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Submitted electronically to ethics@ethics.ok.gov

Karen Long, Chair
Oklahoma Ethics Commission
2300 N. Lincoln Blvd., G-27
Oklahoma City, OK 73105

Dear Chair Long and Members of the Commission,

The Campaign Legal Center (“CLC”) respectfully submits these written comments to the Oklahoma Ethics Commission (“Commission”) regarding Proposed Rule Amendments 2019-01 (“Coordination rule changes”), 2019-02 (“Disclosures for printed or broadcast communications advocating for or against pending legislation”), and 2019-04 (“Designation of contributions; candidate involvement with political action committees”).

CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy across all levels of government. Since the organization’s founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, as well as numerous other federal and state court cases. Our work promotes every citizen’s right to participate in the democratic process and to know the true sources of funds spent to influence elections.

CLC commends the Commission’s decision to amend the Ethics Rules to address coordination, disclosure of indirect lobbying communications, and candidates’ control of political action committees (“PACs”). We make the following comments and recommendations in an effort to assist the Commission’s rulemaking on these important issues.

I. Amendment 2019-01: Coordination Rule Changes

Amendment 2019-01 would introduce a new definition of “coordination or coordinated” to describe expenditures that are not considered “independent” of a candidate’s campaign. Under the Amendment, “coordination or coordinated” would

cover actions “that could reasonably be construed to further one or more communications advocating for [a] candidate, or, against an opponent of the candidate; or, that references the candidate or an opponent of the candidate within thirty days prior to a primary election or within 60 days prior to a general election when the cost of the communication is not paid for by the candidate or candidate’s committee.”

Currently, the Ethics Rules stipulate that an “independent expenditure” is not “made in coordination with, cooperation with, consultation with, or concert with, or at the request or suggestion of, a candidate, a candidate committee, or their agents, or a political party committee or its agents.”¹ The current Rules, however, do not list specific activities or exchanges between a third-party spender and a candidate or political party that will constitute “coordination with” the candidate or party. This lack of clarity provides minimal guidance to independent spenders, candidates, and political parties, and could enable extensive amounts of cooperation between third-party spenders and candidates or political parties, undermining contribution limits imposed by the Ethics Rules.

The Campaign Legal Center is keenly aware that the vast amount of money used for independent expenditures has affected elections at all levels of government, and we support the Commission’s efforts to specify the meaning of “coordination” under the Ethics Rules. The U.S. Supreme Court’s decision in *Citizens United v. FEC* and subsequent lower court decisions have allowed corporations and labor unions to spend unlimited sums from their general treasuries—both directly and through contributions to super PACs and 501(c) entities—to influence elections, so long as the expenditures are made “independently” of candidates and political parties. As the amount of independent spending in campaigns has increased, the legal lines separating “independent” and “coordinated” spending have become critically important, and candidates, political parties, and third-party spenders have continually pushed the boundaries of what constitutes an “independent expenditure” to the point of absurdity.² Consequently, without effective regulation of coordination between campaigns and third-party spenders, statutory limits on contributions to candidates and political parties are easily circumvented.

Consistent with the Supreme Court’s pronouncement, in *Citizens United*, that independent expenditures cannot be constitutionally limited because they “do not give rise to corruption or the appearance of corruption,” non-independent—i.e., coordinated—expenditures may be limited in furtherance of anti-corruption interests.³ The Court has outlined the degree of independence that is necessary to prevent outside spending from undermining contribution limits: only expenditures

¹ Okla. Stat. Ann. tit. 74, Appx. 1, Rule 2.2(10).

² See Paul Blumenthal, *How Super PACs and Campaigns are Coordinating in 2016*, HUFFINGTON POST (Nov. 14, 2015), https://www.huffingtonpost.com/entry/super-pac-coordination_us_56463f85e4b045bf3def0273.

³ 558 U.S. 310, 357 (2010).

that are “totally”⁴ and “truly”⁵ independent of candidates and political parties qualify for full constitutional protection. Likewise, the Court has recognized that, to be effective, any limitations on campaign contributions must apply to expenditures made in coordination with a candidate or political party, so as to “prevent attempts to circumvent the [contribution limits] through prearranged or coordinated expenditures amounting to disguised contributions.”⁶ To this end, the Court has authorized the application of contributions limits not only to direct contributions to a candidate or party, but also to “expenditures placed in cooperation with or with the consent of” the campaign.⁷

To ensure the Ethics Rules meaningfully prevent the circumvention of contribution limits by regulating a comprehensive range of coordinated activity, CLC recommends that the Commission consider a broader definition of coordination in Amendment 2019-01. Although the new definition of “coordination or coordinated” in the Amendment would represent an improvement over the status quo, we believe the Commission should promulgate a definition that clearly describes specific activities and disbursements that will qualify as coordination under the Ethics Rules.

