

MEMORANDUM

TO: JUSTIN MILLER, ECRB CHAIRPERSON
FROM: ZACK SHANDLER, ASSISTANT CITY ATTORNEY *ZS*
SUBJECT: WHAT IS COORDINATION?
DATE: 2/12/15

ISSUES

#1 Should the ECRB be a watchdog body or investigative body for “coordination” issues?

I defer this policy decision to the ECRB. The ECRB has addressed its role in the “Board Complaint Procedures” in its “Rules of Organization and Practice.

#2 What is “coordination” between independent organizations and candidate organizations? The legal doctrine of “I know it, when I see it” appears to be the most prevailing view of interpreting the term “coordination.” It has been noted: [o]n the federal level, the FEC has conducted just three investigations into coordination since 1999-not necessarily because it hasn’t happened, but because it is so hard to detect.” www.publicintegrity.org/2012/01/13/7866/rules-against-coordination-between-super-pacs-candidates-tough-enforce. I have cited several examples below for your review and provided accompanying source materials from jurisdictions/organizations that have tried to define coordination.

SOME EXAMPLES WHEN PENALTIES ASSESSED

1. “Former Utah Attorney General John Swallow, for example, raised funds to support his 2012 campaign from payday lenders by routing their donations through “independent” dark money nonprofits that were formed by Swallow’s campaign staff.” This offense was part of a larger bribery operation. “Swallow resigned from his post, and now faces 12 felonies and two misdemeanors, including racketeering, bribery, accepting gifts and falsifying government records.”

Source: www.sourcewatch.org/.../2/.../Assault_on_Clean_Election_Laws_final.pdf

2. “The most recent FEC investigation regarding coordination was settled in May 2009 and involved the election committee of former Rep. Joe Schwarz, R-Mich., and the Republican Main Street Partnership PAC. The FEC uncovered emails spanning six months in 2006 between members of the PAC and the Schwarz campaign. One email revealed Schwarz campaign director Matt Marsden had contacted the PAC’s treasurer with a suggestion for a radio ad on behalf of Schwarz. One week later, two radio stations ran ads following the theme the Schwarz director suggested. Other emails revealed Schwarz staffers recommended which radio stations the PAC should target. The complaint was filed by Club for Growth, a conservative PAC backing Schwarz’s main challenger. Schwarz vehemently denied his staff broke any laws and spent around \$50,000 and three years fighting the charge before agreeing to settle...each side was fined \$2,500.”

Source: www.sourcewatch.org/.../2/.../Assault_on_Clean_Election_Laws_final.pdf

SOME EXAMPLES WHEN NO PENALTIES ASSESSED

3. “In 2014, for example, Senator Mitch McConnell’s campaign quietly uploaded a video to Youtube featuring the senator smiling at the camera in a variety of poses, providing footage for outside groups to produce ads featuring McConnell, but without McConnell actually “coordinating” or directly communicating with those groups. The tactic took on the name “McConnelling” and was pilloried by the likes of the Daily Show—but it ultimately resulted in a \$1.8 million ad campaign by a supportive group that used the footage.”

Source: www.sourcewatch.org/.../2/.../Assault_on_Clean_Election_Laws_final.pdf

4. “Conservative super PAC American Crossroads asked the FEC to allow candidates to appear in super PAC ads. The PAC argued that while the ads are “fully coordinated” with candidates, they should not count as “coordinated communications” in the campaign finance sense. FEC commissioners deadlocked 3-3 [if this was permissible].”

Source: www.publicintegrity.org/2012/01/13/7866/rules-against-coordination-between-super-pacs-candidates-tough-enforce

5. “The Republican National Committee and the 2004 Bush campaign filed a complaint against liberal PAC MoveOn.org and its affiliates for coordination with the John Kerry campaign. The investigation did not turn up enough evidence to fine the group even with Kerry’s hiring of Zach Exley, a MoveOn.org project director.” No fines were assessed.

Source: www.publicintegrity.org/2012/01/13/7866/rules-against-coordination-between-super-pacs-candidates-tough-enforce

6. “Election watchdogs Democracy 21 and the Campaign Legal Center filed a related complaint against Rick Perry and the Make Us Great Again PAC, alleging that Perry used several video clips, free of charge, in his own ad that Make Us Great Again produced. This constitutes an illegal in-kind contribution, the groups say.”

