

July 2, 2021

Marc Erik Elias
MElias@perkinscoie.com

Federal Election Commission
Attn: Lisa J. Stevenson, Acting General Counsel
1050 First Street NE
Washington, DC 20463

Re: Rulemaking Petition on Candidate Salaries

Dear Ms. Stevenson:

We submit this comment on behalf of DCCC (the “Democratic Congressional Campaign Committee”) and DSCC (the “Democratic Senatorial Campaign Committee”) (together, the “Committees”) regarding the Federal Election Commission’s (the “FEC’s” or the “Commission’s”) Notification of Availability of a petition for rulemaking on candidate salaries and permissible uses of campaign funds. DCCC and the DSCC are national committees of the Democratic Party dedicated to electing Democratic members to the United States House of Representatives and the United States Senate, respectively. The Committees appreciate the Commission’s consideration of this rulemaking petition, and thank former candidate, Nabilah Islam, for sharing her story with the Commission to advance policies which encourage greater diversity among candidates for elected office.

On behalf of their members and prospective Democratic candidates, the Committees urge the FEC to open a rulemaking to reevaluate the existing regulations on candidate salaries and permissible uses of campaign funds in light of the modern-day political climate. In the Committees’ experience, many or most federal candidates now campaign full time, foregoing any other job to focus on seeking election. This means that under the Commission’s current rules, candidates with sufficient wealth to be able to forego any income from the start of the campaign all the way until the filing deadline for access to the primary election ballot have a significant advantage over their opponents of less personal means. In some states, as Ms. Islam points out, this is as late as about two months before the primary. It is no wonder that under this framework many prospective candidates—especially women, traditionally underrepresented minorities, and candidates from less-affluent backgrounds—face difficulties in being able to afford to run for office.

Despite the changing demands on federal candidates, the Commission has not altered its rules on candidate salaries since 2002.¹ Under the existing rules, the Committees find that working-class candidates and those from traditionally underrepresented backgrounds are often unable to run for office. These individuals cannot afford to forego their salaries or wages for months before the primary filing deadlines or pay for non-employer-provided healthcare. The choice then is either to not run at all, or to run with one hand tied behind their back against an opponent that is able to dedicate their full time to the campaign. Unsurprisingly, many such potential candidates often decline to run for office altogether.

Further, the current rules make it more difficult for candidates from non-traditional backgrounds to run for office because they cap candidate salaries at *the lesser of* the candidate's previous salary or the minimum salary for the federal office which the candidate seeks.² This means candidates who have spent the previous year as homemakers or caretakers of young children or of ailing family members, are prohibited from drawing a salary at all.

The Committees believe that the FEC can use this rulemaking effort to promote and encourage diversity among candidates for federal office. Putting lower income candidates on an even playing field with their opponents will benefit the country by paving the way for leaders who understand the struggles faced by so many Americans. The Committees understand and appreciate the FEC's interest in preventing the misuse of campaign funds. However, this laudable goal and the FEC's commitment to preventing fraud or misuse of campaign funds are not mutually exclusive. The Commission's 2002 rulemaking reflected a commitment to both goals, and we are confident that the FEC can strike a similar balance in any new rulemaking on this matter.

Over the last 19 years, the demands of a modern campaign have changed. The Committees ask simply for a rule that reflects our new reality and gives candidates of all backgrounds a chance to seek elected office without setting aside their wellbeing or that of their families. The FEC can certainly accomplish this goal without creating an opportunity for self-enrichment, and we look forward to discussing specific ideas for striking that balance as part of a rulemaking on this topic.

In our great American democracy, income should never be a barrier to run for federal office. We urge the Commission to open a rulemaking to ensure individuals from all backgrounds can have the opportunity to serve the public in Congress.

¹ See Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,970 (Dec. 13, 2002) (codified at 11 C.F.R. § 113.1).

² 11 C.F.R. § 113.1(g) (emphasis added).

Acting General Counsel
July 2, 2021
Page 3

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'M. Elias', with a stylized flourish at the end.

Marc E. Elias
Rachel L. Jacobs
Jacquelyn K. Lopez
Shanna M. Reulbach

Counsel to DCCC and DSCC