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VIA EMAIL (anoti@fec.gov)

Adav Noti, Esq.  
Associate General Counsel for Policy  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: Advisory Opinion Request - Sprinklers to Make the Grassroots Grow

Dear Mr. Noti:

I am writing to seek an advisory opinion from the Federal Election Commission regarding Internet and text activities I would like to personally engage in to raise money for the grassroots activities by state and local parties that are permissible under the Federal Election Campaign Act (FECA) and Commission regulations.<sup>1</sup>

Through the Internet and/or text activity described below, I wish to raise awareness about exempt activity under FECA and to encourage people to contribute to state and local parties to fund these activities. While many people have heard enough from the media to have a basic understanding (or misunderstanding) of super PACs and *Citizens United*, it is safe to say that for most people outside the campaign finance community, exempt grassroots party activity under FECA is not on their radar. Although the FEC's guides and other publications at fec.gov do an excellent job of explaining how the law gives state and local parties special exemptions from coordination rules, the reality is that this useful information is not widely known.

I think anyone with even a passing interest in our campaign system would be interested – and maybe even heartened – to know of an important practical advantage that state and local parties have over more high-profile entities such as national party committees (and super PACs). FECA places no limit on how much state and local party committees may spend on certain core grassroots activities, in coordination with their presumptive or actual nominees (if they see fit), as long as they use contributions raised in accordance with FECA (colloquially known as “hard dollars”) and jump through the necessary regulatory hoops when conducting these activities. Importantly, to fully coordinate with candidates on key get-out-the-vote activities like canvassing and phone banking during a federal election without triggering a

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<sup>1</sup> I worked as a Democratic campaign finance lawyer from 2000-2008 and continue to be a GOTV phone bank volunteer and a donor for various Democratic parties and candidates, so it is worth noting that the views expressed in this advisory opinion request are entirely my own and do not necessarily reflect those of my former colleagues (on either side of the aisle) or my former clients.

spending cap on coordinated activities, the state or local party must use contributions that have not been transferred to them from a national party committee (this non-national party money is colloquially known as a state or local party's "organic" or "home grown" hard dollars). Having enough organic hard dollars at the state and local party level in a swing state can make all the difference to the outcome for the rest of the nation. More people should know this, but the question is: how to spark interest in exempt activity under FECA without getting lost in the weeds?

I have a fairly simple proposal for the Commission's consideration. What is needed are donors willing to sprinkle their money among the state and local parties in swing states to help the grassroots grow. To that end, I would like to contact friends and family online or by text. As an example, the communication could look something like:

Sprinklers needed to help the grassroots grow! Donate to [link to a state/local party's donation page], or Google your own favorite state or local party in a swing state and sprinkle your dollars where they'll fund the most important get-out-the-vote effort ever. Pass this on!

My hope is that the simple idea of being a "sprinkler" for state and local party grassroots efforts will spread, and other people might come up with something more creative on their own. For example, I might encourage some of my friends to include in their message a video of themselves, or a link to a clip of someone publicly affiliated with their party, doing the dance known as the sprinkler. (For an example of what the sprinkler looks like, Google "Evolution of Mom Dancing Jimmy Fallon Michelle Obama". It's about 40-45 seconds in.) I do not plan to collect or forward any contributions.

As an American residing abroad, I know other Americans also residing abroad who have a keen interest in the election and who have a network of friends and family throughout the U.S. who might be interested to know more about supporting state and local parties' grassroots activities in swing states. While I am fairly certain that I know which of my friends have American or dual citizenship and which are Canadian citizens only, I would not want to inadvertently (or even sarcastically) solicit Canadian support in connection with an American election. For example, I have friends who told me that they were U.S. citizens when I first met them eight years ago, but should I make sure that they still are, since they reside at a foreign address? I also have Canadian friends who have moved to the U.S. and who have lived there for over five years. Should I ascertain their immigration status or assume that they have green cards and are working in the U.S. legally?

