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Subject Comments of MB

Please find attached the comments of Mark Brewer on behalf of the Association of State Democratic Chairs. Chairman Brewer would like an opportunity to testify at the Commission's hearing on the 25th. Because of a previous commitment he would request that his testimony be scheduled for the morning.

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Mark Brewer  
President

**Comments of Mark Brewer, President**

**Association of State Democratic Chairs**

**On Proposed Rulemaking on Coordinated Communications**

On behalf of the Association of State Democratic Chairs ("the Association"), I am submitting the following comments on the Notice of Proposed Rulemakings on Coordinated Communications at 70 Fed. Reg. 73,946 (Dec. 14, 2005). The Association represents the interests of the various state committees of the Democratic Party. On a day to day basis, these committees bring together candidates and supporters to advance a common agenda for improving the lives of ordinary Americans. By associating for a shared purpose under the banner of the Democratic Party, candidates from school board to the Presidency are able to provide the public with a clear choice on how the common good might best be achieved. The Commission must take care that it not interfere with the ability of the party to play this role. Regulations need to be tailored to achieve legitimate governmental ends while leaving maximum room for a political party to bring its candidates and supporters together in a common effort.

**A. Candidate Fundraising for State and Local Party Committees**

Of particular concern to the members of the Association is any regulation that might prevent a Federal candidate from raising funds through direct mail, telemarketing or over the Internet for a party committee. Any limitation on this activity would adversely impact small donor fundraising for state parties. The public knows a party through its candidates. Candidates are uniquely positioned to explain to a donor the importance of making a small contribution to the party. Limiting the ability of candidates to solicit small donations on behalf of the party will have the unfortunate consequence of making parties more dependent on major donors.

It should be noted that candidates derive little direct electoral benefit from these efforts. More often than not the candidate is either not on the ballot or her election is not being seriously contested. Moreover, these types of solicitations are

regularly directed at individuals who are not even eligible to vote for the candidate doing the soliciting. Because the costs associated with these solicitations are paid exclusively with federal funds, these fundraising appeals do not present an opportunity to circumvent the restrictions of the Bipartisan Campaign Reform Act. Consequently, the Commission should expressly provide in its regulations that these fundraising efforts may be coordinated without giving rise to a possible violation of the law.

#### **B. Federal Candidate Endorsements of State and Local Candidates.**

One aspect of the current regulations that the Association strongly encourages the Commission to revisit in this rulemaking is the impact of its rules on the ability of candidates for state and local office to publicize an endorsement the candidate receives from a Federal officeholder. State parties spend considerable time and effort enlisting support for their new and lesser known candidates from other officeholders. A new entrant into politics gains public trust and becomes credible when she is able to tout the endorsement of a respected officeholder. These endorsements are seldom, if ever, of electoral value to the endorsing candidate. To make it a violation of law and a potential criminal offense for a state or local candidate merely to tell the public that a Federal officeholder has endorsed her serves no legitimate governmental purpose. The Commission should build into its regulations an exemption for public communications by or on behalf of a state or local candidate that merely recites a Federal candidate's endorsement of her candidacy.

#### **C. Reliance on Firewall**

The Supreme Court has recognized that a political party has the right to make unlimited independent expenditures on behalf of its nominees. If in exercising that right a party committee employs a vendor that is also working on behalf of a candidate, the party should be able to rely on assurances from the vendor that it maintains a "firewall" that prevents any coordination between the candidate and the party. Such a provision is necessary because parties and candidates often have to employ common vendors. In most markets, certain essential political services are available only from one or two vendors. Voter file, political telemarketing and media buying services are examples of such services. A state party, when it contracts for these services, is unable to police the internal operations of the vendor and must rely on representations made by the vendor. A state party that relies in good faith on the representations of a vendor that it has sufficient measures in place to prevent any coordination should not be held liable if the vendor fails to maintain those measures.

#### **D. Publicly Available Information**

State parties closely monitor campaigns. Candidates regularly share with the party issue papers, press releases, and polls released to the public. The regulations should make it clear that the provision of this information to and the use of this information by the party do not together satisfy the conduct test of the regulations. The fact that information is publicly available should be sufficient to demonstrate that the conduct test of the regulation has not been triggered. There is no additional regulatory purpose to be served by requiring the party to retrieve the information from another source before the party uses it.

In closing, I would urge the Commission to adopt clear rules that give the public fair notice of what conduct crosses the line into improper coordination. It is the very purpose of political parties to bring people of diverse views and interests together to advance a common political agenda. Coalition building involves the exchange, discussion and agreement on how best to achieve those ends. Those meetings, those conversations are no more than ordinary citizens associating as our Founding Fathers anticipated that they would. The Commission should not adopt a prophylactic rule which in any manner discourages them from doing so.