Recommendations for Amendment 2019-01

Having observed the legally dubious tactics of super PACs and other third-party spenders over multiple election cycles, CLC recommends including, in the definition of “coordination or coordinated,” specific types of conduct that will qualify a third-party’s expenditure on behalf of a candidate or political party as coordinated. The Amendment also should identify the types of disbursements that will constitute coordinated expenditures, including “expenditures” and “electioneering communications,” as well as payments for partisan voter activity. In addition to regulating coordination involving candidates, the Amendment should cover coordinated expenditures made with political party committees, which are subject to contribution limits under the Ethics Rules.⁸ Finally, we recommend including a safe harbor allowing for the creation of a firewall by a third-party spender that, in certain circumstances, will preclude a finding of coordination even if the spender engages in conduct otherwise qualifying as coordination.

(i) Treatment of coordinated expenditures as contributions: The Amendment should clearly state that a disbursement meeting the definition of “coordination or coordinated” is considered a contribution to the candidate or political party benefitting from the disbursement and subject to the same limits applicable to direct contributions made to candidates or parties under the Ethics Rules. We recommend the Commission include language in the Amendment to make clear that a

⁴ *Buckley v. Valeo*, 424 U.S. 1, 47 (1976); *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 465 (2001).

⁵ *McConnell v. FEC*, 540 U.S. 93, 221 (2003).

⁶ *Buckley*, 424 U.S. at 47.

⁷ *Id.*

⁸ Okla. Stat. Ann. tit. 74, Appx. 1, Rule 2.31.

coordinated expenditure is a contribution to the candidate or party aided by the expenditure.⁹

(ii) Define “conduct” that establishes coordination: With the rise of independent campaign spending, much of which is questionably “independent,” multiple jurisdictions have amended their coordination laws to clarify the type of conduct that constitutes coordination with a candidate or political party.¹⁰ Additionally, a bipartisan coalition in Congress has introduced legislation to specify the range of activities regulated as coordination under federal law.¹¹ Comparably, the Amendment should provide descriptions of particular conduct and exchanges between a third-party spender and a candidate or political party that will result in subsequent disbursements by the spender qualifying as coordinated.¹²

- *General coordination with a candidate or political party:* If a campaign-related disbursement is not made “totally independently” of a candidate or political party, it should be treated as a coordinated expenditure. Generally, a disbursement should be considered not to have been made independently of a candidate or party if it is made pursuant to an express or implied agreement with, a general or particular understanding with, or a request by or a communication with the candidate or party.¹³
- *Candidate or political party role in creating or controlling the third-party spender:* If a candidate or political party, or an agent of the candidate or party, directly or indirectly established, maintained, controlled or principally funded the third-party spender, then the spender’s subsequent disbursements in support of the candidate or party should qualify as coordinated for some period of time following the candidate’s or party’s involvement with the spender. Regulation of this activity also should extend to a third-party spender created or controlled by a candidate’s family member.¹⁴

⁹ See, e.g., 11 C.F.R. § 109.21(b)(1) (“General rule. A payment for a coordinated communication is made for the purpose of influencing a Federal election, and is an in-kind contribution . . . to the candidate, authorized committee, or political party committee with whom or which it is coordinated”); N.Y.C. Rules tit. 52, Rule 1-08(f)(4) (“An expenditure for the purpose of promoting or facilitating the nomination or election of a candidate, which is determined not to be an independent expenditure, is a contribution to, and an expenditure by, the candidate.”).

¹⁰ See Conn. Gen. Stat. § 9-601c(b) (listing categories of expenditures presumed to be made in coordination with a candidate or political party); 2 Cal. Code Regs. § 18225.7(c) (defining circumstances in which an expenditure is not considered to be “independent” of a candidate or political committee).

¹¹ Political Accountability & Transparency Act, H.R. 7267, 115th Cong. (2018), available at <https://www.congress.gov/bill/115th-congress/house-bill/7267>.

