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Subject Comments of Mark Brewer, President of the ASDC

Attached please find the comments of Mark Brewer on behalf of the
Association of State Democratic Chairs.

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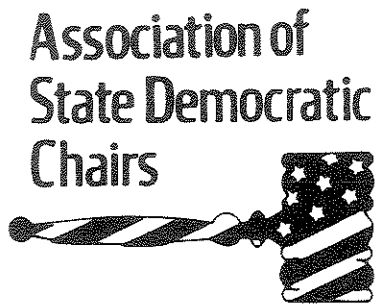
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Mark Brewer
President

COMMENTS OF MARK BREWER
PRESIDENT, ASSOCIATION OF STATE DEMOCRATIC CHAIRS
ON PROPOSED RULES GOVERNING HYBRID COMMUNICATIONS

On behalf of the Association of State Democratic Chairs ("ASDC"), I am submitting the following comments in response to the Commission's Notice of Proposed Rulemaking of May 10th on the proper treatment of public communications by political party committees that reference one or more clearly identified Federal candidates and also urge support for unnamed candidates of a party (referred to below as hybrid communications). The need for regulation arises because party committees often seek to bolster support for their candidates by linking their nominees to better known candidates of the party. A typical example is for a party committee, when advertising on behalf of its Presidential nominee, to use the advertising to promote the party's candidates generally. Such efforts are as old as political parties and were an effective technique for enhancing party support well before the advent of campaign finance regulation. The ASDC recognizes that the practice poses a regulatory challenge and understands and applauds the Commission's effort to meet that challenge through this rulemaking.

The ASDC urges that the Commission be guided in this rulemaking by certain principles. First, the Commission should not adopt rules that would discourage

candidates from identifying with their political party. It should recognize the shared benefits and party building function of hybrid communications. There are many avenues under federal campaign finance law for a party committee to engage in activity that benefits a clearly identified federal candidate. Prominent among the activities that a state committee can undertake are volunteer exempt activities, coordinated expenditures, independent expenditures, internet communications and direct contributions. The Commission should not adopt regulations that go beyond what the law requires and reflect a preference for one form of support over another. The Commission should keep in mind that, regardless of how a party committee elects to support a clearly identified federal candidate, it must use funds raised in compliance with federal law. Party committees are required to pay the full cost of hybrid communications with federal funds. No rule that results from this rulemaking is going to change that requirement.

As a consequence, the Commission will not, regardless of what rules it adopts, be opening an avenue to circumvent the contribution limits and prohibitions of the law. No statutory purpose will be served by adopting regulations that discourage hybrid advertising in favor of one of these other forms of support. For example, a rule that require all the costs of hybrid advertising to count against the coordinated spending limit would likely result in a party committee engaging in more exempt activity or in independent expenditures. It will not result in less money being spent. Nor will it lead to non-federal funds being used to support federal candidates. There is no apparent policy reason for the Commission to adopt a rule that would result in fewer hybrid communications and more exempt activity or independent expenditures.

On the other hand, adopting a rule that gave party committees more freedom to allocate costs would enable the party to judge and choose the means of supporting a candidate that best advances the interests of the party and its candidates. The ASDC recognizes that the law does set coordinated spending limits on party committees but it does not see a need for the Commission to rigidly enforce those limits where a more flexible interpretation would allow the party to play its traditional party building role without compromising the law's corruption preventing objective.

The second principle which the ASDC encourages the Commission to embrace is simplicity. The ability of state and local party committees to comply with existing regulations is already being severely tested by the complexity of those regulations. In no area is that more true than when it comes to allocation of expenses. Present regulation requires different methods of allocation for administrative expenses, for federal election activity, for fundraising, and for candidate activity. Each of these activities requires the application of an allocation formula that varies from activity to activity, from election cycle to election cycle and from fundraising event to fundraising event.

The rulemaking notice well demonstrates the current complexity of the law in this area. As set forth in the notice, to understand how hybrid communications are currently allocated a person would need to have mastered a number of advisory opinions, different regulatory sections and recent audit matters. Even if one were acquainted with the teachings of each of these, it would be difficult to identify what one has learned other than the regulatory framework is complex and uncertain. Therefore the ASDC is pleased

that the Commission is undertaking this rulemaking to bring clarity to these issues. Nevertheless, little will be achieved if the rules bring clarity but the law remains complex and burdensome.

For example, the ASDC would object to rules -- no matter how clear -- that would treat different forms of communication differently. The allocation rule for phone banks should not be different from the rule for direct mail or for a broadcast communication. Even if there is a sound policy reason for different treatment, the ASDC believes that the increased cost of compliance would be too high to justify such a rule. To illustrate the problem, assume that a state committee hired a firm to conduct a phone bank and to follow-up the calls with a direct mail piece. Different allocation requirements for the phone bank and the direct mail would regularly lead to unwitting violations of the law. Simple consistent regulation is a necessity when it comes to the allocation of expenses, an area that is already rife with complexity.

The third principle that should guide the regulations is flexibility. The interests of a political party and any one candidate are not identical. Parties are often asking candidates to sacrifice self-interest for the collective interest of the party. Consequently, party activity on behalf of a candidate is often the subject of negotiation. How the party and its candidates are referenced in a communication is the subject of extensive back and forth discussion between the party and the candidate. The Commission regulation should not lock the party or its candidates into a specific verbal formulation that permits allocation only if certain words or phrases are used. So long as the communication promotes the party unambiguously, allocation should be allowed.

The difficulty of the task that the Commission is undertaking in this rulemaking is evident from the Notice. The Notice sets forth a number of alternatives and variations on those alternatives. There is undoubtedly a myriad of ways that the Commission could choose to regulate hybrid advertising. It is not easy to identify, however, whether the choice of one alternative over another promotes any discernible legislative objective. Therefore, the ASDC suggests that the Commission measure the alternatives based on their impact on the role of political parties in our political process. What the ASDC seeks are simple flexible rules that encourage rather than discourage candidates from associating with their party. If the Commission is able to come to an understanding of what its goals for this rulemaking are, the ASDC is confident that final rules will reflect the above principles and State and local party committees will be pleased with the outcome.