

113TH CONGRESS
2D SESSION

H. R. 5641

To amend the Federal Election Campaign Act of 1971 to clarify the treatment of coordinated expenditures as contributions to candidates, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 2014

Mr. PRICE of North Carolina (for himself and Mr. VAN HOLLEN) introduced the following bill; which was referred to the Committee on House Administration

A BILL

To amend the Federal Election Campaign Act of 1971 to clarify the treatment of coordinated expenditures as contributions to candidates, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. CLARIFICATION OF TREATMENT OF COORDI-**
4 **NATED EXPENDITURES AS CONTRIBUTIONS**
5 **TO CANDIDATES.**

6 (a) TREATMENT AS CONTRIBUTION TO CAN-
7 DIDATE.—Section 301(8)(A) of the Federal Election Cam-
8 paign Act of 1971 (2 U.S.C. 30101(8)(A)) is amended—
9 (1) by striking “or” at the end of clause (i);

1 (2) by striking the period at the end of clause
 2 (ii) and inserting “; or”; and

3 (3) by adding at the end the following new
 4 clause:

5 “(iii) any payment made by any person
 6 (other than a candidate, an authorized com-
 7 mittee of a candidate, or a political committee
 8 of a political party) for a coordinated expendi-
 9 ture (as such term is defined in section 324)
 10 which is not otherwise treated as a contribution
 11 under clause (i) or clause (ii).”.

12 (b) DEFINITIONS.—Section 324 of such Act (2
 13 U.S.C. 30126) is amended to read as follows:

14 **“SEC. 324. PAYMENTS FOR COORDINATED EXPENDITURES.**

15 “(a) COORDINATED EXPENDITURES.—

16 “(1) IN GENERAL.—For purposes of section
 17 301(8)(A)(iii), the term ‘coordinated expenditure’
 18 means—

19 “(A) any expenditure, including a payment
 20 for a covered communication described in sub-
 21 section (d), which is made in cooperation, con-
 22 sultation, or concert with, or at the request or
 23 suggestion of, a candidate, an authorized com-
 24 mittee of a candidate, a political committee of

1 a political party, or agents of the candidate or
2 committee, as provided in subsection (b); or

3 “(B) any payment for any communication
4 which republishes, disseminates, or distributes,
5 in whole or in part, any broadcast or any writ-
6 ten, graphic, or other form of campaign mate-
7 rial prepared by the candidate or committee or
8 by agents of the candidate or committee.

9 “(2) EXCEPTION FOR PAYMENTS FOR CERTAIN
10 COMMUNICATIONS.—A payment for a communication
11 (including a covered communication described in
12 subsection (d) shall not be treated as a coordinated
13 expenditure under this subsection if—

14 “(A) the communication appears in a news
15 story, commentary, or editorial distributed
16 through the facilities of any broadcasting sta-
17 tion, newspaper, magazine, or other periodical
18 publication, unless such facilities are owned or
19 controlled by any political party, political com-
20 mittee, or candidate; or

21 “(B) the communication constitutes a can-
22 didate debate or forum conducted pursuant to
23 regulations adopted by the Commission pursu-
24 ant to section 304(f)(3)(B)(iii), or which solely
25 promotes such a debate or forum and is made

1 by or on behalf of the person sponsoring the de-
2 bate or forum.

3 “(b) COORDINATION DESCRIBED.—

4 “(1) IN GENERAL.—For purposes of this sec-
5 tion, a payment is made ‘in cooperation, consulta-
6 tion, or concert with, or at the request or suggestion
7 of,’ a candidate, an authorized committee of a can-
8 didate, a political committee of a political party, or
9 agents of the candidate or committee, if the payment
10 is not made entirely independently of the candidate,
11 committee, or agents, including a payment which is
12 made pursuant to any general or particular under-
13 standing, or more than incidental communication
14 with, the candidate, committee, or agents about the
15 payment.

16 “(2) NO FINDING OF COORDINATION BASED
17 SOLELY ON SHARING OF INFORMATION REGARDING
18 LEGISLATIVE OR POLICY POSITION.—For purposes
19 of this section, a payment shall not be considered to
20 be made by a person in cooperation, consultation, or
21 concert with, or at the request or suggestion of, a
22 candidate or committee, solely on the grounds that
23 the person or the person’s agent engaged in discus-
24 sions with the candidate or committee, or with
25 agents of the candidate or committee, regarding that

1 person's position on a legislative or policy matter
2 (including urging the candidate or committee to
3 adopt that person's position), so long as there is no
4 discussion between the person and the candidate or
5 committee, or agents of the candidate or committee,
6 regarding the candidate's or committee's campaign
7 advertising, message, strategy, policy, polling, alloca-
8 tion of resources, fundraising, or campaign oper-
9 ations.

