instead derived from the candidate's personal funds,[3] which are not subject to any contribution limits.[4]

While Bloomberg's transfer may fall within the letter of the regulation governing transfers of candidate funds to national political party committees it certainly does not fall within the spirit

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[2] See "Bloomberg makes massive $18M transfer from campaign to DNC," Politico (March 20, 2020)(available at www.politico.com). The Bloomberg campaign's April 2020 FEC Report reflecting this transaction was not available as of the date of this petition, but presumably will be available on or after April 20, 2020.

[3] According to the campaign's March 2020 FEC Report, (available at www.fec.gov), which reflects transactions through February 29, 2020, the Bloomberg campaign received $936,212,079.75 in contributions since its inception in 2019. Of this amount, Michael Bloomberg contributed $935,360,675.56 of personal funds. Contributions from other sources were $851,404.19. Bloomberg's contributions to his campaign amount to more than 99.9% of the total contributions received.

[4] See 11 CFR § 110.10 ("Except as provided in 11 CFR parts 9001, et seq. and 9031, et seq., candidates for Federal office may make unlimited expenditures from personal funds as defined in 11 CFR 100.33").

of the law. As noted above, transfers to national political party committees have traditionally come from funds derived from contributions falling within the limits imposed on contributions from individuals, multi-candidate PACs and national party committees. In stark contrast, the Bloomberg transfer appears to be the first time that a candidate has transferred funds derived entirely from his or her personal funds in an amount that far exceeds the amounts that the candidate could directly contribute to a national party committee. For the 2019-20 election cycle, Mr. Bloomberg could contribute no more than $35,500 to any committee of a national political party in a calendar year. See Price Index Adjustment for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 84 Fed. Reg. 2504, 2506 (Feb. 7, 2019). Bloomberg's March 2020 transfer of $18 million to the DNC is more than 500 times greater than the amount that he could directly contribute to the DNC.

As troubling as this transfer stands on its own merits, the Bloomberg transfer reveals an even deeper flaw in the regulatory scheme governing transfers from candidate accounts to national party committees. Bloomberg was at least a legitimate candidate for the Democratic Party nomination. He appeared on the ballot in several states and spent in the neighborhood of $900 million on his unsuccessful attempt to win the nomination. But there is nothing in the current regulatory framework that would prevent many candidates – whether serious or not – from manipulating the loophole to an even greater degree. Wealthy individuals could: declare their candidacy for any federal elected office; contribute untold millions of dollars of his or her own money to the campaign; promptly withdraw his or her candidacy after spending a token sum; and thereafter transfer the balance of the campaign's funds to the national party committee of his or her choice. This is clearly not what was intended when Congress authorized the transfer surplus campaign funds to national party committees. But given what recently transpired with the Bloomberg campaign, it is clearly a distinct possibility going forward unless the Commission acts promptly to close the Bloomberg loophole.

Requested Regulatory Action

The loophole identified above can and should be promptly remedied by amendment to 11 CFR § 113.2(c).

One possible solution would be to limit the amount that a campaign committee can transfer to a national political party committee to the sum total of contributions received by the committee that fall within the limits imposed on contributions by individuals, multi-candidate PACs and party committees. This may not be the only possible remedy, nor do petitioners' contend it is a perfect fit. It is, however, a bright-line rule that's a reasonable fit in closing the loophole. Such a remedy would be easy to understand, easy to implement and easy to enforce. And such an amendment would in no way impair the ability of a candidate, as an individual, to

make direct contributions to national party committees up to the amounts permitted by law for individuals.[5]

Petitioners do not believe that a regulatory revision of the type suggested herein would require revision of the underlying statutory provision governing transfers of campaign funds to the committees of a national political party. The statutory provision on which the current regulation is based speaks in terms of "[a] contribution accepted by a candidate" and "donations received by an individual." See 11 U.S.C. §30114(a). The language does not address a candidate's usage of his or her own personal funds for campaign expenses. At best the statutory language is ambiguous as to whether funds derived from a candidate's personal funds are subject to transfer without limitation to a national political party committee. Thus, while the regulation that allows a transfer of the type undertaken by the Bloomberg campaign is likely entitled to Chevron deference,[6] it follows that any revision of the regulation to close the loophole would similarly be entitled to Chevron deference.

Conclusion

For the reasons stated herein Petitions hereby request the Commission to forthwith initiate a rulemaking to amend 11 CFR § 113.2(c) in order to close the Bloomberg loophole that allows a self-funded candidate to transfer campaign funds derived from his or her personal funds in amounts that exceed the annual limits imposed on an individual's contributions to a committee of a national political party.

Respectfully Submitted,

Michael Boos
Executive Vice President & General Counsel
Citizens United and Citizens United Foundation

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[5] Petitioners are not requesting that the Commission consider imposing limits on the amounts that can be transferred to State or local party committees. Many states allow unlimited contributions to their state or local party committees. But petitioners would not oppose consideration of a further amendment to CFR § 113.2(c) that would limit such transfers to the maximum amounts permitted in accordance with state law. To that end, petitioners note that the regulation governing donations to State and local candidates from surplus candidate committee funds imposes such a limitation. See 11 CFR § 113.2(d).

[6] See Chevron, USA, Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984); see also, Van Hollen v. FEC, 811 F.3d 486, 492 (DC Cir. 2016)(Explaining that where a statute in ambiguous under step one of Chevron analysis, step two "does not require the best interpretation, only a reasonable one").