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Submitted Electronically (<http://sers.fec.gov/fosers/>)

Federal Election Commission
Attn.: Mr. Robert Knop, Assistant General Counsel
Ms. Heather Filemyr, Attorney
Office of the General Counsel
1050 First St. NE
Washington, DC 20463

Re: REG 2020-02 (Rulemaking Petition: Transfers From Candidate's Authorized Committee)

Dear Mr. Knop & Ms. Filemyr:

These comments are submitted by Common Cause in response to the Commission's Notice of Availability of a Petition for Rulemaking from Citizens United and Citizens United Foundation "asking the Commission to amend its regulations to limit the amount that the authorized committee of a federal candidate may transfer to a national political party committee" when the funds are derived from the candidate's personal funds. 85 Fed. Reg. 39098 (June 30, 2020).

Citizens United and Citizens United Foundation cite in the petition a news report that in March 2020 Michael Bloomberg, who had recently dropped out of the race for the Democratic Party's presidential nomination, transferred \$18 million of personal funds from his authorized campaign committee to the Democratic National Committee ("DNC"). Petitioners note that this \$18 million transfer was "more than 500 times greater" than the \$35,500 Bloomberg could contribute directly to the DNC under 52 U.S.C. §§ 30116(a)(1)(B) and 30116(c).

Common Cause urges the Commission to conduct the rulemaking proceeding proposed by Citizens United and Citizens United Foundation and to expand the scope of the rulemaking to include not only transfers from candidate committees to national party committees, but also transfers to state and local political party committees.

According to disclosure reports filed with the Commission by Mike Bloomberg 2020, Inc. (FEC I.D.# C00728154), the Bloomberg campaign committee not only transferred \$18 million to the DNC in March, the committee also transferred \$513,087.17 of in-kind rent to the North Carolina Democratic Party, \$195,547.95 of in-kind office space to Arizona Democratic Party, \$141,100.81 of in-kind rent to the Michigan Democratic State Central Committee, \$50,000 to the Democratic Party of South

Carolina—and more than a dozen other transfers to state party committees exceeding the \$10,000 limit on contributions from individuals like Michael Bloomberg to the federal account of state political party committees under 52 U.S.C. § 30116(a)(1)(D).

According to disclosure reports filed with the Commission by Mike Bloomberg 2020, Inc., Michael Bloomberg contributed more than \$1 billion in personal funds to his campaign committee, while his campaign committee received less than \$1 million in contributions from other individuals.

The Federal Election Campaign Act (FECA) provides that a “contribution accepted by a candidate ... may be used by the candidate or individual ... for transfers, without limitation, to a national, State, or local committee of a political party[.]” 52 U.S.C. § 30114(a)(4). The Bloomberg campaign presumably relied on this provision as legal authority to make its above-limit contributions to the DNC and Democratic state party committees. But the plain language of the statute applies only to contributions “accepted by a candidate” and does not apply to the candidate’s personal funds.

The Commission regulation interpreting and applying this statute, 11 C.F.R. § 113.2, fails to make this distinction between funds “accepted by a candidate” and the candidate’s own personal funds. Rather, the regulation provides that “funds in a campaign account ... [m]ay be transferred without limit to any national, State, or local committee of any political party.” 11 C.F.R. § 113.2(d).

The Commission must utilize the requested rulemaking proceeding to amend 11 C.F.R. § 113.2 to make it consistent with the statute, making clear that the statute and regulation apply only to contributions “accepted by a candidate” and not to a candidate’s personal funds contributed to the candidate’s campaign committee. This regulatory amendment is critical to maintaining the corruption-preventing purpose of FECA’s limits on contributions from individuals to political party committees.

In *McConnell v. FEC*, the Supreme Court upheld FECA’s prohibition on national political parties receiving unlimited contributions—the so-called “soft money” prohibition—explaining: “Our cases have made clear that the prevention of corruption or its appearance constitutes a sufficiently important interest to justify political contribution limits.” 540 U.S. 93, 97 (2003). By contrast, the Supreme Court held in *Buckley v. Valeo* that the governmental interest that justifies limits on contributions to candidates and parties, preventing actual and apparent corruption, does not support a limitation on a “candidate’s expenditure of his own personal funds.” 424 U.S. 1, 53 (1976).

Put differently, though the Supreme Court has held that wealthy individuals have a First Amendment right to spend an unlimited amount of personal funds in support of their own candidacy, they have no right to contribute unlimited amounts to party committees. The Court has recognized that large contributions to political parties pose a threat of corruption and has upheld limits on contributions to parties in order to prevent such corruption.

Michael Bloomberg's \$18 million contribution to the DNC, and hundreds of thousands of dollars in contributions to Democratic state party committees, pose precisely the threat of actual or apparent corruption that FECA's limits on contributions to political party committees are intended to prevent.

This threat of actual or apparent corruption is not limited to Michael Bloomberg in 2020. Without an amendment to 11 C.F.R. § 113.2 to limit candidate transfers of personal funds to party committees, any wealthy individual could seemingly evade FECA's limits on contributions to party committees through the simple expedient of filing a Statement of Candidacy and Statement of Organization of a candidate committee with the Commission, and then routing unlimited funds through her campaign committee to any party committees of her choice. Although Michael Bloomberg made his transfers to party committees after dropping out of the presidential primary race, the regulation he seemingly relied upon applies to any "funds in a campaign account," regardless of whether or not the candidate has dropped out of the race.

For these reasons, Common Cause urges the Commission to conduct the rulemaking proceeding proposed by Citizens United and Citizens United Foundation, to expand the scope of the rulemaking to include transfers to national, state and local political party committees—making clear that the unlimited transfer provision of 11 C.F.R. § 113.2(d) applies only to contributions accepted by a candidate subject to FECA limits, and does not apply to a candidate's personal funds contributed to the candidate's committee. The integrity of FECA's political party contribution limits depends on Commission action.

Common Cause appreciates the opportunity to submit these comments.

Sincerely,

/s/ Paul S. Ryan
Vice President, Policy & Litigation

/s/ Beth A. Rotman
Director, Money in Politics & Ethics Program