

114TH CONGRESS
1ST SESSION

S. 1838

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 SENATE OF THE UNITED STATES

JULY 22, 2015

Mr. LEAHY (for himself and Mr. UDALL) introduced the following bill; which was read twice and referred to the Committee on Rules and 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. SHORT TITLE.**

4 This Act may be cited as the “Stop Super PAC-Can-
5 didate Coordination Act”.

1 **SEC. 2. CLARIFICATION OF TREATMENT OF COORDINATED**
 2 **EXPENDITURES AS CONTRIBUTIONS TO CAN-**
 3 **DIDATES.**

4 (a) TREATMENT AS CONTRIBUTION TO CAN-
 5 DIDATE.—Section 301(8)(A) of the Federal Election Cam-
 6 paign Act of 1971 (52 U.S.C. 30101(8)(A)) is amended—

7 (1) by striking “or” at the end of clause (i);

8 (2) by striking the period at the end of clause

9 (ii) and inserting “; or”; and

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

12 “(iii) any payment made by any person
 13 (other than a candidate, an authorized com-
 14 mittee of a candidate, or a political committee
 15 of a political party) for a coordinated expendi-
 16 ture (as such term is defined in section 324)
 17 which is not otherwise treated as a contribution
 18 under clause (i) or clause (ii).”.

19 (b) DEFINITIONS.—Section 324 of such Act (52
 20 U.S.C. 30126) is amended to read as follows:

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

22 **“(a) COORDINATED EXPENDITURES.—**

23 **“(1) IN GENERAL.—**For purposes of section
 24 301(8)(A)(iii), the term ‘coordinated expenditure’
 25 means—

1 “(A) any expenditure, or any payment for
 2 a covered communication described in sub-
 3 section (d), which is made in cooperation, con-
 4 sultation, or concert with, or at the request or
 5 suggestion of, a candidate, an authorized com-
 6 mittee of a candidate, a political committee of
 7 a political party, or agents of the candidate or
 8 committee, as defined in subsection (b); or

9 “(B) any payment for any communication
 10 which republishes, disseminates, or distributes,
 11 in whole or in part, any video or broadcast or
 12 any written, graphic, or other form of campaign
 13 material prepared by the candidate or com-
 14 mittee or by agents of the candidate or com-
 15 mittee (including any excerpt or use of any
 16 video from any such broadcast or written,
 17 graphic, or other form of campaign material).

18 “(2) EXCEPTION FOR PAYMENTS FOR CERTAIN
 19 COMMUNICATIONS.—A payment for a communication
 20 (including a covered communication described in
 21 subsection (d) shall not be treated as a coordinated
 22 expenditure under this subsection if—

23 “(A) the communication appears in a news
 24 story, commentary, or editorial distributed
 25 through the facilities of any broadcasting sta-

tion, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate; or

“(B) the communication constitutes a candidate debate or forum conducted pursuant to regulations adopted by the Commission pursuant to section 304(f)(3)(B)(iii), or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

“(b) COORDINATION DESCRIBED.—

“(1) IN GENERAL.—For purposes of this section, a payment is made ‘in cooperation, consultation, or concert with, or at the request or suggestion of,’ a candidate, an authorized committee of a candidate, a political committee of a political party, or agents of the candidate or committee, if the payment, or any communication for which the payment is made, is not made entirely independently of the candidate, committee, or agents. For purposes of the previous sentence, a payment or communication not made entirely independently of the candidate or committee includes any payment or communication made pursuant to any general or particular under-

1 standing with, or pursuant to any communication
2 with, the candidate, committee, or agents about the
3 payment or communication.

4 “(2) NO FINDING OF COORDINATION BASED
5 SOLELY ON SHARING OF INFORMATION REGARDING
6 LEGISLATIVE OR POLICY POSITION.—For purposes
7 of this section, a payment shall not be considered to
8 be made by a person in cooperation, consultation, or
9 concert with, or at the request or suggestion of, a
10 candidate or committee, solely on the grounds that
11 the person or the person’s agent engaged in discus-
12 sions with the candidate or committee, or with any
13 agent of the candidate or committee, regarding that
14 person’s position on a legislative or policy matter
15 (including urging the candidate or committee to
16 adopt that person’s position), so long as there is no
17 communication between the person and the can-
18 didate or committee, or any agent of the candidate
19 or committee, regarding the candidate’s or commit-
20 tee’s campaign advertising, message, strategy, pol-
21 icy, polling, allocation of resources, fundraising, or
22 other campaign activities.