¹² See 11 C.F.R. § 109.21(d) (describing conduct standards to determine whether a communication is coordinated with a federal candidate or political party).

¹³ See, e.g., 2 Cal. Code Regs § 18225.7(c)(1) (“[A]n expenditure is made at the behest of a candidate or committee, and is not considered independent, if . . . [t]he expenditure is made at the request, suggestion, or direction of, or in cooperation, arrangement, consultation, concert or coordination with, the candidate or committee on whose behalf, or for whose benefit the expenditure is made.”).

¹⁴ See N.Y.C. Rules tit. 52, Rule 1-08(f)(1)(iv) (“In determining whether an expenditure is independent, the Board may consider . . . whether the person or entity making the expenditure has been established, financed, maintained, or controlled by any of the same persons or entities as those

- *Fundraising for third-party spender:* If, prior to a third-party spender making a disbursement, a candidate or political party, through an agent of the party, has solicited funds for the spender, provided non-public fundraising information to the spender, appeared as a speaker or featured guest at a fundraiser for the spender, or given permission to be featured in the spender's fundraising efforts, then the spender's subsequent disbursements in support of the candidate or party should be treated as coordinated. For example, if an Oklahoma gubernatorial candidate solicits funds for an unlimited political action committee, the committee's subsequent expenditures supporting that gubernatorial candidate's election should be deemed coordinated with the candidate.¹⁵
- *Campaign needs or plans:* If a disbursement is based on non-public information about a candidate's or political party's campaign needs or plans that the candidate or party provided to the spender directly or indirectly, then the disbursement generally should be treated as coordinated. Communications between the spender and a candidate or party that exclusively concern the spender's position on a policy matter or whether the spender will endorse the candidate or party could be exempted from the meaning of "coordination" to permit legitimate discussion of policy issues and endorsements.¹⁶
- *Former employee or common agent or vendor:* If, during some time period preceding the disbursement (e.g., two years), a third-party spender employed or retained the services of certain individuals or entities with a prior relationship with a candidate or party, then the spender's disbursements in support of the candidate or party should qualify as coordinated.¹⁷ This

that have established, financed, maintained, or controlled a political committee authorized by the candidate").

¹⁵ See Political Accountability & Transparency Act, 115th Cong. § 324(b)(3) (qualifying an expenditure as coordinated if "[d]uring the 2-year period ending on the date the covered expenditure is made (in the case of a candidate or committee for an election for any other Federal office or any political party) or during the election cycle in which the covered expenditure is made (in the case of a candidate or committee for an election for the office of President), the candidate, the committee, or political party solicited funds for, provided nonpublic fundraising information or strategy to, appeared as a speaker or featured guest at a fundraiser for, or gave permission to be featured in fundraising efforts for, the person making the covered expenditure."); N.Y.C. Rules tit. 52, Rule 1-08(f)(1)(vi) ("In determining whether an expenditure is independent, the Board may consider . . . whether the candidate has solicited or collected funds on behalf of the person or entity making the expenditure, during the same election cycle in which the expenditure is made.").

¹⁶ See Conn. Gen. Stat. § 9-601c(b)(3) (establishing presumption of coordination if an expenditure is "made by a person based on information about a candidate's, political committee's, or party committee's plans, projects or needs, provided by (A) a candidate, candidate committee, political committee or party committee, or (B) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee, with the intent that such expenditure be made"); 2 Cal. Code Regs § 18225.7(d)(1) (establishing presumption that an expenditure is not independent if it is "based on information about the candidate's or committee's campaign needs or plans that the candidate or committee provided to the expending person directly or indirectly, such as information concerning campaign messaging, planned expenditures or polling data.").

¹⁷ See Conn. Gen. Stat. § 9-601c(b)(4)-(5) (establishing presumption of coordination if an expenditure either is "made by an individual who, in the same election cycle, is serving or has served as the campaign chairperson, treasurer or deputy treasurer of a candidate committee, political committee

coverage generally should include any person who: (i) had executive or managerial authority for the candidate or party; (ii) was authorized to raise or expend funds for the candidate or party and had received non-public information from the candidate or party about the campaign's plans or needs; or (iii) provided the candidate or party with professional services related to campaign or fundraising strategy. In order to allow for some personnel overlap, the Amendment could permit an exception for a spender who has implemented a firewall policy that, as described below, was in place at all relevant times and separated relevant staff in order to prevent the flow of strategic information to the candidate or party.