Source: www.publicintegrity.org/2012/01/13/7866/rules-against-coordination-between-super-pacs-candidates-tough-enforce

Super PAC manager convicted of funneling funds for candidate

By MATTHEW BARAKAT By MATTHEW BARAKAT, Associated Press 

More News

ALEXANDRIA, Va. (AP) — A Virginia man who managed a losing congressional campaign while running a Super PAC has pleaded guilty to illegally funneling money from the PAC to bolster his candidate's campaign.

Federal prosecutors said it is the first time a person has been convicted of illegally coordinating campaign contributions between political committees.

Tyler Harber, 34, of Alexandria was campaign manager and political consultant for Chris Perkins, who ran in 2012 as a Republican against Democratic incumbent Gerry Connolly in a northern Virginia district. Harber was also a frequent guest on cable news talk shows, appearing as a Republican pundit or strategist.

At a plea hearing Thursday in federal court in Alexandria, Harber admitted causing the PAC, which is not named in court records, to spend \$325,000 in ads targeting Connolly.

Super PACs can solicit and spend unlimited amounts of funds, but cannot coordinate their activity with specific congressional candidates. They were born in the wake of the 2010 Citizens United decision by the U.S. Supreme Court, which lifted federal limits on contributions to and expenditures by independent political organizations. Those groups can spend as they see fit to try and sway voters, but cannot coordinate their spending with candidates.

In his plea deal, Harber also pleaded guilty to making a false statement to the FBI, denying that he knew Perkins or campaigned for him when, in fact, he served as his campaign manager.

At Thursday's plea Hearing, Harber said little except to confirm his guilty plea, and to ensure that the terms of his plea deal will prevent his family members from being prosecuted — an assurance that prosecutors provided.

According to a statement of facts filed with the plea deal, Barber and his family profited from the coordinated campaign activity. It states that Harber received a \$9,100 commission on the \$325,000 ad buy from the Super Pac that targeted Connolly. It also states that Harber and his family used \$138,000 of the money taken in by the PAC — about 23 percent of the PAC's entire receipts — for personal use.

Perkins, who lost to Connolly by more than 20 points in 2012, did not immediately return a call Thursday seeking comment. The court documents do not allege he participated in any wrongdoing.

The two counts to which Harber pleaded guilty each carry a maximum of five years in prison. He is scheduled for sentencing in June.

Harber's plea deal also requires that he cooperate with prosecutors in what was described in court as an ongoing investigation.

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FOR JUSTICE

AFTER *CITIZENS UNITED*:
THE STORY IN THE STATES

Chisun Lee, Brent Ferguson, and David Earley

Election Commission (FEC), the agency charged with enforcing the law,¹⁷⁵ regulates communications as coordinated if a three-part test is met.¹⁷⁶

First, the test asks if the communication was paid for by an outside spender — not the candidate, the campaign, or the party.

Second, the so-called content part of the federal test asks if the spending in question concerns a type of communication that is subject to coordination regulation in the first place — if it is closely enough related to a pending election. An expenditure is subject to regulation if it expressly advocates the election or defeat of a clearly identified candidate,¹⁷⁷ is the “functional equivalent” of such express advocacy,¹⁷⁸ republishes campaign material, or refers to a candidate and occurs within certain time periods before the election.¹⁷⁹

Third, the test asks if the conduct in question is of a type that could lead to a finding of illegal coordination. Such conduct includes:

- The candidate requested or suggested that the communication be created or distributed;¹⁸⁰
- The candidate had “material involvement” in or “substantial discussion” about strategic planning of the communication;¹⁸¹
- The candidate and spender used the same vendor within a short window of the communication’s distribution and the vendor used or conveyed to the spender nonpublic information about the campaign’s plans (unless the vendor implemented a firewall policy to separate services to the two clients);¹⁸²
- A person who recently worked for the candidate is involved in the outside group’s spending and the former employee used or conveyed to the spender nonpublic information about the campaign’s plans (unless the spender implemented a firewall policy to separate the candidate’s former employee from work on the communication);¹⁸³ or
- The spender disseminates or republishes the candidate’s campaign material.¹⁸⁴

We provide a comprehensive analysis of the coordination law in each state, and descriptions of dozens of enforcement actions and compliance opinions, in the Appendix of this report.¹⁸⁵ The following chart delivers the highlights, ranking the 15 states and the federal government into categories of strictness of regulation (in alphabetical order within each category).

meantime other parts of the government are answering the call for change. The New Mexico secretary of state this year issued a candidate guide that advises politicians to follow the federal coordination standard.²²⁹ In August the state attorney general urged the secretary of state to issue similar guidance to outside spenders.²³⁰

