



January 13, 2021

Dear Commissioners:

Congratulations on the restoration of the Commission's quorum. As a new year begins and the Federal Election Commission opens a new chapter, we hope that all Commissioners can work together productively to advance the agency's mission of promoting transparency and protecting the voices of voters in our democracy.

We write to draw to your attention several long-pending regulatory matters that we strongly recommend the Commission prioritize. Although this list does not cover every regulatory matter, we urge the Commission to immediately move forward on the pending rulemakings described below, each of which implicates the Commission's statutory *mandate* to administer and interpret the Federal Election Campaign Act.

As described below, the Commission should proceed with rulemakings to clarify the personal use ban's application to leadership PACs (REG 2018-02); to implement judicial decisions requiring greater transparency for spending on independent expenditures (REG 2018-03); to bring the Commission's disclaimer regulations into the digital age (REG 2011-02); to crack down on so-called "zombie campaigns" (REG 2018-01); to create uniform reporting for big-money "cromnibus" funds (REG 2019-04); to close list-swap reporting loopholes (REG 2019-03); and to close the cycle-change loophole that allows super PACs to game reporting schedules (REG 2019-12).

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

Nearly every member of Congress maintains a leadership PAC, and late last year, President Trump created his own leadership PAC, Save America. The Commission allows candidates and officeholders to establish leadership PACs to support other

candidates' campaigns—yet in the absence of clear rules prohibiting the use of leadership PAC funds for personal expenses, politicians from both parties have commonly used leadership PACs as slush funds.

Over the past five years, only a minority of all leadership PAC spending has gone towards contributions to other candidates or political committees. Over that same period, candidates and officeholders have used leadership PAC funds to spend millions at resorts, golf courses, and high-end restaurants; some also have used their leadership PACs to pay family members. Leadership PAC funds have been used to buy clothes at Allen Edmonds, to pay for wine tours and hunting licenses, and to cover tens of thousands of dollars of MLB, NBA, NFL, and Broadway tickets.

In 2018, the Commission published a notice of availability regarding CLC's petition to clarify that FECA's personal use ban applies to leadership PACs. While the rulemaking has been pending, this activity has continued. In the 2020 election cycle, leadership PAC funds were used to spend \$178,975 at The Greenbrier in West Virginia;<sup>1</sup> \$166,354 at the Dorado Hotel in Puerto Rico;<sup>2</sup> \$151,153 at St. Regis Hotels in Utah and Colorado;<sup>3</sup> \$94,584 at the Walt Disney World Resort and Universal Studios in Florida and California;<sup>4</sup> and \$63,409 at Charlie Palmer Steak.<sup>5</sup> Almost all of this spending occurred before mid-March of 2020, when COVID-19 preventative measures shuttered many hotels and restaurants; absent the pandemic, these totals would likely have been much higher.

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<sup>1</sup> 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](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 Jan. 11, 2021).

<sup>2</sup> 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](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 Jan. 11, 2021).

<sup>3</sup> 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](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 Jan. 11, 2021).

<sup>4</sup> 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](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 Jan. 11, 2021).

<sup>5</sup> 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](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 Jan. 11, 2021).

Aggregate spending tells only part of the story. For example, Rep. Hal Rogers used his leadership PAC, HALPAC, to pay his wife Cynthia \$72,000 over the 2020 election cycle—roughly \$3,000 per month—for “PAC Event Planning.”<sup>6</sup> The monthly payments continued in the same amounts even after the pandemic shut down most of the country; in fact, throughout 2020, HALPAC spent more on payments to Cynthia Rogers for “PAC Event Planning” than it spent on anything described as a PAC “event.”<sup>7</sup> Less than a quarter of HALPAC’s spending in the 2020 cycle has been devoted to contributions to other candidates and political committees.<sup>8</sup>

Also during the 2020 election cycle, Rep. Ron Kind’s BADGERPAC spent \$26,562 at the five-star American Club Resort in June and December of 2019.<sup>9</sup> Rep. George Holding used his leadership PAC, Conservative Roundtable, to pay \$29,396 to private membership clubs in London, New York City, and Washington, D.C.<sup>10</sup> At the same time, Conservative Roundtable has made hardly any contributions to other candidates.<sup>11</sup>

The Commission has a plain statutory mandate to make clear that the personal use ban applies to leadership PACs.

