



July 6, 2018

Submitted electronically to seec.compliance@ct.gov

Joshua Foley, Esq.
State Elections Enforcement Commission
20 Trinity St.
Hartford, Connecticut 06106

**Re: Comments on Proposed Declaratory Ruling 2018-01:
Political Activity of Organized Groups**

Dear Mr. Foley:

The Campaign Legal Center (“CLC”) respectfully submits these comments to the State Elections Enforcement Commission (“Commission”) regarding Proposed Declaratory Ruling 2018-01: Political Activity of Organized Groups (“PDR”).

CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening the democratic process across all levels of government. Since the organization’s founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court as well as numerous other federal and state court cases. Our work promotes every citizen’s right to participate in the democratic process and to know the true sources of money spent to influence elections.

We applaud the Commission’s effort to clarify disclosure requirements applicable to non-committee organizations engaging in political activities in Connecticut. The PDR is a reasonable interpretation of Connecticut’s campaign finance law that will provide meaningful guidance to persons and groups engaging in political activity in the state. In addition to the well-developed guidance contained in the PDR, CLC recommends the Commission provide guidance regarding the requirements for firewalls and make clear that the mere existence of a firewall policy is not sufficient to rebut the statute’s presumption of coordination.

In accordance with Connecticut’s campaign finance law, an organization can rebut the statutory presumptions of coordination, outlined in Section 9-601c(b), through the

establishment 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.” Conn. Gen. Stat. § 9-601c(d).¹ The implementation of a firewall policy serves as a “safe harbor” for independent spenders whose activities meet one of the statute’s presumptions of coordination. The use of an effective firewall is necessary when an independent spender has hired a former employee of a candidate’s campaign, or has hired a consultant or vendor who has provided or is providing similar services to a candidate’s campaign. *Id.* §§ 9-601c(b)(5), (9).

The PDR does not describe any requirements for establishing a firewall policy that will satisfy Section 9-601c(d). We thus recommend that the Commission consider adding to the PDR a list of criteria for an independent spender’s firewall policy to meet the statutory requirements in Section 9-601c(d). The mere existence of a firewall policy should not be sufficient to rebut a presumption of coordination. The firewall needs to actually be effective in preventing the flow of strategic information. Further, we suggest the PDR specify that establishment of a firewall policy will not rebut a presumption of coordination if the policy fails to prevent the passage of strategic information from the independent spender to the candidate or candidate’s agents.²

In addition to a general prohibition on the passage of strategic information to the candidate or candidate’s agents, an effective firewall policy should: (i) require separation of specific staff who provide services to the spender related to independent expenditures benefitting a particular candidate from staff who have engaged or will engage in any activity creating a presumption of coordination; (ii) prohibit owners, executives, and managers from concurrently supervising staff who are separated by a firewall; (iii) require physical and technological separations to ensure strategic information does not, in fact, pass between employees separated by a firewall; and (iv) prior to the performance of any relevant work, require written distribution of the firewall policy, with descriptions of both the general

¹ See also *Democratic Governors Ass’n v. Brandi*, 2014 WL 2589279, at *3 (D. Conn. 2014) (“The rebuttable presumptions outlined in section 9–601 c(b) may be effectively rebutted by “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.”).

² The Federal Election Commission’s rule on firewalls provides an example of a more thorough firewall policy. See 11 C.F.R. § 109.21(h) (“Safe harbor for establishment and use of a firewall. The conduct standards in paragraph (d) of this section are not met if the commercial vendor, former employee, or political committee has established and implemented a firewall that meets the requirements of paragraphs (h)(1) and (h)(2) of this section. This safe harbor provision does not apply if specific information indicates that, despite the firewall, information about the candidate’s or political party committee’s campaign plans, projects, activities, or needs that is material to the creation, production, or distribution of the communication was used or conveyed to the person paying for the communication. (1) The firewall must be designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to the candidate who is clearly identified in the communication, or the candidate’s authorized committee, the candidate’s opponent, the opponent’s authorized committee, or a political party committee; and (2) The firewall must be described in a written policy that is distributed to all relevant employees, consultants, and clients affected by the policy.”).

firewall policy and the specific firewall created pursuant to the policy, to all relevant employees and consultants. By specifying these criteria in the PDR, the Commission could make clear the type of firewall necessary to rebut the statute's presumption of coordination.

CLC appreciates the opportunity to submit these comments, and we would be happy to answer any questions from the Commission.

Respectfully submitted,

/s/

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