But the federal coordination standard is hardly robust, as our comparative review of different laws in Section Three shows. The bill introduced this September by U.S. Reps. David Price and Chris Van Hollen seeks to change that, proposing to modernize coordination regulation for the super PAC era.²³¹ Many features would address candidate-specific super PACs in particular, proposing to treat outside spending to promote a candidate as coordinated if it is “not made entirely independently of the candidate” or made after “more than incidental communication with[] the candidate.”²³² Such spending also would be restricted if done by groups the relevant candidate encouraged to form or assisted through fundraising.²³³ The proposed law would mandate a longer “cooling off” period before a candidate’s former employee could direct unlimited spending to promote the candidate, and similarly expand the time period when an unlimited spender may not use a consultant or vendor that has been hired by a candidate.²³⁴ Coordination rules would extend to all advertising that promotes or attacks a candidate, even if it does not run near the time of the election.²³⁵

Another federal proposal, the American Anti-Corruption Act, contains similar provisions.²³⁶ It would also treat spending as coordinated if the spending group was helmed or assisted by current or former colleagues or campaign staffers of the relevant candidate, regardless of how much time had passed between roles, or if the candidate approved of any of the organization’s activities.²³⁷

Our review of recent collaboration trends and of many different regulation approaches yields a clear set of recommendations for regulating coordinated spending more effectively. Generally, laws treat outside spending to promote a candidate’s election as coordinated if it is based on “substantial discussion” between the spender and the candidate. As a number of jurisdictions have recognized in initiating reforms, that standard does not adequately capture the many ways collaboration occurs today. Our recommendations for a modern and more effective approach include:

- **Make laws apply to a realistic universe of spending.** The weakest laws exclude huge swaths of outside spending from coordination regulation. They cover only so-called express advocacy — communications that explicitly ask voters to elect or defeat a particular candidate — rather than including the more common form of election-season advertisement that promotes or attacks candidates’ stances on issues. Jurisdictions that currently consider a reasonable range of spending in regulating coordination include Maine, Ohio, and the federal government. The Price-Van Hollen bill proposes improvements to federal coverage.
- **If a candidate raised money for a group, treat all spending by that group on behalf of the candidate as coordinated.** When candidates raise money for a group that then spends on communications to promote their election, they are cooperating to make those expenditures happen. What is more, it is this aspect of cooperation in particular — a candidate’s ability to solicit funds for a supportive and unlimited spender — that raises concerns about corruption analogous to those that justify limits on direct campaign contributions. Most jurisdictions,

including the federal government, fail to regulate coordination on this basis.²³⁸ But this year Minnesota announced that it would view any expenditure to promote the election of a candidate who has raised money for the spender as coordinated. Connecticut recently enacted a similar, but weaker, rule that would allow consideration of a candidate's fundraising role as evidence of coordination. Pending reforms to allow for determinations of coordinated spending because of related candidate fundraising include the Price-Van Hollen bill and the American Anti-Corruption Act.