23 “(3) NO EFFECT ON PARTY COORDINATION
24 STANDARD.—Nothing in this section shall be con-
25 strued to affect the determination of coordination

1 between a candidate and a political committee of a
2 political party for purposes of section 315(d).

3 “(4) NO SAFE HARBOR FOR USE OF FIRE-
4 WALL.—A person shall be determined to have made
5 a payment in cooperation, consultation, or concert
6 with, or at the request or suggestion of, a candidate
7 or committee, in accordance with this section with-
8 out regard to whether or not the person established
9 and used a firewall or similar procedures to restrict
10 the sharing of information between individuals who
11 are employed by or who are serving as agents for the
12 person making the payment.

13 “(c) PAYMENTS BY COORDINATED SPENDERS FOR
14 COVERED COMMUNICATIONS.—

15 “(1) PAYMENTS MADE IN COOPERATION, CON-
16 SULTATION, OR CONCERT WITH CANDIDATES.—For
17 purposes of subsection (a)(1)(A), if the person who
18 makes a payment for a covered communication, as
19 defined in subsection (d), is a coordinated spender
20 under paragraph (2) with respect to the candidate
21 as described in subsection (d)(1), the payment for
22 the covered communication is made in cooperation,
23 consultation, or concert with the candidate.

24 “(2) COORDINATED SPENDER DEFINED.—For
25 purposes of this subsection, the term ‘coordinated

1 spender’ means, with respect to a candidate or an
2 authorized committee of a candidate, a person (other
3 than a political committee of a political party) for
4 which any of the following applies:

5 “(A) During the 4-year period ending on
6 the date on which the person makes the pay-
7 ment, the person was directly or indirectly
8 formed or established by or at the request or
9 suggestion of, or with the encouragement of,
10 the candidate (including an individual who later
11 becomes a candidate) or committee or agents of
12 the candidate or committee, including with the
13 approval of the candidate or committee or
14 agents of the candidate or committee.

15 “(B) The candidate or committee or any
16 agent of the candidate or committee solicits
17 funds, appears at a fundraising event, or en-
18 gages in other fundraising activity on the per-
19 son’s behalf during the election cycle involved,
20 including by providing the person with names of
21 potential donors or other lists to be used by the
22 person in engaging in fundraising activity, re-
23 gardless of whether the person pays fair market
24 value for the names or lists provided. For pur-
25 poses of this subparagraph, the term ‘election

1 cycle' means, with respect to an election for
2 Federal office, the period beginning on the day
3 after the date of the most recent general elec-
4 tion for that office (or, if the general election
5 resulted in a runoff election, the date of the
6 runoff election) and ending on the date of the
7 next general election for that office (or, if the
8 general election resulted in a runoff election,
9 the date of the runoff election).

10 “(C) The person is established, directed, or
11 managed by the candidate or committee or by
12 any person who, during the 4-year period end-
13 ing on the date on which the person makes the
14 payment, has been employed or retained as a
15 political, campaign media, or fundraising ad-
16 viser or consultant for the candidate or com-
17 mittee or for any other entity directly or indi-
18 rectly controlled by the candidate or committee,
19 or has held a formal position with the candidate
20 or committee.

21 “(D) The person has retained the profes-
22 sional services of any person who, during the 2-
23 year period ending on the date on which the
24 person makes the payment, has provided or is
25 providing professional services relating to the

1 campaign to the candidate or committee. For
 2 purposes of this subparagraph, the term ‘pro-
 3 fessional services’ includes any services in sup-
 4 port of the candidate’s or committee’s campaign
 5 activities, including advertising, message, strat-
 6 egy, policy, polling, allocation of resources,
 7 fundraising, and campaign operations, but does
 8 not include accounting or legal services.

9 “(E) The person is established, directed, or
 10 managed by a member of the immediate family
 11 of the candidate, or the person or any officer or
 12 agent of the person has had more than inci-
 13 dental discussions about the candidate’s cam-
 14 paign with a member of the immediate family
 15 of the candidate. For purposes of this subpara-
 16 graph, the term ‘immediate family’ has the
 17 meaning given such term in section 9004(e) of
 18 the Internal Revenue Code of 1986.

