



Democracy 21 Model Bill

Model Bill to Shut Down Individual-Candidate Super PACs and Prevent Coordination Between Outside Spending Groups and Candidates

March 19, 2015

The explosive growth of individual-candidate Super PACs is one of the most dangerous developments to result from the Supreme Court's decision in *Citizens United*. These Super PACs allow donors and the candidate supported by the Super PACs to circumvent and eviscerate candidate contribution limits.

The Model Bill set forth below has been prepared by Democracy 21 for use at the state and local levels. The bill would shut down individual-candidate Super PACs and prevent coordination between outside spending groups and candidates.

The Model Bill builds on proposals developed by Democracy 21. The proposals were incorporated into legislation that was introduced by Representatives David Price (D-NC) and Chris Van Hollen (D-MD) in 2012 as part of the more comprehensive Empowering Citizens Act (H.R. 6448). The Act contained provisions to repair the presidential public financing system, create a small donor, matching funds public financing system for congressional races, shut down individual-candidate Super PACs and strengthen the rules prohibiting coordination between outside spending groups and candidates.

The Empowering Citizens Act was reintroduced by Price and Van Hollen in 2013 (H.R. 270) and reintroduced by the Representatives in January 2015 (H.R.424).

In January 2015 Representatives Price and Van Hollen also introduced the Stop Super PAC-Candidate Coordination Act (H.R.425), which contains only the individual-candidate Super PAC and coordination provisions of the comprehensive Empowering Citizens Act. The provisions in the Democracy 21 model bill are virtually the same as the provisions in H.R.425.

For further information about the model bill, contact Democracy 21 at info@democracy21.org.

Model Bill

The model bill assumes there are provisions in state or local law that define “contribution” and “expenditure” in terms generally comparable to the definitions of those terms in federal law. 52 U.S.C. §§30101(8),(9). If those provisions do not exist in state or local law, then those definitions need to be added to the model bill

1. The following should be added at the end of the provision in the law defining “contribution:”

(x) any payment made by any person (other than a candidate, an authorized committee of a candidate, or a political committee of a political party) for a coordinated expenditure (as such term is defined in section XXX)'.

2. The following new section xxx should be added to the law:

SEC. XXX. PAYMENTS FOR COORDINATED EXPENDITURES.

(a) Coordinated Expenditures-

(1) IN GENERAL- For purposes of section xxx, the term 'coordinated expenditure' means—

(A) any expenditure, or any payment for a covered communication described in subsection (d), which is made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, an authorized committee of a candidate, a political committee of a political party, or agents of the candidate or committee, as defined in subsection (b); or

(B) any payment for any communication which republishes, disseminates, or distributes, in whole or in part, any video or broadcast, or any written, graphic, or other form of campaign material, prepared by the candidate or committee or by agents of the candidate or committee (including any excerpt or use of any video or written, graphic, or other form of campaign material).

(2) EXCEPTION FOR PAYMENTS FOR CERTAIN COMMUNICATIONS- A payment for a communication (including a covered communication described in subsection (d)) shall not be treated as a coordinated expenditure under this subsection if—

(A) the communication appears in a news story, commentary, or editorial distributed through the facilities of

any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate; or

` (B) the communication constitutes a candidate debate or forum conducted pursuant to agency regulations, or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

` (b) Coordination Described-

` (1) In General- For purposes of this section, a payment is made 'in cooperation, consultation, or concert with, or at the request or suggestion of,' a candidate, an authorized committee of a candidate, a political committee of a political party, or agents of the candidate or committee, if the payment, or a communication for which the payment is made, is not made entirely independently of the candidate, committee, or agents. For purposes of the previous sentence, a payment or communication not made entirely independently of a candidate, an authorized committee of a candidate, a political committee of a political party, or agents of the candidate or committee includes any payment or communication made pursuant to any general or particular understanding with, or pursuant to any communication with, the candidate, committee, or agents about the payment or communication.

` (2) NO FINDING OF COORDINATION BASED SOLELY ON SHARING OF INFORMATION REGARDING LEGISLATIVE OR POLICY POSITION- For purposes of this section, a payment shall not be considered to be made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate or committee, solely on the grounds that the person or the person's agent engaged in discussions with the candidate or committee, or with agents of the candidate or committee, regarding that person's position on a legislative or policy matter (including urging the candidate or committee to adopt that person's position), so long as there is no communication between the person and the candidate or committee, or agents of the candidate or committee, regarding the candidate's or committee's campaign advertising, message, strategy, policy, polling, allocation of resources, fundraising, or other campaign activities.

` (3) NO EFFECT ON PARTY COORDINATION STANDARD- Nothing in this section shall be construed to affect the determination of coordination between a candidate and a political committee of a political party for purposes of section xxx.

`(4) NO SAFE HARBOR FOR USE OF FIREWALL- A person shall be determined to have made a payment in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate or committee, in accordance with this section without regard to whether or not the person established and used a firewall or similar procedures to restrict the sharing of information between individuals who are employed by or who are serving as agents for the person making the payment.