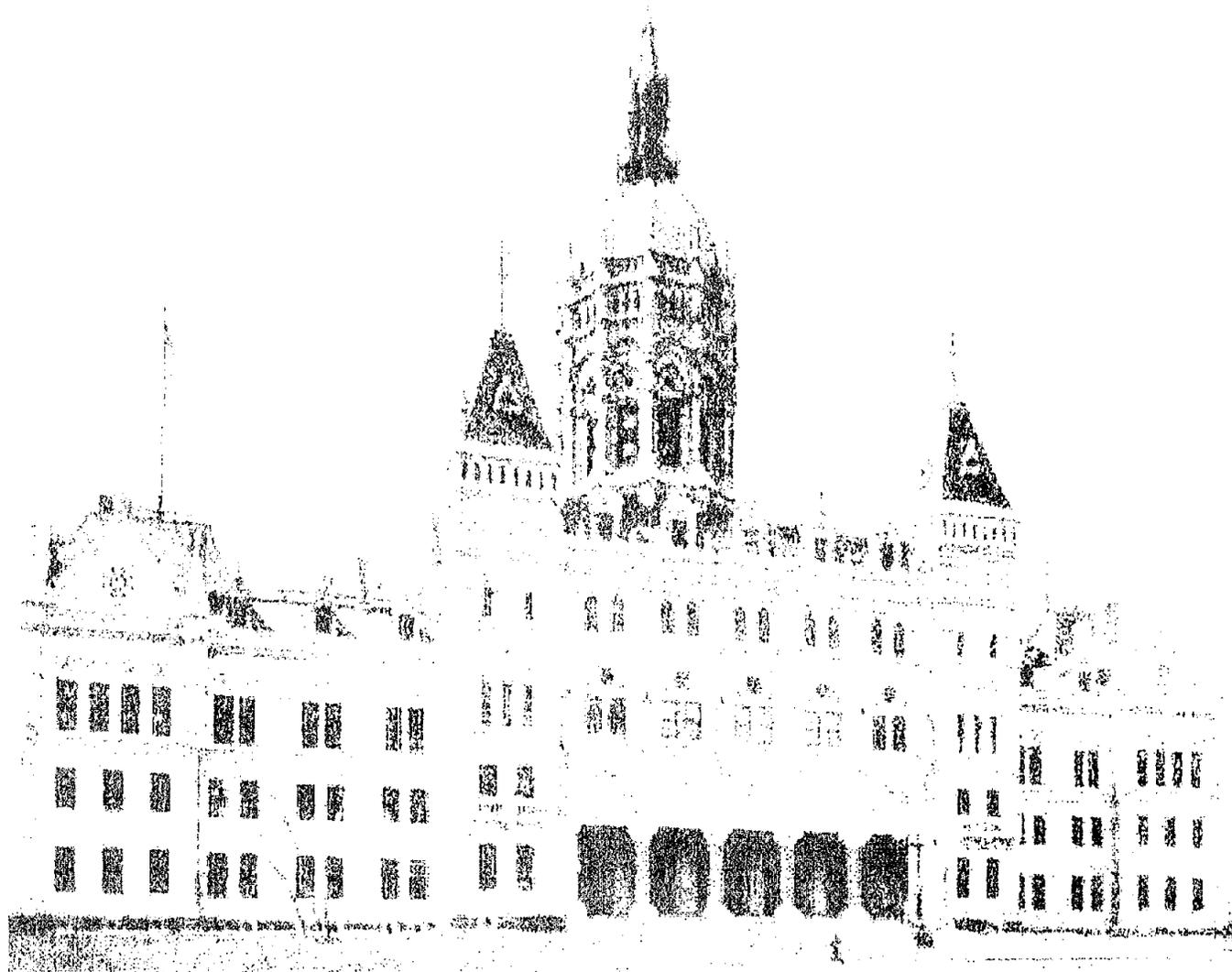
- **Provide sensible “cooling off” periods before a candidate’s former advisers may staff a group that is permitted to make unlimited expenditures to promote the candidate’s election.** Otherwise, any spending in support of that candidate by a group with such staffing should be viewed as coordinated. Many cooling off periods, such as the federal rules’ 120-day window, are too short for an age when super PACs work year-round, not just in the couple of months before Election Day. Maine and Connecticut currently provide for more reasonable windows, and the Price-Van Hollen bill and the American Anti-Corruption Act proposals seek to expand those periods for federal elections.
- **Treat as coordinated any spending to promote the election of a candidate that reproduces material produced by the candidate’s campaign.** Many jurisdictions treat expenditures as contributions if they are used to reproduce or disseminate campaign communications. But few existing laws adequately address the now widespread practice of campaigns’ making available images, silent “B-roll” video footage, scripts, and other raw material for outside spenders to use in supportive advertising. Current proposals in Philadelphia and San Diego would treat such spending as coordinated.
- **Treat as coordinated any spending to promote the election of a candidate, when the spender uses a consultant who has also served the candidate in a position privy to related campaign information.** Federal regulations partially address this behavior by providing that an outside spender may not use a vendor that the candidate has used in the past 120 days. California and Maine also regulate this conduct, without the short time limitation.
- **Publish scenario-based examples of what constitutes prohibited coordination and what does not.** Many jurisdictions provide only a basic, statutory definition of coordination, leaving candidates and spenders on their own to figure out what it means, for instance, to “consult or cooperate” and thus trigger penalties. It is useful to publish examples of prohibited activity, in realistic contexts. For example, Connecticut provides a fairly detailed list of scenarios that will create a rebuttable presumption of coordination. While the federal rules are unnecessarily narrow, they provide more detailed guidance than the laws of many states.
- **Ensure adequate enforcement and deterrence.** Even the most comprehensive coordination law will not deter violations without adequate and sensible enforcement. An effective approach should include vesting a single entity with clear, primary authority to enforce the law, including through proactive investigations — not just in reaction to private complaints. The size of a penalty should track the severity of the violation, to make allowances for minimal transgressions while also ensuring adequate consequences for sizeable and deliberate wrongdoing.

