



June 16, 2020

Dear Commissioners:

Congratulations on the restoration of the Commission's quorum. As the general election approaches, we believe the citizens of the United States are better off with a Federal Election Commission that can fulfill its statutory mandate to administer and enforce the transparency rules for federal elections.

Below is a list of pending regulatory matters that we strongly recommend the Commission prioritize. This is by no means an exhaustive list: there are many other regulatory matters on which the Commission should take action in the near future (not to mention enforcement matters of great importance). But, at a minimum, we urge the Commission to immediately move forward on the matters identified in the attachment, each of which implicates the Commission's statutory *mandate* to administer and interpret the Federal Election Campaign Act.

Campaign Legal Center stands ready to assist the Commission in any way possible with these measures. We always prefer to collaborate with the Commission rather than to litigate against it.

With Commissioner Trainor on board and the quorum restored, we are hopeful the FEC is positioned to adopt a fresh, proactive approach that provides American voters the electoral transparency to which they are entitled.

Not in four years. Not in two years. Now.

Respectfully submitted,

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Internet Communication Disclaimers (REG 2011-02)

Since 2011, Campaign Legal Center (“CLC”) and many others have implored the Commission to update the FEC’s outdated digital political ad rules and clarify how disclaimer requirements apply to digital political advertising. This rulemaking has been languishing for more than eight years.

Meanwhile, recent disclosures continue to underscore the importance of on-ad disclaimers for digital ads. A review of Facebook’s political ad archive shows that federal political committees are regularly running political ads under page names that do not match the name of the true payor. For example, the national Democratic super PAC Priorities USA Action is running Facebook ads promoting or attacking federal candidates from pages such as “Facts First”¹ and “Cost of Chaos.”² Similarly, the joint fundraising committee Trump Make America Great Again Committee and Donald J. Trump for President are paying for ads run from the Facebook pages of individuals like Brad Parscale³ and Mike Pence.⁴

Because Facebook has instituted its own limited disclaimer requirements, we have been able to determine that these ads were bought by political committees. But Facebook could revise or rescind its policy at any time, leaving viewers no way of knowing the ads were paid for by a national super PAC or a presidential candidate’s joint fundraising committee. Furthermore, given that only a handful of platforms have adopted voluntary disclaimer requirements, and that the Commission still has not finalized rules for digital political ad disclaimers, there is reason to suspect that

¹ Ads by Facts First, Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=106158314342739&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=106158314342739&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited June 10, 2020).

² Ads by Cost of Chaos, Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=101359811498192&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=101359811498192&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited June 10, 2020).

³ Ads by Brad Parscale, Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=1745691098822972&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=1745691098822972&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited June 10, 2020).

⁴ Ads by Mike Pence, Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=6726182861&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&impression_search_field=has_impressions_lifetime&view_all_page_id=6726182861&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited June 10, 2020).

similar communications are being run on other platforms without disclaimers, leaving voters in the dark.

As of today, 980 days have passed since the Commission voted to solicit a second round of public comments on digital political ad disclaimers. 813 days have passed since the Commission published competing sets of draft rules in the Federal Register. 720 days have passed since the Commission held two days of hearings on the competing draft rules. 659 days have passed since CLC met with Commissioners to stress the urgency of finalizing this rulemaking. 362 days have passed since the Commission informally released for comment two proposed regulations. With the 2020 election campaign fully underway, and digital political ad spending predicted to hit \$2.8 billion,⁵ the Commission cannot delay any longer. It must act now to adopt rules clarifying disclaimer requirements for digital ads.

Petition for Rulemaking on Personal Use of Campaign Funds by Former Candidates and Officeholders (REG 2018-01)

Although Commission regulations prohibit both current and former candidates and officeholders from converting campaign funds to personal use, evidence has emerged of a disturbing trend of lawmakers leaving office with sizeable campaign chests, and then using those leftover campaign funds in ways that appear to constitute personal use.

Following CLC's rulemaking petition asking the Commission to clarify 11 C.F.R. § 113.1(g) and 11 C.F.R. § 113.2, the Commission sent Requests for Additional Information ("RFAIs") to dozens of so-called "zombie campaigns," but many committees have offered little explanation for apparently personal expenditures.

In their responses to the RFAIs, some committees appeared to ignore or challenge the Commission's straightforward application of the personal use ban to zombie campaigns. One committee told the Commission that it "was aware that there was a winding down process outlined by the FEC" but that it "was not aware that such a winding down process was required."⁶ Another bluntly noted that "there are no current laws or regulations that stipulate a campaign committee must wind down and terminate within a certain timeframe Should the FEC adopt a regulation that requires campaign committees terminate within a certain timeframe, we would

⁵ Alexandra Bruell, *Political Ad Spending Will Approach \$10 Billion in 2020, New Forecast Predicts*, WALL ST. J. (June 4, 2019), <https://www.wsj.com/articles/political-ad-spending-will-approach-10-billion-in-2020-new-forecast-predicts-11559642400>.

