May 27, 2016

Matthew S. Petersen
Chairman
Federal Election Commission
999 E Street NW
Washington, DC 20463

Steven T. Walther
Vice Chairman
Federal Election Commission
999 E Street NW
Washington, DC 20463

Ellen L. Weintraub
Commissioner
Federal Election Commission
999 E Street NW
Washington, DC 20463

Ann M. Ravel
Commissioner
Federal Election Commission
999 E Street NW
Washington, DC 20463

Lee E. Goodman
Commissioner
Federal Election Commission
999 E Street NW
Washington, DC 20463

Caroline C. Hunter
Commissioner
Federal Election Commission
999 E Street NW
Washington, DC 20463

Dear Commissioners:

In December 2014, as part of the Omnibus Appropriations Act, Congress created three new "separate, segregated" political party accounts with a 2016 contribution limit of $100,200 per account, per individual, per year, in addition to other permissible party contributions.[1]

According to the statutory language, one account is to be used "solely to defray expenses incurred with respect to a presidential nomination convention…." 52 U.S.C. § 30116(a)(9)(A). A second account is to be used "to defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings." *Id.* at (9)(C). And the third account is to be used "solely to defray expenses incurred with respect to the construction, purchase, renovation, operation, and furnishing of one or more headquarters buildings of the party," or to repay loans or restore funds to defray such expenses. *Id.* at (9)(B).

Thus, the funds raised for these accounts cannot be used for campaign-related expenditures.

The Federal Election Campaign Act, 52 U.S.C. § 30101, et. seq., requires the Commission to "administer, seek to obtain compliance with, and formulate policy with respect to this Act." 52 U.S.C. § 30106(b)(1). Nevertheless, in the more than 17 months since the

[1] Consolidated and Further Continuing Appropriations Act, 2015, Pub.L. No. 113-235, 128 Stat. 2130, 2772 (2014); *see also* 52 U.S.C. §§ 30116(a)(9) (party accounts), 30116(a)(1)(B) (contribution limit) and 30116(c) (increases on limits based on increases in price index).

enactment of these provisions, the Commission has failed to adopt regulations to administer or define the scope or applicability of the new party contribution limits. There is no excuse for this failure. In January 2015, less than a month after the Omnibus bill was enacted, we filed comments in response to the *McCutcheon* ANPRM and said, "In order to prevent abuses of these new restricted-use funds, the Commission should promulgate regulations specifying and limiting the permissible uses of these new funds, prohibiting transfers of these funds between party accounts, and requiring detailed disclosure of these funds."[2] We submitted four pages of detailed commentary and suggestions for regulation of these new accounts.

In October 2015—10 months after enactment of the statute—the Office of General Counsel prepared an "Outline of Draft NPRM" that would begin the process to start a rulemaking to implement these statutory provisions. Two months later, in December 2015, the Commission discussed the draft "outline" at a meeting, but took no action. At the Commission's meeting last week, on May 19, 2016, Commissioner Weintraub again raised the issue and asked the Commission to undertake a rulemaking, but again the Commission took no action. Some Republican Commissioners expressed solicitude for the "burden" it would impose on party lawyers to have to submit comments in a rulemaking at this point in the election calendar. Ultimately, the chair made a vague comment that he would "look at the outline soon" and perhaps revisit the issue "in a month or two."

There is no question that the Commission could have enacted new regulations in more than enough time for the rules to be effective for this election cycle. However, the Commission did not do so, and it was clear from the discussion at the May 19th meeting that, having waited 17 months since the law was enacted, no Commissioner now thinks that rules can be adopted in time to apply in the 2016 election.

Meanwhile, recent published reports reveal plans to improperly use the new party accounts for campaign purposes. According to an *Associated Press* story last week, the Trump campaign has identified 15 states where it plans to install state directors by the end of May. "The plan will be subsidized, at least in part, by the Republican Party's new 'building fund,' a lightly regulated pool of money that can draw donations of more than $100,000 from individual donors."[3] The article explains that the Trump campaign "envisions a small, but significant presence in key states that includes a local state director, communications director, events coordinator and a coalitions director, with additional campaign functions running through the RNC." According to the article:

> To pay for much of the expansion, Trump's strategists said he expects to draw heavily from a new fundraising agreement with the Republican National Committee, which is expected to be signed in the coming days. . . . [A] key piece of Trump's pact, according to his strategists, will be the RNC's building fund. Congress opened up this new line of money for the parties in a larger spending

---

[2] Comments of the Campaign Legal Center and Democracy 21 re REG 2014-01: Earmarking, Joint Fundraising, Disclosure and Other Issues (*McCutcheon*) (January 15, 2015) at 15.

