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11/21/2008 05:27 PM

To <millionairerepeal@fec.gov>
cc
bcc
Subject Comments on Millionaires' Amendement

Mr. Robert M. Knop
Assistant General Counsel
Federal Elections Commission
999 E. Street, NW
Washington, DC 20463

Mr. Knop,

Please accept the attached comments to the Federal Election Commission on the proposed deletion of rules regarding increased contribution limits and coordinated party expenditure limits for Senate and House of Representatives candidates facing self-financed opponents. The American Legislative Exchange Council (ALEC) supports the Commission's proposal and urges deletion of 11 C.F.R. § 400 because the statutory foundation for those rules was declared unconstitutional by the U.S. Supreme Court in *Davis v. FEC* (2008).

Please contact me with any questions.

Sincerely,

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ALEC_Comments_MillionaireRepeal.pdf

November 21, 2008

By Electronic Email

Mr. Robert M. Knop
Assistant General Counsel
Federal Elections Commission
999 E. Street, NW
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COMMENTS OF THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL SUPPORTING DELETION OF UNCONSTITUTIONAL AND UNENFORCEABLE CAMPAIGN SPEECH REGULATIONS

(Notice 2008-11: Increased Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-financed Candidates)

The Commission requests comments on its proposed deletion of rules regarding increased contribution limits and coordinated party expenditure limits for Senate and House of Representatives candidates facing self-financed opponents. The American Legislative Exchange Council (ALEC) supports the Commission's proposal and urges deletion of 11 C.F.R. § 400 because the statutory foundation for those rules was declared unconstitutional by the U.S. Supreme Court in *Davis v. FEC* (2008).

ALEC is the nation's largest nonpartisan, individual membership organization of state legislators. Its mission is to promote Jeffersonian principles of limited government, federalism, free markets, and individual liberty. In addition to a membership of over 2,000 state legislators, ALEC also provides information support to its more than 85 alumni members who currently serve in the United States Senate and House of Representatives.

In *Davis*, the Supreme Court declared Section 319(a) of the Bipartisan Campaign Reform Act of 2002 (BCRA) unconstitutional because it placed different contribution and coordinated party expenditure limits on candidates vying for the same Congressional seat. It likewise struck down Section 319(b)'s asymmetrical disclosure requirements. The Court insisted that "imposing different contribution and coordinated party limits on candidates vying for the same seat is antithetical to the First Amendment." The Court's analysis recognizes a constitutional rule against contribution limits and disclosure requirements that discriminates between candidates competing for the same seat.

The Court's ruling in *Davis* clearly prohibits enforcement of rules implementing Section 319(a) and (b). It did not, however, address the constitutionality of the BCRA's Section 304(a) and (b), which applies to Senate candidates. Regardless, the Court's reasoning in *Davis* suggests that the implementing regulations for both statutory sections—contained in 11 CFR § 400—are unenforceable in their entirety.

The constitutional prohibition of discriminatory campaign speech burdens appears to apply equally to candidates for seats in both chambers. The Court's opinion in *Davis* vindicates a "candidate's First Amendment right to spend money on his or her own campaign"—a freedom of speech right of "candidates vying for the same seat." Nowhere in *Davis* did the court maintain that the underlying constitutional right is limited in scope to House of Representatives candidates.

Moreover, candidates for the Senate are no more susceptible to corruption or to the appearance of corruption through self-financing than are candidates for the House of Representatives. The Court actually suggested that self-financing reduces the risk that candidates for seats in either chamber will be engaged in corruption or will appear to be engaged in corruption. Also, the dangers of manipulating voter choices through laws attempting to "level electoral opportunities"—as expressed by the Court in *Davis*—are equally present in both House and Senate contexts. The right of voters to choose their Senators is equally important as the right of voters to choose their Representatives.

In its Notice of Proposed Rulemaking, the Commission expresses its belief that *Davis* precludes enforcement of 11 CFR § 400. It proposes to delete 11 CFR § 400 entirely. ALEC believes that the Commission's proposal is based on a sound reading of the Court's opinion in *Davis*. ALEC also believes the Commission's proposal is not only reasonable, but compelled by the constitutional ruling in *Davis*. Accordingly, ALEC support's the Commission's proposal to delete 11 CFR § 400.

Respectfully submitted,

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