⁶ Letter from Jackson Eaton for Congress to FEC (June 8, 2019), <https://docquery.fec.gov/pdf/486/201906089149967486/201906089149967486.pdf>.

obviously adhere to the new regulation.”⁷ Other committees made vague assertions of a future possibility of running for office again but failed to offer evidence of current office-seeking activity.⁸

Meanwhile, evidence continues to accumulate of the opportunities for abuse when campaign accounts stay open indefinitely. The month before the Commission lost its quorum, CLC published a report, *FARA Zombies: How Some Retired Politicians Use Leftover Campaign Funds to Advance Their Careers as Foreign Agents*,⁹ that documented a troubling trend of former lawmakers-turned-foreign agents using their leftover campaign funds to advance their lobbying careers and the interests of their foreign clients. The investigation identified at least 17 former officeholders who kept their campaign accounts open while acting as registered foreign agents in the last five years, and it found that half of them had used those funds to make political contributions to the same members of Congress they were contacting on behalf of their foreign clients.

Opportunities for abuse will only expand as old campaign accounts continue to remain open, and as more outgoing members of Congress retire in early 2021. As of this writing, 44 current members of the 116th Congress are retiring or are seeking other office.¹⁰ We urge the Commission to complete this rulemaking and clarify the boundaries between permissible and impermissible uses of these funds, and to require that committees be closed once an individual is no longer a candidate and the other conditions for terminating registration are met.

⁷ Letter from Citizens for Joe Kennedy 1988 to FEC (June 24, 2019), <https://docquery.fec.gov/pdf/850/201907100300282850/201907100300282850.pdf>.

⁸ One former officeholder, who left Congress in 1993, emphasized that “there is no legal requirement for [the former officeholder] to wind down his committee by any date certain” and claimed to the Commission that he was “actively contemplating a return to public office in some capacity. Letter from Tallon for Congress to FEC (July 1, 2019), <https://docquery.fec.gov/pdf/204/201907010300281204/201907010300281204.pdf>. Months earlier, the same former officeholder told the *Tampa Bay Times* that “I don’t think the likelihood of (running for office) is very high right now, and I’m retiring from my consulting work in Washington.” Christopher O’Donnell, Eli Murray, Connie Humburg & Noah Pransky, *Zombie campaigns*, TAMPA BAY TIMES (Jan. 31, 2018), <http://www.tampabay.com/projects/2018/investigations/zombie-campaigns/spending-millions-after-office/>.

⁹ BRENDAN FISCHER & MAGGIE CHRIST, CAMPAIGN LEGAL CTR., *FARA ZOMBIES: HOW SOME RETIRED POLITICIANS USE LEFTOVER CAMPAIGN FUNDS TO ADVANCE THEIR CAREERS AS FOREIGN AGENTS* (July 25, 2019), <https://campaignlegal.org/sites/default/files/2019-07/07-25-19%20FARA%20Zombie%20Report%20%28final%29.pdf>.

¹⁰ *Casualty List: 116th Congress*, U.S. HOUSE OF REPRESENTATIVES, <https://pressgallery.house.gov/member-data/casualty-list> (last visited June 10, 2020).

Petition for Rulemaking to Revise and Amend Regulations Relating to the Personal Use of Leadership PAC Funds (REG 2018-02)

Congress has prohibited “any contribution accepted by a candidate” and “any other donation received by an individual as support for activities of the individual as a holder of Federal office” from being converted to the “personal use” of the candidate or any other person. 52 U.S.C. §§ 30114(a), 30114(b)(1). A leadership PAC is a committee established, financed, maintained, or controlled by a candidate, and thus should be subject to the personal use prohibition. 52 U.S.C. § 30104(i)(8)(B); 11 C.F.R. § 100.5(e)(6).

The Commission allowed officeholders to establish leadership PACs to support their duties as officeholders—specifically, to “support other candidates’ campaigns” in order “to gain support when the officeholder seeks a leadership position in Congress.” Yet in the absence of clear rules prohibiting the conversion of leadership PAC funds to personal use, leadership PACs have become commonly used as slush funds to subsidize officeholders’ lifestyles. Over the past five years, only a minority of all leadership PAC spending has gone towards contributions to other candidates or political committees. Yet over that same period, candidates and officeholders spent millions in leadership PAC funds at resorts, golf courses, and high-end restaurants.