Congress has prohibited “a contribution accepted by a candidate” and “any other donation received by an individual as support for activities of the individual as a

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<sup>6</sup> HALPAC Disbursements to “Cynthia Rogers,” 2019-20, FEC.GOV, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00376038&recipient\\_name=Rogers&two\\_year\\_transaction\\_period=2020&min\\_date=01%2F01%2F2019&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00376038&recipient_name=Rogers&two_year_transaction_period=2020&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020) (last visited Jan. 7, 2021).

<sup>7</sup> HALPAC Disbursements for “Event,” Jan. 1, 2020-Dec.31, 2020, FEC.GOV, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00376038&two\\_year\\_transaction\\_period=2020&min\\_date=01%2F01%2F2020&max\\_date=12%2F31%2F2020&disbursement\\_description=event](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00376038&two_year_transaction_period=2020&min_date=01%2F01%2F2020&max_date=12%2F31%2F2020&disbursement_description=event) (last visited Jan. 7, 2021).

<sup>8</sup> OpenSecrets, HALPAC: Expenditures, CENTER FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/political-action-committees-pacs/help-america-s-leaders/C00376038/expenditures/2020> (last visited Jan. 7, 2021) (showing 24% of expenditures in 2020 were for contributions).

<sup>9</sup> BADGER PAC Disbursements to “American Club Resort,” 2019-20, FEC.GOV, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00382242&recipient\\_name=American+Club+Resort&min\\_date=01%2F01%2F2019&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00382242&recipient_name=American+Club+Resort&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020) (last visited Jan. 7, 2021).

<sup>10</sup> Conservative Roundtable Disbursements to “116 Club,” “East India Club,” “Metropolitan Club,” “Royal Automobile Club,” and “Union Club of New York,” 2019-20, FEC.GOV, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00549725&recipient\\_name=116+club&recipient\\_name=east+india+club&recipient\\_name=metropolitan+club&recipient\\_name=royal+automobile+club&recipient\\_name=union+club+of+new+york&min\\_date=01%2F01%2F2019&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00549725&recipient_name=116+club&recipient_name=east+india+club&recipient_name=metropolitan+club&recipient_name=royal+automobile+club&recipient_name=union+club+of+new+york&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020) (last visited Jan. 7, 2021).

<sup>11</sup> OpenSecrets, Conservative Roundtable: Expenditures, CENTER FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/political-action-committees-pacs/conservative-roundtable/C00549725/expenditures/2020> (last visited Jan. 7, 2021) (showing less than 3% of expenditures in 2020 were for contributions).

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, 52 U.S.C. § 30104(i)(8)(B); 11 C.F.R. § 100.5(e)(6), and thus a contribution accepted by a candidate’s leadership PAC is a “contribution accepted by a candidate” that should be subject to the statutory personal use prohibition.

Moreover, the reason that the Commission allows officeholders to establish leadership PACs is to support their duties as officeholders—specifically, so that an officeholder may “support other candidates’ campaigns”<sup>12</sup> in order “to gain support when the officeholder seeks a leadership position in Congress.”<sup>13</sup> Therefore, a contribution to an officeholder’s leadership PAC is received as support for the officeholder’s duties, and thus subject to the statutory personal use ban.

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

***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 by non-political committees. *Citizens for Responsibility and Ethics in Washington v. FEC (“CREW”)*, 316 F. Supp. 3d 349 (D.D.C. 2018). The D.C. Circuit affirmed the decision in 2020. *CREW v. FEC*, 971 F.3d 340, 343 (D.C. Cir. 2020).

When the *CREW* district court issued its decision in 2018, it 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). The FEC failed to promulgate new regulations, and instead, in October 2018, issued a press release restating the court’s decision. Today, over 26 months after the stay was lifted, the Commission has yet to adopt new regulations.

Meanwhile, non-political committees that fund independent expenditures continue to keep the identities of their contributors hidden from the public.

For example, in the third quarter of 2020—the most recent regular reporting period for non-political committees—31 non-political committees reported spending at

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<sup>12</sup> 67 FR at 35672.

<sup>13</sup> 67 FR at 78754.

least \$100,000 on independent expenditures, which together amounted to \$23.7 million.<sup>14</sup> According to CLC’s analysis of these reports, less than a quarter of that \$23.7 million was accounted for with any meaningful disclosure of contributions.<sup>15</sup> Indeed, the top-spending group, Defending Democracy Together, reported almost \$10 million in third-quarter independent expenditures yet claimed to have received no reportable contributions.<sup>16</sup>

The Commission has sent Requests for Additional Information (“RFAIs”) to some groups that reported independent expenditures without meaningful disclosure of contributors. Yet the responses to those letters underscore the problems that arise when the FEC fails to issue clear rules and to signal that those rules will be enforced.

