Association of
State Democratic
Chairs

Mark Brewer
President

Comments of Mark Brewer, President

Association of State Democratic Chairs

On Proposed Revisions to 11 C.F.R. § 300.32

On behalf of the Association of State Democratic Chairs ("Association"), I am submitting the following comments on the proposed revisions to the Commission's regulation that provides for a *de minimis* exemption allowing State, district and local committees of a political party committee to pay for certain Federal election activity aggregating $5000 or less in a calendar year entirely with non-federal funds, provided that those funds otherwise qualify as Levin funds. The Commission proposes to delete this exemption in order to comply with the District Court's decision in *Shays v FEC*, 337 F. Supp.2d (D.D.C. 2004). The Commission is appealing that decision. For the reasons given below, the Association strongly urges the Commission to retain the exemption because of the role that the exemption plays in preserving grassroots local party activity.

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Comments

The Association applauds the Commission's decision to appeal the District Court's decision overturning this regulation. The *de minimis* exemption takes into account the grassroots character of local party activity in a manner not fully appreciated in the District Court decision. Local political party committees are organized down to the ward, district and even precinct level. These committees consist largely of volunteers. Very few of these committees are political committees for the purposes of the Federal Election Campaign Act. The volunteers who compose these committees devote most of their time and energy to state and local elections. Seldom do these local committees engage in sufficient financial activity to trigger registration and reporting obligations. The imposition of such obligations would be a major deterrent to their continued existence.

The lack of a *de minimis* exemption in the Commission regulations would have a negative impact on grassroots party organization. These local party entities do not maintain federal accounts. As a general rule, they operate very informally. Fundraising is done on as needed basis for a particular project or program. Funds are most often collected from the members of the committee itself. Frequently the committee will operate without a bank account and without a treasurer.

Unless the committee makes contributions to or independent expenditures on behalf of federal candidates, its members will assume that the committee does not

have any federal registration, reporting or recordkeeping obligation. The idea of allocating activity between a federal and non-federal account or complying with the F.E.C.'s disclaimer requirement is totally alien to most of these people. It would not occur to them that reminding their neighbors to vote or staffing a voter registration booth at a local mall or college subjects them to federal government regulation.

Telling these people that they have to pay for these activities with the proper mix of federal funds and non-federal Levin funds is either a futile gesture or a death sentence. To believe that these people will be thumbing their way through the Code of Federal Regulations in search of the proper allocation formula is unrealistic. Were they to become aware of this duty, they will either ignore the Commission or quit doing local party grassroots politics. Because these committees exist in the thousands all across the country, it is impossible to imagine how the Commission could construct an enforcement program that could fairly enforce the law. The Commission could find itself responding to an untold number of politically inspired complaints involving insubstantial sums of money. The choice for the Commission would be to either dismiss them and create a *de facto de minimis* exemption or expend substantial resources pursuing the complaints.

The lack of an exemption could also lead to absurd results. Local party activists do not need to wear an official party hat to engage in "federal election activity" such as voter registration and get-out-the-vote drives. By removing the

official party label from the activity, the very same people who constitute the local party committee could reassemble under a different moniker and free themselves from all the restrictions that would otherwise apply. The very informality of local party activity facilitates such rebirth. If their neighbors can engage in these activities unrestricted, it is hard to fathom an argument that their participation in a local party committee somehow precludes them from engaging in precisely the same activity. Because of the small amounts of money involved, operating outside the official party structure is at most a minor inconvenience and far less burdensome than complying with federal regulations.

It is difficult to imagine how a *de minimis* exemption of $5000 can be seen as undermining Congress's clear intent. If Congress allowed an unlimited number of $10,000 non-federal Levin contributions to well-heeled party committees, what legislative purpose is served by requiring small grassroots party organizations to allocate the cost of pizzas for a voter registration drive between much smaller contributions? Allocation of *de minimis* amounts of activity only makes sense if it serves some larger purpose. Suppressing local grassroots party activity in favor of non-party or large institutional party activity is not a legitimate legislative purpose. The Commission should not presume that Congress was pursuing such an unlikely objective. Unless the Commission can identify a more credible purpose, it should

reject the argument that a *de minimis* exemption flies in the face of clear legislative intent.

In closing, the Association would urge the Commission to consider precisely whom it is regulating when it imposes burdensome regulation on local party committees. Making it difficult for local volunteers to participate in neighbor to neighbor politics surrenders the political playing field to the very big money players at whom the law is presumably directed and drives political activity out of our political parties and into less accountable political channels.