The goal would be to keep it as simple as possible and let people's creativity and political expression evolve online without any requirement that certain "magic words" be included or excluded, so if it is too onerous to ensure compliance with the ban on foreign national solicitations among Americans living abroad, I could (regretfully) limit my communications to my friends and family living stateside.

The friends and family I would contact -- and encourage to contact their friends/family -- would have no background in FECA, and it is my hope that the Commission would permit them to participate without fear of running afoul of the law, leaving the burden of compliance, as usual, to the state or local party. For example, if a person unaware of FECA's conduit and earmarking restrictions were to include with their contribution to a state or local party a message saying, "Make sure this helps [insert name of presidential/vice presidential candidates]!" or "Please help save the Republic from [insert name of presidential candidate] and good luck down ballot!" this would not somehow spoil the contribution, so long as the state or local party committee receiving the funds makes the final decision regarding which candidate(s) shall receive the benefit of the funds raised.

Although I haven't checked each and every state or local party's website, no doubt most of the state and local parties in swing states have landing pages for their online contributions that comply with the Commission's Internet regulations (I see that some use ActBlue), and their compliance departments take reasonable steps to weed out contributions that do not comply with FECA. If there are any state or local party committees who were not sufficiently whipsawed by the Bipartisan Campaign Reform Act of 2002 (BCRA) during the 2004, 2006, 2008, 2010, 2012, or 2014 elections to take all necessary precautions when raising funds for federal election activity, they are likely to be small local party committees. Presumably the Commission would take a remedial, as opposed to a punitive, approach to any compliance failures on their part.

Although my main hope is that the "sprinkler" idea will give people who are unsophisticated in the ways of FECA an easy way to support the important work of getting out the vote in local communities, I would also hope that through this advisory opinion request I can raise awareness among the media about the important role that state and local parties play in our democracy. The amount of free media attention that super PACs receive appears to be grossly disproportionate to that of the men and women at the local level who, with little fanfare, do practical, vital work for our democracy each election cycle.

I would also hope that wealthy donors would embrace the idea of sprinkling their dollars far and wide as organic hard dollars in swing states, as opposed to writing a large check to a fly-by-night entity where the rate of return might be zero. Compared to the ways that FECA permits state and local parties' grassroots activities to make a difference in tight elections and work closely with all their candidates, super PACS are less efficient and less effective. Perhaps raising awareness about these state and local party exemptions (the media could even call them "loopholes" to make them sound more exciting), which undoubtedly help maintain the health of the body politic, could contribute to super PACS dying a natural death.

For a whole host of reasons, some noble, some perhaps less so, there are people who are willing to spend lots of money during campaign season. This is unlikely to change (I remain highly skeptical whenever I hear talk of amending the First Amendment), but to the extent that the Supreme Court's relatively recent *McCutcheon* decision now allows this impulse to be channeled and diffused among an unlimited number of state and local parties and their

candidates in their grassroots efforts, I believe this will enhance, not diminish, the vibrancy of our democracy.

In sum, I would appreciate the Commission's consideration of the following questions:

1. As an American residing abroad, if I solicit donations from friends and family to state or local parties over the Internet or by text, using the sample language provided above, is this permissible? In particular, do I need to take any additional steps with friends residing abroad who told me they were U.S. citizens when I met them a number of years ago? Do I need to take any additional steps with friends who immigrated to the U.S. more than five years ago and are still working there now? Do I need to warn these friends not to solicit foreign nationals?
2. Does the answer to #1 change if I restrict my emails or texts to friends and family who live in the U.S. and who have not, to my knowledge, lived abroad?
3. Is it permissible for me to inform the state and local parties for whom I'm attempting to raise money about my efforts to raise money for grassroots activities?

For the reasons stated above, I respectfully request the Commission's permission to turn on the "sprinklers" in this election season, and would appreciate expedited review.

Sincerely,



(signed)

Caroline Goodson Parker

Bowen Island, British Columbia