(iii) Define the “content” of a coordinated expenditure: The Amendment should describe the types of disbursements that, if coordinated, are sufficiently campaign-related to be considered made on behalf of the candidate or political party benefitting from the disbursement,¹⁸ including:

- An “expenditure,” as defined in Ethics Rule 2.2(8).
- An “electioneering communication,” as defined in Ethics Rule 2.2(7).
- Non-communicative campaign-related disbursements, including payments for:
 - (1) Partisan voter activity, including partisan voter registration, partisan get-out-the-vote-activity, or phone banking, in the jurisdiction where the candidate is seeking election; or
 - (2) Research, design or production costs, polling expenses, data analytics, creating or purchasing mailing or social media lists, or similar activities related to expenditures, electioneering communications, or partisan voter activity.

(iv) Include republication of a candidate’s or political party’s campaign material within definition of “coordination or coordinated”: If payment is made for a communication that republishes a candidate’s or political party’s campaign material, in whole or in substantial part, then the payment should qualify as a coordinated expenditure, regardless of whether there was any direct communication between the spender and candidate or party.¹⁹ However, if the

or party committee benefitting from such expenditure, or in any other executive or policymaking position, including as a member, employee, fundraiser, consultant or other agent, of a candidate committee, political committee or party committee” or is “made by a person or an entity on or after January first in the year of an election in which a candidate is seeking public office that benefits such candidate when such person or entity has hired an individual as an employee or consultant and such individual was an employee of or consultant to such candidate’s candidate committee or such candidate’s opponent’s candidate committee during any part of the eighteen-month period preceding such expenditure”); *see also* 11 C.F.R. § 109.21(d)(4) (describing coordinated conduct involving “common vendors”).

¹⁸ *See, e.g.*, 11 C.F.R. §109.21(c) (describing “content standards” for purposes of determining whether a communication is coordinated with a federal candidate or political party).

¹⁹ *See, e.g.*, 11 C.F.R. § 109.23(a) (“The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate’s authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure.”); Conn. Gen. Stat. § 9-601c(b)(2)

republished content is used to *oppose* the candidate or party that produced the material, it generally should be excluded from coverage as a coordinated expenditure.²⁰

(v) Create a safe harbor for use of firewalls: Any disbursement involving former employees of a candidate or political party, or common agents or vendors of a third-party spender and a candidate or party, could be excluded from the meaning of “coordinated” if the third-party spender implements a firewall policy that meets certain criteria established in the Ethics Rules.²¹ A firewall exemption could be especially useful in a state with a limited number of vendors providing campaign-related services. A third-party spender who relies upon a firewall should bear the burden of demonstrating that the firewall was in existence and effective at all relevant times. If strategic, non-public information passes through a firewall, the resulting spending should be deemed coordinated with the benefitting candidate or party. Generally, an effective firewall policy should:

- Separate staff who provide a service to the spender in relation to its expenditures from other staff who have provided or will provide services to a candidate or party supported by the spender’s expenditures;
- Forbid an organization’s owners, executives, managers, and supervisors from simultaneously overseeing the work of staff separated by a firewall;
- Prohibit the flow of strategic, non-public information between the spender and the candidate or party supported by an expenditure, and between specific staff who are separated by the firewall;
- Provide for physical and technological separation to ensure that strategic, non-public information does not flow between the spender and the candidate or party, and between specific staff separated by the firewall; and
- Be in writing and distributed to all relevant employees and consultants before any relevant work is performed, and provided to the Commission upon request.

II. Amendment 2019-02: Disclosures for Printed or Broadcast Communications Advocating for or against Pending Legislation

Amendment 2019-02 would introduce new disclosure requirements for persons engaging in “indirect lobbying.”²² Under the proposal, any communication

(creating presumption of coordination if an expenditure is “made by a person for the production, dissemination, distribution or publication, in whole or in substantial part, of any broadcast or any written, graphic or other form of political advertising or campaign communication prepared by (A) a candidate, candidate committee, political committee or party committee, or (B) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee”).