For example, some groups have responded to the RFAIs by simply asserting, without details or evidence, that they didn’t have reportable contributions,<sup>17</sup> some

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<sup>14</sup> See Independent expenditure reports and notices (by a person or group) (Form 5) beginning Oct. 1, 2020, FEC.GOV, [https://www.fec.gov/data/filings/?data\\_type=processed&min\\_receipt\\_date=10%2F01%2F2020&form\\_type=F5](https://www.fec.gov/data/filings/?data_type=processed&min_receipt_date=10%2F01%2F2020&form_type=F5) (last visited Jan. 8, 2021). Downloading the data file from this search, filtering for October quarterly reports only, removing earlier versions of subsequently amended reports, filtering for reports that disclosed at least \$100,000 in independent expenditures, and removing one individual spender (Reid Hoffman) yielded 31 non-political committee entities that reported at least \$100,000 in third quarter independent expenditures.

<sup>15</sup> See *id.* From the downloaded data file described *supra* note 15, the 31 entities’ contributions were summed through the following method: if the contribution total in column W was less than or equal to the entity’s independent expenditure total in column AB, the contribution total in column W was used; if the column W contribution total *exceeded* the column AB total (*i.e.*, the group reported more in contributions than in independent expenditures), the column AB independent expenditure total was used in order to capture, for a given entity, how much of its third quarter spending was accounted for with contribution disclosure; finally, the reports of the entities that disclosed nonzero contribution sums were manually reviewed, and two were deemed not to have made any meaningful contribution disclosure and therefore were assigned contribution sums of zero: Gun Owners of America, Inc., which disclosed contributions only from itself, Gun Owners of America, Inc., and CatholicVote.Org, which reported “Unitemized, Unitemized” in the name field of the nominal single contribution entry it included on its report. Summing these contribution amounts produced the sum \$5.2 million in meaningful contributions disclosed, which was under a quarter of the \$23.7 million in independent expenditures disclosed.

<sup>16</sup> Defending Democracy Together, October 2020 Report of Independent Expenditures Made and Contributions Received, FEC Form 5 at 1 (filed Oct. 15, 2020), <https://docquery.fec.gov/pdf/499/202010159294154499/202010159294154499.pdf>.

<sup>17</sup> *E.g.*, Letter from Environmental Defense Action Fund to FEC (Jan. 9, 2020), <https://docquery.fec.gov/pdf/628/202001099167131628/202001099167131628.pdf>; Letter from Animal Wellness Action to FEC (Jan. 30, 2020), <https://docquery.fec.gov/pdf/068/202001309184063068/202001309184063068.pdf>; Letter from Taking Texas to the Top to FEC (June 4, 2019), <https://docquery.fec.gov/pdf/991/201906049149877991/201906049149877991.pdf>; Letter from VoteVets.Org Action Fund to FEC (Aug. 14, 2019), <https://docquery.fec.gov/pdf/630/201908149162866630/201908149162866630.pdf>.

improperly cited the vacated regulation,<sup>18</sup> and some made independent legal arguments under the statute to justify not disclosing any contributions.<sup>19</sup> Others have apparently responded to the guidance—and avoided receiving RFAIs—by adding short, generic assertions on their quarterly reports that state, for example, that “[a]s a matter of policy,” the group “does not accept funds earmarked for independent expenditure activity or for other political purposes in support or opposition to federal candidates.”<sup>20</sup>

RFAIs and press releases are not adequate substitutes for formal rulemakings. In December 2018, the Commission published a notice of availability regarding a petition to revisit the definition of “contribution” at 11 C.F.R. 100.52(a). The Commission should proceed with a rulemaking that will ensure the disclosure required by 52 U.S.C. § 30104(c).

### ***Internet Communication Disclaimers (REG 2011-02)***

For nearly a decade, the Commission has been considering a rulemaking to update its outdated digital political ad rules and to clarify how disclaimer requirements apply to digital political advertising. It is far past time that the Commission finalize digital disclaimer rules that protect voters’ statutory right to know who is trying to influence them online.