19 “(d) COVERED COMMUNICATION DEFINED.—

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

1 “(A) expressly advocates the election of the
 2 candidate or the defeat of an opponent of the
 3 candidate (or contains the functional equivalent
 4 of express advocacy);

5 “(B) promotes or supports the candidate,
 6 or attacks or opposes an opponent of the can-
 7 didate (regardless of whether the communica-
 8 tion expressly advocates the election or defeat
 9 of a candidate or contains the functional equiv-
 10 alent of express advocacy); or

11 “(C) refers to the candidate or an oppo-
 12 nent of the candidate but is not described in
 13 subparagraph (A) or subparagraph (B), but
 14 only if the communication is disseminated dur-
 15 ing the applicable election period.

16 “(2) APPLICABLE ELECTION PERIOD.—In para-
 17 graph (1)(B), the ‘applicable election period’ with re-
 18 spect to a communication means—

19 “(A) in the case of a communication which
 20 refers to a candidate in a general, special, or
 21 runoff election, the 120-day period which ends
 22 on the date of the election; or

23 “(B) in the case of a communication which
 24 refers to a candidate in a primary or preference
 25 election, or convention or caucus of a political

1 party that has authority to nominate a can-
2 didate, the 60-day period which ends on the
3 date of the election or convention or caucus.

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) PENALTY.—

14 “(1) DETERMINATION OF AMOUNT.—Any per-
15 son who knowingly and willfully commits a violation
16 of this Act by making a contribution which consists
17 of a payment for a coordinated expenditure shall be
18 fined an amount equal to the greater of—

19 “(A) in the case of a person who makes a
20 contribution which consists of a payment for a
21 coordinated expenditure in an amount exceeding
22 the applicable contribution limit under this Act,
23 300 percent of the amount by which the
24 amount of the payment made by the person ex-
25 ceeds such applicable contribution limit; or

1 “(B) in the case of a person who is prohib-
 2 ited under this Act from making a contribution
 3 in any amount, 300 percent of the amount of
 4 the payment made by the person for the coordi-
 5 nated expenditure.

6 “(2) JOINT AND SEVERAL LIABILITY.—Any di-
 7 rector, manager or officer of a person who is subject
 8 to a penalty under paragraph (1) shall be jointly and
 9 severally liable for any amount of such penalty that
 10 is not paid by the person prior to the expiration of
 11 the 1-year period which begins on the date the Com-
 12 mission imposes the penalty or the 1-year period
 13 which begins on the date of the final judgment fol-
 14 lowing any judicial review of the Commission’s ac-
 15 tion, whichever is later.”.

16 (c) EFFECTIVE DATE.—

17 (1) REPEAL OF EXISTING REGULATIONS ON CO-
 18 ORDINATION.—Effective upon the expiration of the
 19 90-day period which begins on the date of the enact-
 20 ment of this Act—

21 (A) the regulations on coordinated commu-
 22 nications adopted by the Federal Election Com-
 23 mission which are in effect on the date of the
 24 enactment of this Act (as set forth in 11 CFR

1 Part 109, Subpart C, under the heading “Co-
2 ordination”) are repealed; and

3 (B) the Federal Election Commission shall
4 promulgate new regulations on coordinated
5 communications which reflect the amendments
6 made by this Act.

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

15 **SEC. 3. CLARIFICATION OF BAN ON FUNDRAISING FOR**
16 **SUPER PACS BY FEDERAL CANDIDATES AND**
17 **OFFICEHOLDERS.**

18 (a) IN GENERAL.—Section 323(e)(1) of the Federal
19 Election Campaign Act of 1971 (52 U.S.C. 30125(e)(1))
20 is amended—

21 (1) by striking “or” at the end of subparagraph
22 (A);

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

1 (3) by adding at the end the following new sub-
2 paragraph:

3 “(C) solicit, receive, direct, or transfer
4 funds to or on behalf of any political committee
5 which accepts donations or contributions that
6 do not comply with the limitations, prohibitions,
7 and reporting requirements of this Act (or to or
8 on behalf of any account of a political com-
9 mittee which is established for the purpose of
10 accepting such donations or contributions), or
11 to or on behalf of any political organization
12 under section 527 of the Internal Revenue Code
13 of 1986 which accepts such donations or con-
14 tributions (other than a committee of a State or
15 local political party or a candidate for election
16 for State or local office).”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 subsection (a) shall apply with respect to elections occur-
19 ring after January 1, 2016.

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