²⁰ See 11 C.F.R. § 109.23(b) (excluding republication of candidate’s campaign material from treatment as contribution if “campaign material is incorporated into a communication that advocates the defeat of the candidate or party that prepared the material”). FEC regulations regarding republication also exempt news media communications, along with other limited exceptions. *Id.*

²¹ See 11 C.F.R. § 109.21(h) (“Safe harbor for establishment and use of a firewall.”).

²² In Amendment 2019-02, “indirect lobbying” is defined as a print or broadcast communication “that advocate[s] support or opposition of legislative bills or resolutions pending at the Oklahoma legislature” made through a paid advertisement, “through the efforts of an individual or individuals

that qualifies as “indirect lobbying” would have to include a disclosure statement that identifies the name of the sponsor of the communication, and either lists the sponsor’s address and phone number or provides the website address for a webpage containing the sponsor’s address and phone number.

Additionally, Amendment 2019-02 would require an “indirect lobbyist”²³ to file an event-driven report with the Commission within 24-hours of spending in excess of \$5,000 for “indirect lobbying.” The report would have to include the name and address of the indirect lobbyist; the amount, date, and a description of the indirect lobbying; the legislation supported or opposed, including whether the communication supports or opposes that legislation; and the name, address, and occupation/ employer or principal business (if a corporation) of each contributor who contributed to the indirect lobbyist “for the purpose of engaging in indirect lobbying.” The amendment specifies that a contributor has given funds “for the purpose” of indirect lobbying if the funds are either “received in response to a solicitation specifically requesting funds to pay for indirect lobbying” or “specifically designated for indirect lobbying by the contributor.”

CLC supports the Commission’s efforts to increase the public’s access to information about sources of indirect lobbying communications in Oklahoma. At both the federal and state levels, advocacy groups frequently utilize “grassroots” lobbying campaigns, in tandem with direct lobbying, to promote their policy and legislative agendas.²⁴ While often using innocuous names, many organizations that sponsor “grassroots” lobbying communications are funded by corporate and special interests with vested stakes in particular legislative outcomes.²⁵ Unlike direct lobbying of lawmakers, however, this type of legislative advocacy is not subject to

employed or retained by another to engage in such advocacy,” or “by a person who receives funds or services valued in excess of Five Hundred (\$500.00) or who has made or will make expenditures in excess of Five Hundred (\$500 during any calendar year for the purpose of advocating support or opposition of legislation pending at the Oklahoma legislature.” The term excludes legislative testimony, communications by news media, and internal communications made by an organization to its members.

²³ The amendment defines an “indirect lobbyist” as “a person funding indirect lobbying, or a person who organizes, directs, or otherwise coordinates the efforts of others to engage in indirect lobbying.” The definition excludes officers and employees of state or federal government acting in their official capacity, along with any governmental entity served by the officers or employees.

²⁴ For example, America First Policies, a 501(c)(4) nonprofit organization, was established to promote President Trump’s political agenda in the media, and, in 2017, the group sponsored numerous advertisements urging members of Congress to pass tax reform legislation. While IRS filings show America First Policies raised over \$22 million in 2017, federal law does not require public identification of the sources of this funding. *See* Maggie Severns, *Pro-Trump group raised \$22 million from anonymous donors*, POLITICO (Nov. 15, 2018), <https://www.politico.com/story/2018/11/15/trump-america-first-policies-fundraising-donors-994292>.

²⁵ Some pundits have used the term “astroturf” lobbying to describe corporations and special interests funding public communications about legislation through innocuously-named groups. *See* Peter Overby, *Senate Bill Ignores ‘Astroturf’ Lobbying*, NPR (Jan. 25, 2007), <https://www.npr.org/templates/story/story.php?storyId=7015097>.

meaningful disclosure under federal law and in many states.²⁶ Accordingly, the public often lacks information about the real sources of funding behind advertisements urging support for or against consequential legislation. While Congress has not acted to address the lack of transparency around federal grassroots lobbying, multiple states have enacted laws that require disclosure of indirect lobbying activities.²⁷