- **Allow use of firewalls under appropriate circumstances as evidence that an outside group's spending was truly independent.** Under some circumstances — such as when a vendor provides services to both a candidate and an outside group — it may be possible to mitigate the risk of coordination through the vendor's use of an adequate firewall to separate the two streams of work. In such cases, states should allow proof of a formal, written policy, prohibiting the exchange of relevant information, to be used as evidence that no coordination occurred.

These recommended reforms — which address the most obvious problems and do not preclude further ideas — come as a package. Some of the elements already appear in some form in existing local, state, or federal rules. But, as our review of constantly evolving collaboration tactics shows, any jurisdiction seeking to quell potentially corruptive coordination on a meaningful scale needs to embrace a comprehensive approach.

Understanding the Connecticut Campaign Finance Laws

A Guide for Political Committees



STATE ELECTIONS ENFORCEMENT COMMISSION
Revised January 2014



For more information on how and when to report organization expenditures, please see **Chapter VII. Reporting Information.**

[General Statutes §§ 9-601(25) (as amended by P.A. 13-180), 9-601a(16), 9-601b(8), 9-608(c)(5), 9-718; Declaratory Ruling 2011-01]

3. Non-Independent (Coordinated) Expenditures

Non-independent expenditures, or coordinated expenditures, are considered contributions under the law and are defined broadly. Recently, the General Assembly amended the definition of independent expenditures. These changes expanded the "rebuttable presumptions" that expenditures made in certain ways or by certain persons or groups, including committees, are coordinated with the candidate. While the candidate committee could overcome this presumption by showing that an expenditure truly was independent, see **Independent Expenditures** below, committees may be served best by knowing how to avoid scenarios that could invoke these presumptions.

Important Note: This section provides a general summary of the current law concerning independent expenditures and provides a few general examples of the rebuttable presumptions. The rebuttable presumption provisions in section 9-601a(16) and 9-601b(8) may be found in the appendix to this Guidebook.

The statute points out several instances where the Commission will presume that a coordinated expenditure was made, including but not limited to where:

- The person making the expenditure and the candidate or committee benefiting from the expenditure share the same leadership, consultants, or providers of creative services, including but not limited to advertising campaigns, polling, mail design, mail strategy, political strategy, general campaign advice or telephone banking;
- The person makes an expenditure in cooperation with a candidate or committee or based on information received from the candidate or someone acting on behalf of the candidate about the candidate's plans or needs;
- The person pays for political advertising or communications that uses material prepared by the benefiting committee or a consultant hired by the benefiting committee;
- The person pays for fundraising affairs on behalf of a committee; and
- The person pays for communications or advertising that clearly identify the candidate and the candidate or a representative of the candidate has been informed about the manner, contents, and target audience, among others, of the communication.

Important Reminder: As noted throughout this Guidebook, the term "person" is defined broadly to mean "[a]n individual, committee, firm, partnership, organization, association, syndicate, company trust, corporation, limited liability company or any other legal entity of any kind but does not mean the state or any political or administrative subdivision of the state."



Important Note (2013 Law Changes): In section 4 of Public Act 13-180 the legislature amended the rebuttable presumption provisions and added several new rebuttable presumptions. Any person seeking to engage or engaging in independent expenditures may find the rebuttable presumptions as set forth in the law in the appendix of this Guidebook, and may contact the Commission's compliance staff with any specific questions.

Important Note (2013 Law Change): When the Commission is evaluating whether an expenditure is an independent expenditure, it will consider as an effective rebuttal to the rebuttable presumptions that the person making the expenditure has established a firewall policy designed and implemented to prohibit the flow of information between (1) employers, consultants, or other individuals providing services to the person paying for the expenditure, and (2) the candidate or the candidate's agents.

If an expenditure is coordinated by a political committee with a candidate and payment or reimbursement is not made by the candidate committee within a reasonable time, the coordinated expenditure constitutes an in-kind contribution to that candidate's campaign, which is impermissible for a CEP candidate to receive. Moreover, if an expenditure is coordinated by a business entity, labor union, or any other type of entity that is not making the expenditure through a political committee established under Connecticut law, it is an impermissible contribution, regardless of whether the candidate is participating in the Citizens Election Program or not.

[General Statutes § 9-601c (as amended by P.A. 13-180)]

4. Independent Expenditures

"Independent expenditures" occur when a political committee (or other person) makes an expenditure to promote the success or defeat of a candidate without the consent, knowing participation, or consultation of, a candidate or agent of the candidate committee. An independent expenditure does not count as a contribution to the candidate who received the benefit of the independent expenditure. However, such expenditure may impact the political committee making it and the candidates that it supports or opposes. Independent expenditures are **not** "coordinated expenditures."

