

March 6, 2023

BY E-MAIL DELIVERY

Attn: Amy L. Rothstein, Assistant General Counsel for Policy
Federal Election Commission
1050 First Street NE
Washington, DC 20463

Re: REG 2021-01, Candidate Salaries

Dear Ms. Rothstein:

We submit the following comment on behalf of the DSCC and DCCC (the “Parties”) regarding the Federal Election Commission (the “Commission”) Notice of Proposed Rulemaking (“NPRM”) 2021-01 on candidate salaries and benefits. The strength of our American democracy depends on the ability of all Americans, and not just the ultra-wealthy, to run for elected office. The Parties are grateful to the Commission for the effort to review existing regulations in furtherance of this vital goal while also considering important safeguards to protect against the personal use of campaign funds.

I. Compensation Cap

The Parties feel strongly that current Commission regulations that cap the amount of compensation a candidate may receive disadvantage candidates that do not come from a wealthy background and therefore require amendment. At the same time, the Parties recognize the need for a compensation cap to guard against the misuse of donor funds for personal enrichment.

The Parties encourage the Commission to adopt a version of Alternative A, which allows a candidate to receive compensation from their campaign provided that the amount of compensation paid to a candidate is capped, when calculated at the daily rate, at a specific salary threshold. The Parties support a cap that does not exceed 50% of the minimum annual salary paid to a Federal officeholder holding the Federal office that the candidate seeks. The Parties would also support a compensation cap tied to the minimum annual salary of such Federal officeholder.

The Parties oppose tying the cap on compensation to the minimum wage. Alternative Options B and C, which are based on minimum wage standards, neither compensate candidates for the

services demanded by a modern political campaign nor reasonably account for the opportunity cost incurred by a candidate running for office. The Parties also do not support alternatives D-F, rejecting the premise that a candidate with a recent history of low income, whether due to the candidate's own career choices or external circumstances, should receive less compensation as a candidate.

II. Compensation Definition

The Parties strongly agree with several of the NPRM comments that a campaign's inability to pay health insurance premiums for its candidate is incompatible with the U.S.'s employer-dominated healthcare system and creates a cost prohibitive environment to seeking office.

The Parties support exempting the cost of certain benefits provided to a candidate from the cap on compensation. Including the cost of essential benefits like health insurance in the compensation cap is not necessary to guard against personal use and is inconsistent with how salary calculations are done not only for Members of Congress, but further for the average American who receives employer-provided health care. The Commission acknowledges that the payment of a salary to a candidate is "in return for the candidate's services provided to the campaign and the necessity of that salary would not exist irrespective of the candidacy."¹ The same logic applies to a campaign providing standard employee-related benefits to a candidate.

The legitimate concerns of abuse, which led to the Commission originally adopting salary maximums,² can be restrained in less burdensome ways than a monetary cap on benefits. For instance, the Parties support the general principles in Compensation Definition Alternative B: candidate employee-related benefits should match the benefits the campaign provides its staff, with the exception of a separate allowance for dependent care or elder care expenses incurred as a direct result of the candidate's campaign activities that would not have existed but for the campaign. To be clear, the Parties do not support a definition of compensation that would supersede prior advisory opinions permitting federal officeholders to pay for childcare expenses directly resulting from campaign activity.³ The Parties also note that the reporting requirements provide a built-in political check on excessive candidate benefits by requiring public disclosure of any benefit payments made to the candidate.

III. Eligibility Period

The Parties support proposed 11 C.F.R. § 113.1(g)(6)(v) which reasonably extends the period of compensation eligibility to encompass the entire candidacy process from the filing of the Statement of Organization to the candidate being sworn in or otherwise ceasing to be a

¹ 67 FR 76962, 76972 (Dec. 13, 2002), <https://www.govinfo.gov/content/pkg/FR-2002-12-13/pdf/02-31521.pdf#page=17>.

² *Id.*

³ Advisory Opinion 2022-07 (Swalwell); Advisory Opinion 1995-42 (McCrery).

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candidate. The current regulation's primary access deadline has no correlation with when a candidate begins campaigning and the deadline varies significantly by state. The proposed eligibility period will reduce the financial hardship that many prospective candidates currently face when deciding on a run for public office.

Sincerely,

A handwritten signature in black ink, appearing to read "Jacquelyn Lopez". The signature is fluid and cursive, with the first name being more prominent.

Jacquelyn K. Lopez
Rachel L. Lopez
Jonathan A. Peterson
Zachary P. Morrison
Counsel to DSCC and DCCC