Courts have repeatedly sustained the constitutionality of lobbying disclosure requirements that extend beyond those who make direct contact with government officials. In *United States v. Harriss*, the U.S. Supreme Court upheld part of the Federal Regulation of Lobbying Act that required any person “receiving any contributions or expending any money for the purpose of influencing the passage or defeat of any legislation by Congress” to report such contributions and expenditures.²⁸ Although it narrowed the scope of the term “lobbying” due to vagueness concerns, the Court explained, even under its narrowing interpretation, the definition of “lobbying” still encompassed not only direct communications with lawmakers, but also indirect communications through “artificially simulated letter campaign[s].”²⁹ The Court concluded that the reporting of “lobbying,” as narrowly construed, was permissible under the First Amendment, since disclosure of this activity ensured Congress’s “power of self-protection” and served “to maintain the integrity of a basic governmental process.”³⁰

Other federal courts likewise have upheld disclosure laws applicable to indirect lobbying. In 1985, the U.S. Court of Appeals for the Eighth Circuit upheld a Minnesota statute that, for registration and reporting purposes, defined “lobbyist” to include an individual who received compensation and spent substantial time or money “for the purpose of attempting to influence legislative or administrative action by communicating or *urging others to communicate with* public officials.”³¹ The court determined that disclosure of grassroots lobbying served “a compelling interest” by helping to inform lawmakers about “the myriad pressures to which they are regularly subjected.”³² This interest outweighed any incidental burden on First Amendment rights, even as applied to communications sent only to members of a voluntary association.³³

²⁶ Under the federal Lobbying Disclosure Act, the definition of “lobbying contact” excludes any communication “made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, cable television, or other medium of mass communication.” 2 U.S.C. § 1602(8)(B)(iii).

²⁷ See, e.g., Wash. Rev. Code Ann. § 42.17A.640 (detailing reporting requirements for “grass roots lobbying campaigns”); Minn. Stat. Ann. § 10A.04 (requiring lobbyists to report disbursements for “the cost of publication and distribution of each publication used in lobbying” as well as “each original source of money in excess of \$500 in any year used for the purpose of lobbying”).

²⁸ 347 U.S. 612 (1954).

²⁹ *Id.* at 620. See also *id.* at 620, n.10 (noting Congress intended the Act to cover lobbyists’ “initiat[ion] of propaganda from all over the country, in the form of letters and telegrams.”).

³⁰ *Id.* at 625.

³¹ *Minn. State Ethical Practices Bd. v. Nat’l Rifle Ass’n*, 761 F.2d 509, 510 (8th Cir. 1985) (emphasis added).

³² *Id.* at 512 (quoting *U.S. v. Harriss*, 347 U.S. at 625).

³³ *Id.* at 513.

Similarly, the U.S. Court of Appeals for the Eleventh Circuit upheld the constitutionality of a Florida law that required reporting of “indirect” lobbying activities, including expenditures for “media advertising.”³⁴ Like the Eighth Circuit in *Minnesota State Ethical Practices Board*, the Eleventh Circuit found the state’s lobbying disclosure requirements advanced “compelling” interests both in helping voters to “apprais[e] the integrity and performance of officeholders and candidates” and in ensuring legislators’ “self-protection in the face of coordinated pressure campaigns.”³⁵ Further, the court emphasized “the government interest in providing the means to evaluate these pressures may in some ways be stronger when the pressures are indirect, because then they are harder to identify without the aid of disclosure requirements.”³⁶ In addition to federal courts, state courts have upheld disclosure requirements for indirect lobbying.³⁷

As the aforementioned cases demonstrate, states may enact disclosure requirements for lobbying activities that go beyond direct contact with lawmakers. Nonetheless, the existing case law does not set explicit parameters for the permissible structure and scope of disclosure rules for indirect lobbying, and it is important that regulation of this activity be carefully drawn to avoid vagueness and overbreadth concerns. Regarding Amendment 2019-02, CLC believes the proposal is tailored to regulate only communications clearly intended to support or oppose pending legislation in Oklahoma. Correspondingly, the Amendment’s reporting provisions only require the identification of contributors who gave funds to an indirect lobbyist “for the purpose of engaging in indirect lobbying,” and would not obligate persons engaged in indirect lobbying to identify any contributors who did not give money specifically for this purpose. Importantly, the Amendment’s explanation of contributions made “for the purpose of” indirect lobbying limits disclosure to those contributors who gave in response to a solicitation to pay for indirect lobbying, or earmarked their funds for indirect lobbying.