The 2020 election cycle underscored 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:

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<sup>18</sup> *E.g.*, Letter from Patriot Majority USA to FEC (May 23, 2019), <https://docquery.fec.gov/pdf/120/201905239149832120/201905239149832120.pdf>; Letter from Americans for Prosperity to FEC (June 19, 2019), <https://docquery.fec.gov/pdf/535/201906199150101535/201906199150101535.pdf>.

<sup>19</sup> *E.g.*, Letter from Big Tent Project Fund to FEC (June 11, 2020), <https://docquery.fec.gov/pdf/336/202006119239762336/202006119239762336.pdf>.

<sup>20</sup> *E.g.*, House Majority Forward, 2019 October Quarterly Report of Independent Expenditures Made and Contributions Received, FEC Form 5 at 2 (filed Oct. 15, 2019), <https://docquery.fec.gov/pdf/045/201910159164677045/201910159164677045.pdf>; House Majority Forward, Filings, 2019-2020, FEC.GOV, <https://www.fec.gov/data/committee/C90018763/?tab=filings> (last visited Jan. 9, 2021) (showing no RFAIs in the 2019-20 cycle).

- The Democratic Senatorial Campaign Committee (“DSCC”) ran ads under page names such as “Corrupt Thom Tillis,”<sup>21</sup> “Joni Ernst Isn’t On Our Side,”<sup>22</sup> and “Steve Daines Follows the Money.”<sup>23</sup>
- The National Republican Senatorial Committee (“NRSC”) ran Facebook ads attacking or promoting federal candidates under page names such as “Big Money Mark Kelly,”<sup>24</sup> “Hollywood Jon Ossoff,”<sup>25</sup> and “Too Liberal for Iowa;”<sup>26</sup>
- The Democratic Congressional Campaign Committee (“DCCC”) ran ads under page names like “2020 Priorities,”<sup>27</sup> “Dirty Money Richard Hudson,”<sup>28</sup> and “Swampy Jim Hagedorn.”<sup>29</sup>

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<sup>21</sup> Ads by “Corrupt Thom Tillis,” Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=104987704684453&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=104987704684453&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited Jan. 8, 2021).

<sup>22</sup> Ads by “Joni Ernst Isn’t On Our Side,” Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=103571278142168&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=103571278142168&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited Jan. 8, 2021).

<sup>23</sup> Ads by “Steve Daines Follows the Money,” Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=109894877501594&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=109894877501594&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited Jan. 8, 2021).

<sup>24</sup> Ads by “Big Money Mark Kelly,” Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=107038924352529&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=107038924352529&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited Jan. 8, 2021).

<sup>25</sup> Ads by “Hollywood Jon Ossoff,” Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=107867817669170&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=107867817669170&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited Jan. 8, 2021).

<sup>26</sup> Ads by “Too Liberal for Iowa,” Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=113926707149172&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=113926707149172&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited Jan. 8, 2021).

<sup>27</sup> Ads by “2020 Priorities,” Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=108464460953715&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=108464460953715&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited Jan. 8, 2021).

<sup>28</sup> Ads by “Dirty Money Richard Hudson,” Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=106119737934606&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=106119737934606&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited Jan. 8, 2021).

<sup>29</sup> Ads by “Swampy Jim Hagedorn,” Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=108252177711618](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=108252177711618) (last visited Jan. 8, 2021).

- The Trump campaign ran ads under page names such as “Black Voices for Trump”<sup>30</sup> and “Trump for Pennsylvania,”<sup>31</sup> and the Trump Make America Great Again Committee ran ads under page names like “Women for Trump”<sup>32</sup> and “Evangelicals for Trump.”<sup>33</sup>
- The Democratic super PACs Priorities USA Action and SMP jointly ran ads under page names such as “One North Carolina”<sup>34</sup> and “We the People 2020.”<sup>35</sup>

CLC could identify that these ads were paid for by political committees because Facebook has voluntarily adopted its own limited disclaimer requirements. 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, a national party committee, or a presidential campaign.

Furthermore, only a handful of platforms have adopted voluntary disclaimer requirements and created public ad archives that make it possible to monitor compliance. Given that the Commission still has not finalized rules for digital political ad disclaimers, there is reason to suspect that similar communications are being run on other platforms without disclaimers, leaving voters in the dark about who paid for the ads.<sup>36</sup>

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<sup>30</sup> Ads by “Black Voices for Trump,” Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=607626319739286&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=607626319739286&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited Jan. 8, 2021).

<sup>31</sup> Ads by “Trump for Pennsylvania,” Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=102940748211235&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=102940748211235&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited Jan. 8, 2021).