It is important to understand the distinction between independent and non-independent activities, i.e., those coordinated with a candidate. Because the rules regarding each type of expenditure have very differing consequences, committees should take extra care to ensure that their activities are truly independent when making such expenditures.

Important Note (2013 Law Change): In section 4 of Public Act 13-180 the legislature amended the rebuttable presumption provisions and added several new rebuttable presumptions. Any person wishing to engage in independent expenditures may find the rebuttable presumptions as set forth in the law in the appendix of this Guidebook, and may contact the Commission's compliance staff with any specific questions.

The deadline to submit an independent expenditure report is dependent on the amount and date on which the expenditure was made in relation to the



primary/election. For more information on how and when to report independent expenditures, please see the [instructions to the SEEC Form 20](#).

Important Note (2013 Law Change): The disclosure provisions in [Public Act 13-180](#) require disclosure within 24 hours of making or obligating to make an independent expenditure or expenditures exceeding \$1,000 in the aggregate in relation to the offices for statewide or General Assembly candidates during the primary or general election campaign period.

As noted earlier, additional information and instructions concerning independent expenditures, including information about disclosure, will be forthcoming and made available on the SEEC website. If making or obligating to make an independent expenditure, please check the SEEC website to be sure you are following the most recent instructions.

[General Statutes § 9-601c, as amended by [Public Act 13-180](#)]

5. Joint Fundraising Events to Benefit Two or More Committees

Two or more political committees may form a separate political committee for the purpose of holding one or more fundraising affairs to benefit the committees. A political committee may also form a separate political committee with a party committee for the purpose of holding one or more fundraising affairs, but may not do so with a candidate committee.

Alternatively, a political committee may throw a joint fundraiser with another political committee (or a party committee or candidate committee) without forming a separate political committee as long as contributors write separate checks out to each involved committee. Each committee taking part should pay its proportional share of the cost of the event and include its attribution on any communications concerning the event. The committees should agree to and document the terms of the joint event and all related expenditures before making or committing to make any expenditures for the event.

[General Statutes § 9-609(a)]

6. Committee Worker Reimbursements

The committee may reimburse a committee worker if:

1. the worker has paid the expense from his or her own personal funds or personal credit card;
2. the treasurer authorized the expenditure;
3. the worker provides the treasurer with a written receipt from the vendor proving payment by the worker;
4. the expenditure is for a lawful purpose of the committee; and
5. the expenditure is not a contribution to any other committee.

When a committee worker uses personal funds to make authorized expenditures on behalf of the committee and seeks reimbursement, the payment made by the worker will be deemed a contribution to the committee unless the committee reimburses the



PUBLIC ACT 13-180, SECTION 4

Public Act 13-180, section 4: Section 9-601c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) As used in this chapter and chapter 157, the term "independent expenditure" means an expenditure, as defined in section 9-601b, as amended by this act, that is made without the consent, coordination, or consultation of, a candidate or agent of the candidate, candidate committee, political committee or party committee.

(b) When the State Elections Enforcement Commission evaluates an expenditure to determine whether such expenditure is an independent expenditure, there shall be a rebuttable presumption that the following expenditures are not independent expenditures:

(1) An expenditure made by a person in cooperation, consultation or in concert with, at the request, suggestion or direction of, or pursuant to a general or particular understanding with (A) a candidate, candidate committee, political committee or party committee, or (B) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee;

(2) An expenditure made by a person for the production, dissemination, distribution or publication, in whole or in substantial part, of any broadcast or any written, graphic or other form of political advertising or campaign communication prepared by (A) a candidate, candidate committee, political committee or party committee, or (B) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee;

(3) An expenditure made by a person based on information about a candidate's, political committee's, or party committee's plans, projects or needs, provided by (A) a candidate, candidate committee, political committee or party committee, or (B) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee, with the intent that such expenditure be made;

(4) An expenditure made by an individual who, in the same election cycle, is serving or has served as the campaign chairperson, treasurer or deputy treasurer of a candidate committee, political committee or party committee benefiting from such expenditure, or in any other executive or policymaking position, including as a member, employee, fundraiser, consultant or other agent, of a candidate committee, political committee or party committee;

(5) An expenditure made by a person or an entity on or after January first in the year of an election in which a candidate is seeking public office that benefits such candidate when such person or entity has hired an individual as an employee or consultant and such individual was an employee of or consultant to such candidate's candidate



committee or such candidate's opponent's candidate committee during any part of the eighteen-month period preceding such expenditure;