While this rulemaking petition has been pending, many officeholders have continued using their leadership funds this way. For example, in the 2020 election cycle so far, leadership PACs have collectively paid at least:

- \$94,878 to the Walt Disney World Resort and Universal Studios in Florida;¹¹
- \$83,524 to The Breakers, a Palm Beach Resort;¹²
- \$161,354 to Dorado Hotel in Puerto Rico;¹³

¹¹ Leadership PAC Disbursements to “Universal Studios,” “Disney World,” and “Disney Resort,” 2019-20, FEC.GOV, https://www.fec.gov/data/disbursements/?spender_committee_designation=D&data_type=processed&recipient_name=disney+resort&recipient_name=disney+world&recipient_name=universal+studios&two_year_transaction_period=2020&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020 (last visited June 10, 2020).

¹² Leadership PAC Disbursements to “Breakers,” 2019-20, FEC.GOV, https://www.fec.gov/data/disbursements/?spender_committee_designation=D&data_type=processed&recipient_name=breakers&two_year_transaction_period=2020&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020 (last visited June 10, 2020).

¹³ Leadership PAC Disbursements to “Dorado,” 2019-20, FEC.GOV, https://www.fec.gov/data/disbursements/?spender_committee_designation=D&data_type=processed&recipient_name=dorado&two_year_transaction_period=2020&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020 (last visited June 10, 2020).

- \$111,215 to the Greenbrier in West Virginia;¹⁴
- \$40,202 to the Washington Nationals and Nationals Park;¹⁵
- \$111,994 to the St. Regis Hotels in Deer Valley, Utah and Aspen, Colorado;¹⁶ and
- \$62,832 to Charlie Palmer Steak.¹⁷

Meanwhile, according to the Center for Responsive Politics, over 200 leadership PACs have devoted less than half of their spending this cycle to federal political contributions.¹⁸

We request that the Commission amend 11 C.F.R. § 113.1(g) to clarify that the personal use prohibition applies to leadership PACs.

Petition for Rulemaking to Amend 11 C.F.R. § 104.3 to Clarify that Political Committees Must Disclose Receipts and Disbursements of Exchanged Lists (REG 2019-03)

Despite Congress’s unambiguous command that political committees report all of their receipts and disbursements, 52 U.S.C. § 30104, the Commission has issued a series of advisory opinions that improperly created a disclosure exemption for voter email or mailing lists that are “swapped” as part of a purported equal-value exchange. Most notably, in advance of the 2016 elections, the super PAC Ready for Hillary used six-figure and corporate contributions to create a valuable list of

¹⁴ Leadership PAC Disbursements to “Greenbrier,” 2019-20, FEC.GOV, https://www.fec.gov/data/disbursements/?spender_committee_designation=D&data_type=processed&recipient_name=greenbrier&two_year_transaction_period=2020&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020 (last visited June 10, 2020).

¹⁵ Leadership PAC Disbursements to “Nationals” in Washington, D.C., 2019-20, FEC.GOV, https://www.fec.gov/data/disbursements/?spender_committee_designation=D&data_type=processed&recipient_name=nationals&two_year_transaction_period=2020&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020&recipient_state=DC (last visited June 10, 2020).

¹⁶ Leadership PAC Disbursements to “Regis” in Utah or Colorado, 2019-20, FEC.GOV, https://www.fec.gov/data/disbursements/?spender_committee_designation=D&data_type=processed&recipient_name=regis&two_year_transaction_period=2020&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020&recipient_state=CO&recipient_state=UT (last visited June 10, 2020).

¹⁷ Leadership PAC Disbursements to “Charlie Palmer,” 2019-20, FEC.GOV, https://www.fec.gov/data/disbursements/?spender_committee_designation=D&data_type=processed&recipient_name=charlie+palmer&two_year_transaction_period=2020&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020 (last visited June 10, 2020).

¹⁸ Ctr. for Responsive Politics, *Leadership PACs: Percent Spent on Candidates, PACs and Parties*, OPENSECRETS.ORG, <https://www.opensecrets.org/pacs/industry.php?txt=Q03&cycle=2020&view=R> (last visited June 10, 2020).

supporters of Hillary Clinton, and then transferred that list to another super PAC, which gave the list to the Clinton campaign as part of a claimed “equal market value” exchange. Yet that high-value transaction never appeared on campaign finance reports filed with the Commission.

We request that the Commission open a rulemaking to amend 11 C.F.R. § 104.3 and clarify that the receipt or disbursement of a mailing list or other valuable information is subject to reporting, regardless of whether the list was received or disbursed as part of a purported equal-value list swap.