<sup>32</sup> Ads by “Women for Trump,” Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=706716899745696&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=706716899745696&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited Jan. 8, 2021).

<sup>33</sup> Ads by “Evangelicals for Trump,” Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=100560711450721&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=100560711450721&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited Jan. 8, 2021).

<sup>34</sup> Ads by “One North Carolina,” Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=111201130682281&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=111201130682281&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited Jan. 8, 2021).

<sup>35</sup> Ads by “We the People 2020,” Facebook Ad Library, FACEBOOK, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=108103774350322&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=108103774350322&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped) (last visited Jan. 8, 2021).

<sup>36</sup> See, e.g., BRENDAN FISCHER, MAGGIE CHRIST & SOPHIE GONSALVES-BROWN, HOW THE 2020 ELECTIONS REMAIN VULNERABLE TO SECRET ONLINE INFLUENCE, CAMPAIGN LEGAL CTR. (Aug. 2020)



As of today, nearly a decade has passed since the Commission first published its notice of availability on REG 2011-02. 1,193 days have passed since the Commission voted to solicit a second round of public comments on these digital political ad disclaimer rules. 1,042 days have passed since the Commission published competing sets of draft rules in the Federal Register. 931 days have passed since the Commission held two days of hearings on the competing draft rules. 870 days have passed since CLC met with Commissioners to stress the urgency of finalizing this rulemaking. 573 days have passed since the Commission informally released for comment two proposed regulations.

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

Commission regulations clearly prohibit both current and former candidates and officeholders from converting campaign funds to personal use. However, evidence has accumulated of a disturbing trend where lawmakers leave office with sizeable campaign chests, and then use those leftover campaign funds in ways that appear to constitute personal use.<sup>37</sup> Other evidence shows how former lawmakers-turned-foreign agents have used their leftover campaign funds to advance their lobbying careers and the interests of their foreign clients: a CLC investigation identified multiple former officeholders who have used leftover funds to make political contributions to the same members of Congress they were lobbying on behalf of their foreign clients.<sup>38</sup>

CLC filed a rulemaking petition in 2018 asking the Commission to clarify the application of the personal use ban to former candidates. The Commission then announced that it would more closely review potential personal use by “dormant committees” of former candidates who did not campaign or hold office in the previous election cycle.<sup>39</sup> Beginning in 2019, the Commission began sending RFAIs

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<https://campaignlegal.org/sites/default/files/2020-08/08-18-20%20Post-Primary%20Digital%20Ad%20Report%20%28330pm%29.pdf> (documenting how only a fraction of many FEC-reported digital independent expenditures appeared on Facebook, Google, or other platforms that have voluntarily adopted disclaimer requirements and created digital ad archives).

<sup>37</sup> See, e.g., Christopher O'Donnell, Eli Murray, Connie Humburg & Noah Pransky, *Zombie Campaigns*, TAMPA BAY TIMES/WTSP (Jan. 31, 2018), <https://projects.tampabay.com/projects/2018/investigations/zombie-campaigns/spending-millions-after-office/>.

<sup>38</sup> 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>.

<sup>39</sup> Press Release, FEC, Commission Will Review Dormant Committees' Use of Campaign Funds (Apr. 26, 2018), <https://www.fec.gov/updates/commission-will-review-dormant-committees-use-campaign-funds/>.

to some dormant committees. Yet in response to those RFAIs, many committees have offered little explanation for apparently personal expenditures, few appear to have changed their behavior, and the opportunities for abuse remain open—and are only expanding as more members of Congress retire and keep their old campaign accounts open. Indeed, 68 members of the 116th Congress retired, sought other office, or were defeated in 2020 alone.<sup>40</sup>

We urge the Commission to complete this rulemaking and clarify the boundaries between permissible and impermissible uses of leftover campaign 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.

### ***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”), 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 was \$106,500, per account, per year, meaning that an individual could give as much as \$852,000 to either of the two major national parties in 2019 and 2020.

However, it is effectively impossible for the public to track the large quantities of funds flowing into and out of the accounts because the Commission has not promulgated any reporting rules implementing the 2014 legislation—it only issued “interim reporting guidance” in February 2015.<sup>41</sup>

In the absence of clear guidance, each national party committee reports its receipts to and disbursements from the accounts in inconsistent and insufficient ways, which makes data sorting and analysis nearly impossible. Party committees are inconsistent in *where* they report the transactions on their reports—in some cases in the memo section, in other cases the purpose section, and still in other cases in the “receipt for” / “disbursement for” sections—and *how* the account is described.