10 “(3) NO EFFECT ON PARTY COORDINATION
11 STANDARD.—Nothing in this section shall be con-
12 strued to affect the determination of coordination
13 between a candidate and a political committee of a
14 political party for purposes of section 315(d).

15 “(4) NO SAFE HARBOR FOR USE OF FIRE-
16 WALL.—A person shall be determined to have made
17 a payment in cooperation, consultation, or concert
18 with, or at the request or suggestion of, a candidate
19 or committee, in accordance with this section with-
20 out regard to whether or not the person established
21 and used a firewall or similar procedures to restrict
22 the sharing of information between individuals pro-
23 viding services for or on behalf of the person and the
24 candidate or committee or agents of the candidate or
25 committee.

1 “(c) SPECIAL RULE FOR PAYMENTS BY COORDI-
2 NATED SPENDERS FOR COVERED COMMUNICATIONS.—

3 “(1) PAYMENTS DEEMED TO BE MADE IN CO-
4 OPERATION, CONSULTATION, OR CONCERT WITH,
5 CANDIDATES.—For purposes of this section, if the
6 person who makes a payment for a covered commu-
7 nication is a coordinated spender with respect to the
8 candidate involved, the person shall be deemed to
9 have made the payment in cooperation, consultation,
10 or concert with the candidate.

11 “(2) COORDINATED SPENDER DEFINED.—For
12 purposes of this subsection, the term ‘coordinated
13 spender’ means, with respect to a candidate or an
14 authorized committee of a candidate, a person (other
15 than a political committee of a political party) for
16 which any of the following applies:

17 “(A) The person is directly or indirectly
18 formed or established by or at the request or
19 suggestion of, or with the encouragement of,
20 the candidate or committee or agents of the
21 candidate or committee, including with the ex-
22 press or tacit approval of the candidate or com-
23 mittee or agents of the candidate or committee.

24 “(B) The candidate or committee or agents
25 of the candidate or committee solicit funds or

1 engage in other fundraising activity on the per-
2 son's behalf during the election cycle involved,
3 including by providing the person with names of
4 potential donors or other lists to be used by the
5 person in engaging in fundraising activity, re-
6 gardless of whether the person pays fair market
7 value for the names or lists provided.

8 “(C) The person is established, directed, or
9 managed by any person who, during the elec-
10 tion cycle involved or during the 4-year period
11 ending on the first day of the election cycle in-
12 volved, has been employed or retained as a po-
13 litical, media, or fundraising adviser or consult-
14 ant for the candidate or committee or for any
15 other entity directly or indirectly controlled by
16 the candidate or committee, or has held a for-
17 mal position with a title for the candidate or
18 committee.

19 “(D) During the election cycle involved,
20 the person has had more than incidental com-
21 munications with the candidate or committee or
22 agents of the candidate or committee about the
23 candidate's campaign needs or activities, or
24 about the person's possible or actual campaign

1 activities with respect to the candidate or com-
2 mittee.

3 “(E) The person has retained the profes-
4 sional services of any person who, during the
5 same election cycle, has provided or is providing
6 professional services relating to the campaign to
7 the candidate or committee. For purposes of
8 this subparagraph, the term ‘professional serv-
9 ices’ includes any services in support of the can-
10 didate’s or committee’s campaign activities, in-
11 cluding advertising, message, strategy, policy,
12 polling, allocation of resources, fundraising, and
13 campaign operations, but does not include ac-
14 counting or legal services.

15 “(F) The person is established, directed, or
16 managed by a member of the immediate family
17 of the candidate, or (in the case of a person
18 that is a political committee) has received a
19 contribution from a member of the immediate
20 family of the candidate. For purposes of this
21 subparagraph, the term ‘immediate family’ has
22 the meaning given such term in section 9004(e)
23 of the Internal Revenue Code of 1986.

24 “(3) LIMITATION.—Paragraph (2) shall apply
25 to a person with respect to a candidate or authorized

1 committee during a calendar quarter only if 20 per-
2 cent or more of that person’s total spending for cov-
3 ered communications in the period beginning on the
4 first day of the election cycle with respect to the
5 candidate or committee involved and ending on the
6 first day of that calendar quarter is attributable
7 to—

8 “(A) communications that promote or sup-
9 port that candidate, or attack or oppose the op-
10 ponent of that candidate, in the case of covered
11 communications described in subsection (d)(1);
12 and

13 “(B) communications that refer to that
14 candidate or an opponent of that candidate, in
15 the case of covered communications described in
16 subsection (d)(2).