Recommendation for 2019-02

CLC’s sole recommendation regarding Amendment 2019-02 is for the Commission to delineate a timeframe for the \$5,000 threshold for filing indirect lobbying reports under amended Rule 5.19(B). Currently, it is unclear whether the \$5,000 threshold for filing reports is based on expenses made within a single calendar year or in some other period. Similarly, we recommend specifying that subsequent reports are due when additional expenditures are made within the same timeframe applicable under amended Rule 5.19(B)(1), e.g., “subsequent reports will be required within twenty-four hours of each additional cost for indirect lobbying in the same calendar year.” We believe the addition of timeframes, for purposes of determining whether the monetary threshold for reporting has been exceeded, would help to clarify the scope of Amendment 2019-02’s application.

³⁴ *Fla. League of Professional Lobbyists v. Meggs*, 87 F. 3d 457, 458 (11th Cir. 1996).

³⁵ *Id.* at 460 (internal quotations omitted).

³⁶ *Id.* at 461.

³⁷ See, e.g., *Fritz v. Gorton*, 517 P. 2d 911 (Wash. 1974) (upholding lobbying disclosure requirements in Washington state law), *appeal dismissed*, 417 U.S. 902 (1974).

III. Amendment 2019-04: Designation of Contributions; Candidate Involvement with Political Action Committees

Under Amendment 2019-04, a candidate would not be permitted to “establish, maintain, operate, make decisions, file reports, or be an officer of a political action committee.” Additionally, the Amendment would bar a candidate from directing any contributions from a limited PAC to any other candidate or candidate’s committee, and would clarify that the “straw donor” prohibition in the Ethics Rules applies to earmarked contributions given to a candidate for the benefit of another candidate.

Taken together, the proposed changes in Amendment 2019-04 would prohibit a candidate from establishing, maintaining, operating, making decisions, filing reports, or being an officer of any PAC, from directing contributions from a limited PAC to other candidates, and from acting as a conduit for contributions to other candidates. The Amendment’s provisions resemble sections of the Federal Election Campaign Act intended to prevent federal candidates and donors from evading contribution limits and disclosure requirements.³⁸ The “soft money” prohibitions in federal law also apply to any “entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of” a candidate or officeholder.³⁹ In *McConnell v. FEC*, the U.S. Supreme Court upheld these “soft money” restrictions against constitutional challenge.⁴⁰

CLC supports the Commission’s efforts to restrict candidates’ and officeholders’ use of PACs to circumvent contribution limits under the Ethics Rules. The Amendment also could help to diminish the role of money within political party caucuses by reducing opportunities for officeholders to “buy” leadership positions through leadership PAC contributions to other caucus members. Further, the Amendment would limit opportunities for party leaders to exert undue pressure over their colleagues by making or withholding leadership PAC contributions. At the federal level, members of Congress have regularly used leadership PACs to enhance their influence within political party caucuses, to punish or reward their legislative colleagues, and to make expenditures for their own personal benefit.⁴¹ CLC believes the Amendment would serve to inhibit similar misuse of PAC funds in Oklahoma.

Recommendations for Amendment 2019-04

CLC has several minor suggestions to strengthen Amendment 2019-04. For amended Rule 2.41, which states that “[c]andidates shall not be involved in directing, either directly or indirectly, contributions from a limited political action committee to one or more candidates or candidate committees,” the Commission could make explicit that this provision also prohibits a candidate from soliciting

³⁸ 52 U.S.C. § 30125(e).

³⁹ *Id.*

⁴⁰ 540 U.S. 93 (2003).

⁴¹ See CAMPAIGN LEGAL CENTER & ISSUE ONE, ALL EXPENSES PAID: HOW LEADERSHIP PACS BECAME POLITICIANS’ PREFERRED TICKET TO LUXURY LIVING (2018), <https://bit.ly/2O8cAvo>.

contributions to a limited PAC. While the solicitation prohibition is implied by the following sentence, which contains an exception for candidates soliciting limited PACs for contributions to their own candidate committees, the Commission could make the prohibition more explicit. Similarly, if the Commission intends to prevent candidates from soliciting funds for or financing PACs, it should make this restriction clear in amended Rule 2.81, by adding language such as “solicit funds for” or “finance” to the list of prohibited activities.

Conclusion

CLC sincerely appreciates the opportunity to submit comments regarding this important rulemaking, and we support the Commission’s decision to address these issues in the Ethics Rules. We would be happy to answer questions or provide additional information to aid the Commission’s rulemaking going forward.

Respectfully submitted,

/s/

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/s/

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