Petition to Promulgate Rules on Reporting of “Cromnibus” Accounts (REG 2019-04)

Pursuant to the Consolidated and Further Continuing Appropriations Act of 2015 (also known as the “Cromnibus” bill), each national party operates up to seven special purpose accounts, each with 300% of the typical contribution limit. In the 2020 election cycle, that limit is \$106,500, per account, per year, meaning that an individual can give as much as \$852,000 to either of the two major national parties this year.

Because the Commission has not promulgated any rules implementing the 2015 legislation, each national party committee reports its receipts to and disbursements from the accounts in inconsistent and insufficient ways. As a result, it is effectively impossible for the public to track the large quantities of funds flowing into and out of the accounts.

We request that the Commission proceed with a rulemaking and enact regulations that ensure consistent reporting of receipts and disbursements for these accounts.

Petition to Amend 11 C.F.R. § 104.5(c) to Close the Cycle-Change Loophole (REG 2019-12)

Nonauthorized political committees report their receipts and disbursements to the Commission on one of two schedules: (1) monthly reports, plus pre- and post-election reports for general elections only, 52 U.S.C. § 30104(a)(4)(B), or (2) quarterly reports in election years, plus pre- and post-election reports for both primary and general elections, *id.* § 30104(a)(4)(A).

Commission regulations at 11 C.F.R. § 104.5(c) allow a nonauthorized political committee to change its filing frequency once per year when it files a report. However, crafty political committees have found that a well-timed switch from

reporting on a quarterly cycle to a monthly cycle just before a pre-election report deadline can allow them to avoid disclosing receipts and disbursements until after the election is over—when the information is of less value to voters.

We request that the Commission proceed with a rulemaking and amend 11 C.F.R. § 104.5(c) to close the cycle-change loophole and ensure that quarterly filers are required to file a pre-election report.

Regulations implementing the decision in Citizens for Responsibility and Ethics in Washington v. FEC (“CREW”), 316 F. Supp. 3d 349 (D.D.C. 2018) (REG 2018-03)

In 2018, the U.S. District Court for the District of Columbia vacated Commission rules that undermined the statutory disclosure requirements enacted by Congress: specifically, the donor disclosure requirements that attach to independent expenditures funded by non-political committees. The court in 2018 temporarily stayed its order to provide time for the FEC to issue interim regulations that comport with the statutory disclosure requirement of 52 U.S.C. § 30104(c), yet 20 months after the stay was lifted, the Commission has yet to promulgate new regulations.

Instead, the Commission issued a press release, and non-political committees that fund independent expenditures continue to keep the identities of their contributors hidden from the public. Last year, the Commission also began sending RFAs to some of these groups that had reported independent expenditures to the Commission without reporting any contributors. Yet the letters merely restated the press release while offering no further guidance,¹⁹ and many of the subsequent responses to those letters underscore the ambiguity that is being exploited in the absence of clear rules. For example, some groups responded by simply asserting, without details or evidence, that they didn’t have reportable contributions,²⁰ and

¹⁹ E.g., Request for Additional Information from FEC to Patriot Majority USA (May 10, 2019), <https://docquery.fec.gov/pdf/941/201905110300039941/201905110300039941.pdf>.

²⁰ E.g., Letter from Taking Texas to the Top to FEC (June 4, 2019), <https://docquery.fec.gov/pdf/991/201906049149877991/201906049149877991.pdf>; Letter from Patriot Majority USA to FEC (June 24, 2019), <https://docquery.fec.gov/pdf/624/201906249150349624/201906249150349624.pdf>; Letter from VoteVets.Org Action Fund to FEC (Aug. 14, 2019), <https://docquery.fec.gov/pdf/630/201908149162866630/201908149162866630.pdf>; Letter from Main Street Advocacy to FEC (June 6, 2019), <http://docquery.fec.gov/pdf/756/201906069149951756/201906069149951756.pdf>.

others incorrectly cited the vacated regulation.²¹ RFAIs and press releases are not adequate substitutes for formal rulemakings.

The Commission has published a notice of availability to revisit the definition of “contribution” at 11 C.F.R. 100.52(a), but ultimately should proceed with a rulemaking that will ensure the disclosure required by 52 U.S.C. § 30104(c).

²¹ *E.g.*, Letter from Patriot Majority USA to FEC (May 23, 2019), <https://docquery.fec.gov/pdf/120/201905239149832120/201905239149832120.pdf>; Letter from UNITE HERE TIP State & Local Fund to FEC (May 21, 2019), <https://docquery.fec.gov/pdf/948/201905219149822948/201905219149822948.pdf>; Letter from Americans for Prosperity to FEC (June 19, 2019), <https://docquery.fec.gov/pdf/535/201906199150101535/201906199150101535.pdf>.