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Subject Comments from the NJ Democratic State Committee are attached.

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July 9, 2007

Mr. Ron B. Katwan  
Assistant General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington DC 20463

**RE: Comments to Notice of Proposed Rulemaking on Federal Election Activity and Non-Federal Elections**

Dear Mr. Katwan:

We submit these comments on behalf of the New Jersey Democratic State Committee (the "Committee") on the Notice of Proposed Rulemaking on Federal Election Activity and Non-Federal Elections, published at 72 Fed. Reg. 31473 (June 7, 2007) (the "NPRM"). The Committee is a state party that is registered as a political committee with the Commission. It engages in activities in support of both federal and non-federal candidates. The Committee supports the Commission's effort to provide guidance on which activities conducted by state and local parties on behalf of non-federal candidates in connection non-federal elections do not constitute Federal election activity. In addition to proposed section 100.24(a)(1)(iii), the Committee encourages the Commission to expand this language to include exemptions for communications discussing specific issues that are exclusively a state or local concern, and references to absentee ballot or vote-by-mail information. *See 72 Fed. Reg.* at 31475. Without such exemptions, state and local party committees may be needlessly restricted in their message of support for state and local candidates during exclusively non-federal elections, without any statutory mandate or discernible policy goal to justify curbing such speech.

While the Committee is supportive of the proposed rulemaking, it is also concerned that some of the questions raised in the NPRM suggest a possible infringement on the exclusive state regulation of certain non-federal activities, as permitted under the Bipartisan Campaign Reform Act of 2002 ("BCRA"). In particular, the Committee urges the Commission to confirm that the statutory


exclusions from Federal election activity set forth in 2 U.S.C. § 431(20)(B)(i) and (iv) remain intact, and to provide a non-exhaustive list of examples of political speech that would fall within these exemptions, such as those found in Advisory Opinion 2006-19.

The line of questioning in the NPRM about other possible exemptions from FEA for separate non-federal elections does not appear to acknowledge the breadth of the statutory exemption for "the costs of grassroots campaign materials . . . that name or depict only a candidate for State or local office." 2 U.S.C. § 431(20)(B)(iv). Unlike the exemption in section 431(20)(B)(i) for "a public communication that refers solely to a clearly identified candidate for State or local office, if the communication is not a Federal election activity described in subparagraph (A)(i) or (ii)," there is no similarly restrictive language in this exemption for grassroots campaign materials. "Grassroots" is not defined, but it is commonly understood to encompass, at a minimum, communications that are delivered in person – thus providing a strong statutory basis for a state or local party to use exclusively non-federal funds to pay canvassers at any point in the election cycle to engage in a wide range of political speech on behalf of a state or local candidate, provided that their communications do not refer to any clearly identified federal candidates.

The range of political speech that is exempt under section 431(20)(B)(i) is admittedly more narrow, for it specifically excludes the voter registration, voter identification, GOTV and generic campaign activities defined in subparagraph (A)(i) or (ii) of section 431(20). This makes it all the more important for the Commission to confirm that a public communication that is focused exclusively on advocating the election of one or more non-federal candidates is exempt from FEA regardless of when the communication occurs.

Finally, in light of these statutory exemptions, the Committee respectfully questions the legal relevance of whether turnout for a non-federal election has a measurable effect on voter turnout in a subsequent federal election. *See 72 Fed. Reg.* at 31474-75. It would be difficult to find a party committee to deny that having strong non-federal candidates helps strengthen a party's standing among voters in the state, and provides an ancillary benefit to federal candidates when their turn for election or re-election arises. The converse often proves true as well. But surely this dynamic between non-federal and federal candidates did not escape the attention of the members of Congress who voted for BCRA. Section 431(20)(B) – in particular, subparagraphs (i) and (iv) – is evidence of that, and should not be disregarded.

Very truly yours,



Marc E. Elias  
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Counsel, New Jersey Democratic  
State Committee