[3] Steve Peoples, "Trump ramping up national team to expand battleground states," *Associated Press* (May 17, 2016).

bill at the end of 2014, and Trump is set to become the first presidential candidate to test its legal boundaries.

We do not now know whether the Trump campaign and the RNC will ultimately use money from the restricted party building fund account to pay for Mr. Trump's state campaign staff. To do so would flagrantly violate the law. Of course, that will likely not stop party officials from arguing that the absence of regulatory guidance from the Commission means that they cannot be held accountable for illegally using the funds. And despite the fact that there would be no legal basis for this claim, party officials might assume the argument would be adopted by three Commissioners as sufficient to block any attempt at enforcement.

This would not surprise any observer of the agency. As Commissioner Weintraub pointed out at last week's meeting, a May 19, 2016 story about the new party accounts in *The Washington Post* quoted a well-known election lawyer from a major Washington, DC law firm as saying, "We are in an environment in which there has been virtually no enforcement of the campaign finance laws, so it would arguably be political malpractice not to make maximum uses of these accounts."[4]

Reform organizations and the press have pointed out the precipitous decline in this agency's enforcement of the law, and the consequential growth of lawlessness that has methodically undermined the campaign finance laws. Now a Republican practitioner also has stated in *The Washington Post* that there has been "virtually no enforcement" of the law and that, as a result, when it comes to these party accounts, pretty much anything goes—indeed it would be "malpractice" to not advise clients to maximize the spending out of these accounts.

Both parties are using these new restricted party accounts to turbo-charge their joint funding efforts, including fundraising with their respective presidential candidates. A recent *Washington Post* story describes an RNC joint fundraising account that combines 2015 and 2016 donations to all three new restricted accounts—legal, convention and headquarters—with donations to the general party fund, for a single donation of $668,000 per donor. For those who are less well off, the RNC has another donor "tier" that combines a donation to each of the three new party accounts with a donation to the national party, 11 state parties and the Trump campaign, for a total contribution of $449,400. The DNC is doing much the same thing. That party has a donor package combining 2015 and 2016 donations to the party convention accounts and building accounts, with donations to the general party account, for a total contribution of $467,600.[5]

---

[4] M. Gold, "Trump's deal with the RNC shows how big money is flowing back to the parties," *The Washington Post* (May 19, 2016).

[5] *See* M. Gold, "Here's how a wealthy Trump supporter could give $783,400 to support his campaign and the RNC, *The Washington Post* (May 19, 2016). Although the *Washington Post* report states that the joint fundraising committees are collecting contributions to the new party accounts applicable to 2015 contribution limits as well as 2016 limits, any such back-dating of contributions to these accounts would be illegal.

It is no surprise that the parties are seeking to utilize these new fundraising accounts to provide wealthy donors with additional ways to support the presidential candidates. But that is all the more reason that the agency should have ensured that rules would be in place to help guard against obvious opportunities to abuse these accounts. The fact that the agency has not, over 17 months, been able to write simple regulations to implement only three paragraphs of statutory text is inexplicable and has no conceivable justification. By contrast, and by congressional directive, the Commission in 2002 took just 90 days after enactment to write comprehensive regulations to implement all of the Title I (soft money) provisions of BCRA. That was a much more daunting task and it was accomplished in a fraction of the time that was available here.

The discussion at last week's meeting made clear that the Commission has given up on having rules in place for the frenzy of raising and spending the huge donations that are already flowing into these new party accounts**.** With or without regulations in place, however, it is still the Commission's ongoing responsibility to ensure that the statutory restrictions on these accounts are followed. Therefore, we urge the Commission to issue interim regulations or otherwise make clear that the statutory limitations on the use of these accounts will be enforced and that no campaign expenditures can be made from these accounts.

Sincerely,

/s/ Paul S. Ryan	*/s/ Fred Wertheimer*
Paul S. Ryan	Fred Wertheimer
Campaign Legal Center	Democracy 21

Donald J. Simon
Sonosky, Chambers, Sachse
Endreson & Perry LLP
1425 K Street NW—Suite 600
Washington, DC 20005

Counsel to Democracy 21

Lawrence M. Noble
The Campaign Legal Center
1411 K Street NW—Suite 1400
Washington, DC 20005

Counsel to the Campaign Legal Center