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113TH CONGRESS
2D SESSION

H. R. 5641

To amend the Federal Election Campaign Act of 1971 to clarify the treatment of coordinated expenditures as contributions to candidates, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 2014

Mr. PRICE of North Carolina (for himself and Mr. VAN HOLLEN) introduced the following bill; which was referred to the Committee on House Administration

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A BILL

To amend the Federal Election Campaign Act of 1971 to clarify the treatment of coordinated expenditures as contributions to candidates, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CLARIFICATION OF TREATMENT OF COORDINATED EXPENDITURES AS CONTRIBUTIONS TO CANDIDATES.

(a) TREATMENT AS CONTRIBUTION TO CANDIDATE.—Section 301(8)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 30101(8)(A)) is amended—

(1) by striking ''or'' at the end of clause (i);

(2) by striking the period at the end of clause (ii) and inserting "; or"; and

(3) by adding at the end the following new clause:

"(iii) 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 324) which is not otherwise treated as a contribution under clause (i) or clause (ii).".

(b) DEFINITIONS.—Section 324 of such Act (2 U.S.C. 30126) is amended to read as follows:

"SEC. 324. PAYMENTS FOR COORDINATED EXPENDITURES.

"(a) COORDINATED EXPENDITURES.—

"(1) IN GENERAL.—For purposes of section 301(8)(A)(iii), the term 'coordinated expenditure' means—

"(A) any expenditure, including a 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 provided in subsection (b); or

"(B) any payment for any communication which republishes, disseminates, or distributes, in whole or in part, any 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.

"(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 regulations adopted by the Commission pursuant to section 304(f)(3)(B)(iii), 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 is not made entirely independently of the candidate, committee, or agents, including a payment which is made pursuant to any general or particular understanding, or more than incidental communication with, the candidate, committee, or agents about the payment.

"(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 discussion 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 campaign operations.

"(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 315(d).

"(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 providing services for or on behalf of the person and the candidate or committee or agents of the candidate or committee.

"(c) SPECIAL RULE FOR PAYMENTS BY COORDINATED SPENDERS FOR COVERED COMMUNICATIONS.—

"(1) PAYMENTS DEEMED TO BE MADE IN COOPERATION, CONSULTATION, OR CONCERT WITH, CANDIDATES.—For purposes of this section, if the person who makes a payment for a covered communication is a coordinated spender with respect to the candidate involved, the person shall be deemed to have made the payment 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) The person is directly or indirectly formed or established by or at the request or suggestion of, or with the encouragement of, the candidate or committee or agents of the candidate or committee, including with the express or tacit 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 solicit funds or

engage 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.

"(C) The person is established, directed, or managed by any person who, during the election cycle involved or during the 4-year period ending on the first day of the election cycle involved, has been employed or retained as a political, media, or fundraising adviser or consultant for the candidate or committee or for any other entity directly or indirectly controlled by the candidate or committee, or has held a formal position with a title for the candidate or committee.

"(D) During the election cycle involved, the person has had more than incidental communications with the candidate or committee or agents of the candidate or committee about the candidate's campaign needs or activities, or about the person's possible or actual campaign

activities with respect to the candidate or committee.

"(E) The person has retained the professional services of any person who, during the same election cycle, has provided or is providing professional services relating to the campaign to the candidate or committee. 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.

"(F) The person is established, directed, or managed by a member of the immediate family of the candidate, or (in the case of a person that is a political committee) has received a contribution from 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.

"(3) LIMITATION.—Paragraph (2) shall apply to a person with respect to a candidate or authorized

committee during a calendar quarter only if 20 percent or more of that person's total spending for covered communications in the period beginning on the first day of the election cycle with respect to the candidate or committee involved and ending on the first day of that calendar quarter is attributable to—

"(A) communications that promote or support that candidate, or attack or oppose the opponent of that candidate, in the case of covered communications described in subsection (d)(1); and

"(B) communications that refer to that candidate or an opponent of that candidate, in the case of covered communications described in subsection (d)(2).

"(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 section 301(22)) which—

"(A) promotes or supports the candidate, or attacks or opposes an opponent of the candidate (regardless of whether the communica-

tion expressly advocates the election or defeat of a candidate or contains the functional equivalent of express advocacy); or

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

"(2) APPLICABLE ELECTION PERIOD.—In paragraph (1)(B), the 'applicable election period' with respect to a communication means—

"(A) in the case of a communication which refers to a candidate for the office of President or Vice President, the period which begins on the date that is 120 days before the date of the first primary election, preference election, or nominating convention for nomination for the office of President which is held in any State and ends with the date of the general election for such office; or

"(B) in the case of a communication which refers to a candidate for any other office, which begins on the date that is 90 days before the primary or preference election, or convention or caucus of a political party that has authority to

nominate a candidate, for the office sought by the candidate and ends on the date of the general election for such office.

''(3) SPECIAL RULES FOR COMMUNICATIONS INVOLVING CONGRESSIONAL CANDIDATES.—For purposes of this subsection, a public communication shall not be considered to be a covered communication with respect to a candidate for election for an office other than the office of President or Vice President unless it is publicly disseminated or distributed in the jurisdiction of the office the candidate is seeking.

''(e) ELECTION CYCLE DEFINED.—In this section, the term 'election cycle' means, with respect to an election for Federal 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) EFFECTIVE DATE.—

(1) REPEAL OF EXISTING REGULATIONS ON COORDINATION.—Effective upon the expiration of the

90-day period which begins on the date of the enactment of this Act—

(A) the regulations on coordinated communications adopted by the Federal Election Commission which are in effect on the date of the enactment of this Act (as set forth in 11 CFR part 109, subpart C, under the heading ''Coordination'') are repealed; and

(B) the Federal Election Commission shall promulgate new regulations on coordinated communications which reflect the amendments made by this Act.

(2) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to payments made on or after the expiration of the 120-day period which begins on the date of the enactment of this Act, without regard to whether or not the Federal Election Commission has promulgated regulations in accordance with paragraph (1)(B) as of the expiration of such period.

SEC. 2. CLARIFICATION OF BAN ON FUNDRAISING FOR SUPER PACS BY FEDERAL CANDIDATES AND OFFICEHOLDERS.

(a) IN GENERAL.—Section 323(e)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 30125(e)(1)) is amended—

(1) by striking ''or'' at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting ''; or''; and

(3) by adding at the end the following new subparagraph:

''(C) solicit, receive, direct, or transfer funds to or on behalf of any political committee which accepts donations or contributions that do not comply with the limitations, prohibitions, and reporting requirements of this Act (or to or on behalf of any account of a political committee which is established for the purpose of accepting such donations or contributions), or to or on behalf of any political organization under section 527 of the Internal Revenue Code of 1986 which accepts such donations or contributions (other than a committee of a State or local political party or a candidate for election for State or local office).''.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply with respect to elections occur-
3 ring after January 1, 2015.

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