For example, on the recent post-general reports filed in December 2020:

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<sup>40</sup> Ctr. for Responsive Politics, *116th Congress Casualty List*, OPENSECRETS.ORG, <https://www.opensecrets.org/members-of-congress/outgoing-members-list> (last visited January 12, 2021).

<sup>41</sup> Press Release, FEC, *FEC issues interim reporting guidance for national party accounts (2015)*, (Feb. 18, 2015), <https://www.fec.gov/updates/fec-issues-interim-reporting-guidance-for-national-party-accounts/>.

- The Republican National Committee (“RNC”) designated special-purpose account disbursements through memo text entries like “headquarters account” and “legal proceedings account.”<sup>42</sup>
- The National Republican Senate Committee and the National Republican Congressional Committee (“NRCC”) designated headquarters account disbursements with “HQ ACCT” notations in the disbursement purpose fields.<sup>43</sup>
- The Democratic Congressional Campaign Committee added “headquarters” at the beginning of purpose descriptions for apparent disbursements from its headquarters account.<sup>44</sup>
- The Democratic National Committee (“DNC”) designated headquarters and legal proceedings account disbursements by checking the “other” box in the election designation section of the disbursement entry, and then writing “Headquarters Account” or “Legal” in the field for election specification.<sup>45</sup>
- The Democratic Senatorial Campaign Committee reported headquarters account disbursements by noting “Headquarters Account” at the beginning of the disbursement purpose description.<sup>46</sup>

In 2019, the Commission published a notice of availability regarding a petition from CLC and the Center for Responsive Politics to enact regulations that ensure consistent reporting of receipts and disbursements for these accounts. We request that the Commission proceed with such a rulemaking to ensure the statutorily mandated transparency of all national party funds.

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<sup>42</sup> *E.g.*, Republican National Committee, 2020 Post-General Report, FEC Form 3X at 684,550 (filed Dec. 3, 2020), <https://docquery.fec.gov/cgi-bin/fecimg/?202012039339556380>; *id.* at 684,561, <https://docquery.fec.gov/cgi-bin/fecimg/?202012039339556391>; *id.* at 683,999, <https://docquery.fec.gov/cgi-bin/fecimg/?202012039339555829>.

<sup>43</sup> *E.g.*, NRCC, 2020 Post-General Report, FEC Form 3X at 126,697 (filed Dec. 3, 2020), <https://docquery.fec.gov/cgi-bin/fecimg/?202012039338870907>; NRSC, 2020 Post-General Report, FEC Form 3X at 354,972 (filed Dec. 3, 2020), <https://docquery.fec.gov/cgi-bin/fecimg/?202012039340388780>.

<sup>44</sup> *E.g.*, DCCC, 2020 Post-General Report, FEC Form 3X at 82,325 (filed Dec. 3, 2020), <https://docquery.fec.gov/cgi-bin/fecimg/?202012039340544874>.

<sup>45</sup> *E.g.*, DNC Services Corp/Democratic National Committee, 2020 Post-General Report, FEC Form 3X at 82,608 (filed Dec. 3, 2020), <https://docquery.fec.gov/cgi-bin/fecimg/?202012039342660589>; *id.* at 82,624, <https://docquery.fec.gov/cgi-bin/fecimg/?202012039342660605>.

<sup>46</sup> *E.g.*, DSCC, 2020 Post-General Report, FEC Form 3X at 157,344 (filed Dec. 3, 2020), <https://docquery.fec.gov/cgi-bin/fecimg/?202012039339981443>.

***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 have 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 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.

In 2019, the Commission published a notice of availability regarding CLC’s petition to close this list swap loophole. We request that the Commission open a rulemaking to amend 11 C.F.R. § 104.3 to conform to FECA’s requirement 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 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.

In 2019, following a CLC rulemaking petition, the Commission published a notice of availability to close the cycle-change loophole, and we request that the Commission

proceed with a rulemaking and amend 11 C.F.R. § 104.5(c) to ensure that quarterly filers are required to file a pre-election report.

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Campaign Legal Center looks forward to the opportunity to assist the Commission as it fulfills its statutory mandate and makes progress on these important regulatory measures. Certainly, we would rather support the Commission than litigate against it.

Respectfully submitted,

Adav Noti  
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