

117TH CONGRESS
1ST SESSION

H. R. 1172

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 18, 2021

Mr. PRICE of North Carolina introduced the following bill; which was referred to the Committee on House Administration

A BILL

To amend the Federal Election Campaign Act to clarify the treatment of coordinated expenditures as contributions made to candidates under such Act, 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 325)
 17 which is not otherwise treated as a contribution
 18 under clause (i) or clause (ii).”.

19 (b) DEFINITIONS.—Title III of such Act (52 U.S.C.
 20 30101 et seq.) is amended by adding at the end the fol-
 21 lowing new section:

22 **“SEC. 325. PAYMENTS FOR COORDINATED EXPENDITURES.**

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

24 **“(1) IN GENERAL.—**For purposes of section
 25 301(8)(A)(iii), the term ‘coordinated expenditure’
 26 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 (including a position as an em-
21 ployee of the office of the candidate at any time
22 the candidate held any Federal, State, or local
23 public office during the 4-year period).

24 “(D) The person has retained the profes-
25 sional services of any person who, during the 2-

1 year period ending on the date on which the
2 person makes the payment, has provided or is
3 providing professional services relating to the
4 campaign to the candidate or committee, with-
5 out regard to whether the person providing the
6 professional services used a firewall. For pur-
7 poses of this subparagraph, the term ‘profes-
8 sional services’ includes any services in support
9 of the candidate’s or committee’s campaign ac-
10 tivities, including advertising, message, strat-
11 egy, policy, polling, allocation of resources,
12 fundraising, and campaign operations, but does
13 not include accounting or legal services.

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

24 “(d) COVERED COMMUNICATION DEFINED.—

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

6 “(A) expressly advocates the election of the
7 candidate or the defeat of an opponent of the
8 candidate (or contains the functional equivalent
9 of express advocacy);

10 “(B) promotes or supports the election of
11 the candidate, or attacks or opposes the election
12 of an opponent of the candidate (regardless of
13 whether the communication expressly advocates
14 the election or defeat of a candidate or contains
15 the functional equivalent of express advocacy);
16 or

17 “(C) refers to the candidate or an oppo-
18 nent of the candidate but is not described in
19 subparagraph (A) or subparagraph (B), but
20 only if the communication is disseminated dur-
21 ing the applicable election period.

22 “(2) APPLICABLE ELECTION PERIOD.—In para-
23 graph (1)(C), the ‘applicable election period’ with re-
24 spect to a communication means—

1 “(A) in the case of a communication which
2 refers to a candidate in a general, special, or
3 runoff election, the 120-day period which ends
4 on the date of the election; or

5 “(B) in the case of a communication which
6 refers to a candidate in a primary or preference
7 election, or convention or caucus of a political
8 party that has authority to nominate a can-
9 didate, the 60-day period which ends on the
10 date of the election or convention or caucus.

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

20 “(e) PENALTY.—

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

1 “(A) in the case of a person who makes a
2 contribution which consists of a payment for a
3 coordinated expenditure in an amount exceeding
4 the applicable contribution limit under this Act,
5 300 percent of the amount by which the
6 amount of the payment made by the person ex-
7 ceeds such applicable contribution limit; or

8 “(B) in the case of a person who is prohib-
9 ited under this Act from making a contribution
10 in any amount, 300 percent of the amount of
11 the payment made by the person for the coordi-
12 nated expenditure.

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

23 (c) EFFECTIVE DATE.—

24 (1) REPEAL OF EXISTING REGULATIONS ON CO-
25 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. 3. 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 (52 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, 2022.

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