



**Republican
National
Committee**

Counsel's Office

June 3, 2005

Ms. Mai T. Dinh
Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

VIA ELECTRONIC MAIL: StatePartyWages@fec.gov

Dear Ms. Dinh:

By and through the undersigned counsel, the Republican National Committee submits the following comments regarding the Commission's Notice of Proposed Rulemaking on State, District, and Local Party Committee Payment of Certain Salaries and Wages, 70 Fed. Reg. 23,072 (May 4, 2005). We thank the Commission for the opportunity to comment in writing on this Proposed Rulemaking.

This rulemaking results from the ruling in Shays v. FEC, 337 F. Supp.2d 28 (D.D.C. 2004), striking down Commission regulations regarding the payment of employee salaries by State, local, and district party committees ("State party committees"). The Commission's current regulations, as promulgated in 2002, allow for these party committees to use State funds to pay the full salary or wage of an employee who spends 25% or less of his or her time in a month on Federal election activity and activities in connection with a Federal election ("Federal-related activities").¹ The Shays court held that the regulation "compromise[d] the Act's purposes of preventing circumvention" and "stemming the flow of non-federal money into activities that impact federal elections."²

Since the Commission is appealing this portion of the Shays decision, the current regulation should remain in effect until that matter is settled. However, since the Commission

¹ See 11 C.F.R. § 106.7(c)(1); 11 C.F.R. § 106.7(d)(1)(i); 11 C.F.R. § 300.33(c)(2). These provisions were adopted on the basis of 2 U.S.C. § 431(20)(A)(iv).

² Shays at 114.

simultaneously initiated this rulemaking, the RNC offers these comments on the proposed regulations in the event that appeal is not successful.

The Commission's proposal to require State party committees to use Federal funds to pay a fixed 25% of the salary of an employee who spends 25% or less of his or her time on Federal-related activities during months of the two-year, Presidential election cycle seems to be appropriate.

However, with respect to months during the two-year, non-Presidential election cycle, State party committees should have the opportunity to use the same allocation ratio allowed for all other "Administrative costs," as set forth at 11 C.F.R. § 106.7(d)(2)(iii) and (iv). Under this proposal, a State party committee would pay 15% of the salary of an employee performing 25% or less of his or her time on Federal-related activities with Federal funds in a year in which no Presidential or Senatorial candidate appeared on the ballot, and 21% of the salary in a year in which a Senatorial, but no Presidential candidate appeared on the ballot.

This approach is consistent with the Commission's current allocation requirements in a two-year, non-Presidential election cycle and responsive to the Shays decision if the Commission's appeal is unsuccessful. In addition, the Commission's continued adherence to the approach set forth in footnote 4 of the Notice, that salaries of employees spending no time in a given month on Federal-related activities may be paid entirely with State funds, is also appropriate, especially with respect to State party committees that participate in odd-year, nonfederal elections.

Respectfully submitted,

/s/
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