`(c) Payments by Coordinated Spenders for Covered Communications-

`(1) PAYMENTS MADE IN COOPERATION, CONSULTATION, OR CONCERT WITH, CANDIDATES- For purposes of subsection (a)(1)(A), if the person who makes a payment for a covered communication, as defined in subsection (d), is a coordinated spender under paragraph (2) with respect to the candidate as described in subsection (d)(1), the payment for the covered communication is made in cooperation, consultation, or concert with the candidate.

`(2) COORDINATED SPENDER DEFINED- For purposes of this subsection, the term `coordinated spender' means, with respect to a candidate or an authorized committee of a candidate, a person (other than a political committee of a political party) for which any of the following applies:

`(A) During the 4-year period ending on the date on which the person makes the payment, the person was directly or indirectly formed or established by or at the request or suggestion of, or with the encouragement of, the candidate (including an individual who later becomes the candidate) or committee or agents of the candidate or committee, including with the approval of the candidate or committee or agents of the candidate or committee.

`(B) The candidate or committee or agents of the candidate or committee solicits funds, appears at fundraising events or engages in other fundraising activity on the person's behalf during the election cycle involved, including by providing the person with names of potential donors or other lists to be used by the person in engaging in fundraising activity, regardless of whether the person pays fair market value for the names or lists provided. For purposes of this subparagraph, the term `election cycle' means with respect to a candidate for State office, the period beginning on the day after the date of the most recent general election for that office (or, if the general election resulted in a runoff election, the date of the runoff election) and ending on the date of the

next general election for that office. (or, if the general election resulted in a runoff election, the date of the runoff election).”

`(C) The person is established, directed, or managed by the candidate or committee or by any person who, during the 4-year period ending on the date on which the person makes the payment, has been employed or retained as a political, campaign, media, or fundraising adviser or consultant for the candidate or committee or for any other entity directly or indirectly controlled or managed by the candidate or committee, or has held a formal position for the candidate or committee.

(D) The person has retained the professional services of any vendor who, during the two year period ending on the date on which the person makes the payment, has provided, or is providing, professional services relating to the campaign to the candidate or committee, without regard to whether the vendor has used a firewall. For purposes of this subparagraph, the term `professional services' includes any services in support of the candidate's or committee's campaign activities, including advertising, message, strategy, policy, polling, allocation of resources, fundraising, and campaign operations, but does not include accounting or legal services.

`(E) The person is established, financed, directed, or managed by a member of the immediate family of the candidate, or the person or any officer or agent of the person has had more than incidental discussions about the candidate's campaign with a member of the immediate family of the candidate. For purposes of this subparagraph, the term `immediate family' has the meaning given such term in section 9004(e) of the Internal Revenue Code of 1986.

(F) The person is established, financed, maintained or controlled by a political committee of the political party of the candidate and the person is not subject to the contribution limits that apply to the political committee of the party.

`(d) Covered Communication Defined--

`(1) IN GENERAL- For purposes of this section, the term `covered communication' means, with respect to a candidate or an authorized committee of a candidate, a public communication (as defined in subsection (e)) which—

(A) expressly advocates the election of the candidate or the defeat of the candidate's opponent (or contains the functional equivalent of express advocacy); or

`(B) promotes or supports the candidate, or attacks or opposes an opponent of the candidate (regardless of whether the communication expressly advocates the election or defeat of a candidate or contains the functional equivalent of express advocacy); or

`(C) refers to the candidate or an opponent of the candidate but is not described in subparagraph (A) or subparagraph (B), but only if the communication is disseminated during the applicable election period.

`(2) APPLICABLE ELECTION PERIOD- In paragraph (1)(C), the `applicable election period' with respect to a communication means—

(A) in the case of a communication which refers to a candidate in a general, special, or runoff election, the 120-day period which ends on the date of the election; or

(B) in the case of a communication which refers to a candidate in a primary or preference election, or convention or caucus of a political party that has authority to nominate a candidate, the 60-day period which ends on the date of the election or convention or caucus.

(e) Public Communication Defined – In this section, the term `public communication' means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.

(f) Penalty. –

(1) Determination of Amount.--- Any person who knowingly and willfully commits a violation of this Act by making a contribution which consists of a payment for a coordinated expenditure shall be fined an amount equal to the greater of—

(A) in the case of a person who makes a contribution which consists of a payment for a coordinated expenditure in an amount exceeding the applicable contribution limit under this Act, 300 percent of the amount by which the amount of the payment made by the person exceeds such applicable contribution limit; or

(B) in the case of a person who is prohibited under this Act from making a contribution in any amount, 300 percent of the amount of the payment made by the person for the coordinated expenditure.

(2). Joint and Several Liability.--- Any director, manager or officer of a person who is subject to a penalty under paragraph (1) shall be jointly and severally liable for any amount of such penalty that is not paid by the person prior to the expiration of the 1-year period which begins on the date the penalty is imposed or the 1-year period which begins on the date of the final judgment following any judicial review of the imposition of the penalty, whichever is later.