(6) An expenditure made by a person for fundraising activities (A) for a candidate, candidate committee, political committee or party committee, or a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee, or (B) for the solicitation or receipt of contributions on behalf of a candidate, candidate committee, political committee or party committee, or a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee;

(7) An expenditure made by a person based on information about a candidate's campaign plans, projects or needs, that is directly or indirectly provided by a candidate, the candidate's candidate committee, a political committee or a party committee, or a consultant or other agent acting on behalf of such candidate, candidate committee, political committee or party committee, to the person making the expenditure or such person's agent, with an express or tacit understanding that such person is considering making the expenditure;

(8) An expenditure made by a person for a communication that clearly identifies a candidate during an election campaign, if the person making the expenditure, or such person's agent, has informed the candidate who benefits from the expenditure, that candidate's candidate committee, a political committee or a party committee, or a consultant or other agent acting on behalf of the benefiting candidate or candidate committee, political committee, or party committee, concerning the communication's contents, or of the intended audience, timing, location or mode or frequency of dissemination. As used in this subdivision, a communication clearly identifies a candidate when that communication contains the name, nickname, initials, photograph or drawing of the candidate or an unambiguous reference to that candidate, which includes, but is not limited to, a reference that can only mean that candidate; and

(9) An expenditure made by a person or an entity for consultant or creative services, including, but not limited to, services related to communications strategy or design or campaign strategy or to engage a campaign-related vendor, to be used to promote or oppose a candidate's election to office if the provider of such services is or has provided consultant or creative services to such candidate, such candidate's candidate committee or an agent of such candidate committee, or to any opposing candidate's candidate committee or an agent of such candidate committee after January first of the year in which the expenditure occurs. For purposes of this subdivision, communications strategy or design does not include the costs of printing or costs for the use of a medium for the purpose of communications. For purposes of this subdivision, campaign-related vendor includes, but is not limited to, a vendor that provides the following services: Polling, mail design, mail strategy, political strategy, general campaign advice or telephone banking.



(c) When the State Elections Enforcement Commission evaluates an expenditure to determine whether an expenditure by entity is an independent expenditure, the following shall not be presumed to constitute evidence of consent, coordination or consultation within the meaning of subsection (a) of this section: (1) Participation by a candidate or an agent of the candidate in an event sponsored by the entity, unless such event promotes the success of the candidate's candidacy or the defeat of the candidate's opponent, or unless the event is during the period that is forty-five days prior to the primary for which the candidate is seeking nomination for election or election to office; (2) membership of the candidate or agent of the candidate in the entity, unless the candidate or agent of the candidate holds an executive or policymaking position within the entity after the candidate becomes a candidate; or (3) financial support for, or solicitation or fundraising on behalf of the entity by a candidate or an agent of the candidate, unless the entity has made or obligated to make independent expenditures in support of such candidate in the election or primary for which the candidate is a candidate.

(d) When the State Elections Enforcement Commission evaluates an expenditure to determine whether such expenditure is an independent expenditure, the commission shall consider, as an effective rebuttal to the presumptions provided in subsection (b) of this section, the establishment by the person making the expenditure of a firewall policy designed and implemented to prohibit the flow of information between (1) employees, consultants or other individuals providing services to the person paying for the expenditure, and (2) the candidate or agents of the candidate.

**PHILADELPHIA BOARD OF ETHICS
REGULATION NO. 1
CAMPAIGN FINANCE**

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SUBPART H. COORDINATED EXPENDITURES

1.38 When a person or political committee makes an expenditure that is coordinated with a candidate's campaign and is made to advocate or influence the election of the candidate, the expenditure is an in-kind contribution from the person or committee to the candidate and is subject to the contribution limits set forth in Subpart B.

- 1.39** An expenditure is coordinated with a candidate's campaign if:
- a. The expenditure is made in cooperation, consultation or concert with the candidate's campaign;
 - b. The expenditure is made at the request or suggestion of the candidate's campaign;
 - c. A person suggests making an expenditure and the candidate's campaign assents to the suggestion;
 - d. The person making the expenditure communicates with the candidate's campaign concerning the expenditure before making the expenditure;
 - e. The candidate's campaign has solicited funds for or directed funds to the person making the expenditure, but only if the solicitation occurred within the 12 months before the election that the expenditure seeks to influence; or
 - f. The person making the expenditure uses information obtained from the candidate's campaign to design, prepare, or pay for the specific expenditure at issue, unless the person has obtained that information from a public source or from a communication the candidate made to the general public. This subparagraph does not apply to the republication of campaign communications or materials, which is covered by Paragraph 1.40.