17 “(d) COVERED COMMUNICATION DEFINED.—

18 “(1) IN GENERAL.—For purposes of this sec-
19 tion, the term ‘covered communication’ means, with
20 respect to a candidate or an authorized committee of
21 a candidate, a public communication (as defined in
22 section 301(22)) which—

23 “(A) promotes or supports the candidate,
24 or attacks or opposes an opponent of the can-
25 didate (regardless of whether the communica-

tion expressly advocates the election or defeat of a candidate or contains the functional equivalent of express advocacy); or

“(B) refers to the candidate or an opponent of the candidate but is not described in subparagraph (A), but only if the communication is disseminated during the applicable election period.

“(2) APPLICABLE ELECTION PERIOD.—In paragraph (1)(B), the ‘applicable election period’ with respect to a communication means—

“(A) in the case of a communication which refers to a candidate for the office of President or Vice President, the period which begins on the date that is 120 days before the date of the first primary election, preference election, or nominating convention for nomination for the office of President which is held in any State and ends with the date of the general election for such office; or

“(B) in the case of a communication which refers to a candidate for any other office, which begins on the date that is 90 days before the primary or preference election, or convention or caucus of a political party that has authority to

1 nominate a candidate, for the office sought by
2 the candidate and ends on the date of the gen-
3 eral election for such office.

4 “(3) SPECIAL RULES FOR COMMUNICATIONS IN-
5 VOLVING CONGRESSIONAL CANDIDATES.—For pur-
6 poses of this subsection, a public communication
7 shall not be considered to be a covered communica-
8 tion with respect to a candidate for election for an
9 office other than the office of President or Vice
10 President unless it is publicly disseminated or dis-
11 tributed in the jurisdiction of the office the can-
12 didate is seeking.

13 “(e) ELECTION CYCLE DEFINED.—In this section,
14 the term ‘election cycle’ means, with respect to an election
15 for Federal office, the period beginning on the day after
16 the date of the most recent general election for that office
17 (or, if the general election resulted in a runoff election,
18 the date of the runoff election) and ending on the date
19 of the next general election for that office (or, if the gen-
20 eral election resulted in a runoff election, the date of the
21 runoff election).”.

22 (c) EFFECTIVE DATE.—

23 (1) REPEAL OF EXISTING REGULATIONS ON CO-
24 ORDINATION.—Effective upon the expiration of the

1 90-day period which begins on the date of the enact-
2 ment of this Act—

3 (A) the regulations on coordinated commu-
4 nications adopted by the Federal Election Com-
5 mission which are in effect on the date of the
6 enactment of this Act (as set forth in 11 CFR
7 part 109, subpart C, under the heading “Co-
8 ordination”) are repealed; and

9 (B) the Federal Election Commission shall
10 promulgate new regulations on coordinated
11 communications which reflect the amendments
12 made by this Act.

13 (2) EFFECTIVE DATE.—The amendments made
14 by this section shall apply with respect to payments
15 made on or after the expiration of the 120-day pe-
16 riod which begins on the date of the enactment of
17 this Act, without regard to whether or not the Fed-
18 eral Election Commission has promulgated regula-
19 tions in accordance with paragraph (1)(B) as of the
20 expiration of such period.

1 **SEC. 2. CLARIFICATION OF BAN ON FUNDRAISING FOR**
2 **SUPER PACS BY FEDERAL CANDIDATES AND**
3 **OFFICEHOLDERS.**

4 (a) IN GENERAL.—Section 323(e)(1) of the Federal
5 Election Campaign Act of 1971 (2 U.S.C. 30125(e)(1))
6 is amended—

7 (1) by striking “or” at the end of subparagraph
8 (A);

9 (2) by striking the period at the end of sub-
10 paragraph (B) and inserting “; or”; and

11 (3) by adding at the end the following new sub-
12 paragraph:

13 “(C) solicit, receive, direct, or transfer
14 funds to or on behalf of any political committee
15 which accepts donations or contributions that
16 do not comply with the limitations, prohibitions,
17 and reporting requirements of this Act (or to or
18 on behalf of any account of a political com-
19 mittee which is established for the purpose of
20 accepting such donations or contributions), or
21 to or on behalf of any political organization
22 under section 527 of the Internal Revenue Code
23 of 1986 which accepts such donations or con-
24 tributions (other than a committee of a State or
25 local political party or a candidate for election
26 for State or local office).”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply with respect to elections occur-
3 ring after January 1, 2015.

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