Example for 1.39(f): Philadelphians for Philadelphia PAC establishes a telephone bank to get out the vote for primary voters for Candidate A. Candidate A's campaign gives Philadelphians for Philadelphia a list of telephone numbers of people that contributed to Candidate A's campaign. Philadelphians for Philadelphia organizes the phone bank without any other input from Candidate A and spends \$11,500 to set up the phone bank and telephones individuals provided on the list from Candidate A. The \$11,500 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A because the PAC used information obtained from Candidate A's campaign for the phone bank. As such, Philadelphians for Philadelphia has made an \$11,500 in-kind contribution to Candidate A.

1.40 Republication of campaign communications or materials. For the purposes of the contribution limits, an expenditure made to reproduce, republish, or disseminate a campaign communication (including audio recordings or video footage) or campaign material (such as photographs, flyers, signs, or brochures) prepared by a candidate's campaign:

- a. Shall be considered an in-kind contribution made by the person making the expenditure.
- b. Shall be considered an in-kind contribution received by the candidate if the person making the expenditure obtains the communication or materials directly from the candidate's campaign or from another source with the consent of the candidate's campaign.

A campaign communication or campaign material is obtained with the candidate's consent if the candidate provides it to a third party for the purpose of enabling another person to obtain the communication or material from that third party and subsequently republish some or all of it.

Example for 1.40(a) and (b): Three weeks before election day, candidate A's campaign uploads five minutes of b-roll video footage to her YouTube channel. The political committee Pennsylvanians for a Better Pennsylvania downloads the b-roll footage and uses it to create a television advertisement. The committee spends \$100,000 to run the advertisement on three television stations during the week before election day.

Candidate A posted the b-roll footage for the purpose of enabling another person to obtain it. Pennsylvanians for a Better Pennsylvania obtained a campaign communication created by Candidate A's campaign with the consent of the candidate's campaign. As such, the committee's expenditure of \$100,000 was coordinated with Candidate A's campaign and is both an excess in-kind contribution made by the committee ~~to~~ and an excess in-kind contribution received by Candidate A.

- c. Shall not be considered an in-kind contribution if:
 - i. The communication or material is incorporated into a communication that advocates the defeat of the candidate that prepared the material;
 - ii. The item republished is a photograph obtained from a public source; or
 - iii. The person's expenditures for republication of a candidate's communications or materials are less than \$100 in the aggregate per reporting period;

- 1. 41** An expenditure will not be considered a coordinated expenditure merely because:
- a. The person making the expenditure interviews the candidate;
 - b. The person making the expenditure has endorsed the candidate;
 - c. The person making the expenditure and the candidate's campaign have an agent in common;
 - d. The person making the expenditure has obtained from the candidate a biography of the candidate or a position paper, press release, or similar material about the candidate; or
 - e. The person making the expenditure has invited the candidate to make an appearance before the person's members, employees, or shareholders.

**SUBPART I. EXCESS PRE-CANDIDACY CONTRIBUTIONS;
EXCESS POST-CANDIDACY CONTRIBUTIONS**

Note: The requirements in this Subpart regarding excess pre-candidacy contributions are relevant only if a political committee that is authorized to receive contributions on behalf of an individual who subsequently becomes a candidate for City office receives contributions prior to that individual becoming a candidate in excess of the limits set forth in Subpart B.

- 1.42** The provisions of this Subpart regarding excess pre-candidacy contributions apply only to contributions received during the accounting period.

Example: On December 1, 2014, Candidate A declares her candidacy for the May 2015 Mayoral primary election. The accounting period for Candidate A is January 1, 2012 through November 30, 2014. The last Mayoral election was held in 2011 so January 1, 2012 would be the first day of the year following that election.

- 1. 43 Prohibited Expenditures.** A candidate or candidate political committee shall not:
- a. Spend any excess pre-candidacy contributions for the purpose of influencing the outcome of a covered election in which he or she is a candidate.
 - b. Spend any excess pre-candidacy contributions or post-candidacy contributions for the purposes of:
 - i. Transition or inauguration expenses; or
 - ii. Retiring debt that was incurred to (i) influence the outcome of an already completed covered election in which he or she was a candidate; or (ii) cover transition or inauguration expenses related to an already completed covered election.
 - c. Transfer excess pre-candidacy contributions to the candidate's litigation fund committee established as described in Subpart G.