

March 29, 2023

Chair Dara Lindenbaum  
Vice Chairman Sean J. Cooksey  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463

Re: REG 2021-01, Candidate Salaries

Dear Chair Lindenbaum and Vice Chairman Cooksey:

The Brennan Center for Justice at New York University School of Law<sup>1</sup> respectfully submits this supplemental comment in response to the Commission’s Notice of Proposed Rulemaking re: Candidate Salaries (“NPRM”), published December 12, 2022 (87 FR 75945), concerning the use of campaign funds to compensate candidates.<sup>2</sup>

Thank you for the opportunity to testify at the March 22, 2023 hearing on the NPRM and for the thoughtful and productive discussion. We continue to believe that this rulemaking is needed to help ensure that individuals from all walks of life can run for and win office. In light of the Commissioners’ questions and the testimony of other witnesses, we would like to make three additional recommendations that in our view would help draw an appropriate balance between removing barriers for less wealthy candidates to run for office and the Commission’s core mission to combat corruption and ensure campaign transparency.

*First*, we recommend that any revised salary cap the Commission adopts be no higher than the lowest salary paid to any federal elected official, i.e., the base salary for

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<sup>1</sup> The Brennan Center is a nonpartisan public policy and law institute that focuses on fundamental issues of democracy and justice. This comment does not purport to convey the position of New York University School of Law, if any.

<sup>2</sup> This is the third comment that the Brennan Center has submitted in this proceeding. *See* Ltr. from Brennan Center re: REG 2021-01, Candidate Salaries (“BCJ Feb. 2023 Comment”) (Feb. 10, 2023), <https://www.brennancenter.org/our-work/research-reports/comment-fec-adopt-more-equitable-rules-candidate-salaries-and-benefits>; Ltr. from Brennan Center re: REG 2021-01, Candidate Salaries (“BCJ July 2021 Comment”) (July 2, 2021), <https://www.brennancenter.org/our-work/research-reports/brennan-center-comment-fec-candidate-salaries-and-benefits>.

members of the House of Representatives and Senate, \$174,000 per year as of 2022.<sup>3</sup> At the hearing, Commissioners observed that certain federal officeholder salaries, most notably president of the United States, are significantly higher (the president’s current annual salary is \$400,000). We agree that a higher cap might present avenues for abuse.

What is most important is for the Commission to permit all candidates to use campaign funds to pay themselves a living wage. Particularly if the Commission opts for a lower salary cap, we urge it to exclude the cost of other employment-related benefits, such as health insurance, from the cap, so long as they are offered to all full-time campaign employees or comply with the other terms recommended by commenters.<sup>4</sup>

*Second*, we recommend that the Commission specify that candidate salary payments must comply with other applicable federal, state, and local laws. In particular, we appreciate the concern raised that a poorly drafted rule could be construed to preempt certain state and local ethics laws for public officials, such as prohibitions on outside earned income and gift restrictions. We agree revised rules should be drafted to avoid such an outcome.

*Third*, the revised regulations should to the extent practicable require a candidate’s authorized committee to disclose all candidate salary and benefit payments so that they are clearly identifiable as such on the committee’s reports. In this context, we agree with other commenters that “the political marketplace” is an important check on abuse.<sup>5</sup> We believe that paying a reasonable salary and benefits to the candidate is an appropriate use of privately-raised campaign funds, but strong transparency requirements will allow donors and the voting public to make their own judgments with respect to individual candidates.

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The Commission has long interpreted the Federal Election Campaign Act to allow candidates to be compensated from their campaign accounts for services they provide to

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<sup>3</sup> IDA A. BRUDNICK, CONG. RSCH. SERV., RL30064, CONGRESSIONAL SALARIES AND ALLOWANCES: IN BRIEF 11 (2022).

<sup>4</sup> BCJ Feb. 2023 Comment at 4; Ltr. from National Labor Organizations re: REG 2021-01, Candidate Salaries (Feb. 10, 2023) at 7 (noting that a candidate should also receive benefits from her campaign committee if she is the only employee).

<sup>5</sup> Hearing on Candidate Salaries Before the Federal Election Commission (Mar. 22, 2023) (statement of Laurence E. Gold, Counsel, AFL-CIO) at 1:36:10–30. Furthermore, there are various federal and state prohibitions on committing fraud that deter individuals from running for office just to make money.

their campaigns.<sup>6</sup> Caution is certainly appropriate in these circumstances, but the Act does not require the Commission to adopt a more restrictive approach to candidate salaries and benefits than it has in analogous scenarios, such as campaign payments to a candidate's family or business. If anything, we believe that more equitable rules in this area, coupled with rigorous enforcement of those regulations and other restrictions on the personal use of campaign funds, will maximize incentives to use campaign funds appropriately by ensuring that candidates have legitimate means to support themselves while running.

Respectfully submitted,

/s/

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Daniel I. Weiner  
Harry Isaiah Black

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<sup>6</sup> *See, e.g.*, Advisory Opinion 1995-08 (Stupak) (applying the Commission's rule that "personal use" under the Act does not include payments made from a campaign committee to the candidate when he rents his office space to his campaign at or below fair market value); Advisory Opinion 2000-02 (Hubbard) (same); *see also* BCJ Feb. 2023 Comment at 3 (noting that Commission regulations permit payments to a candidate's family members employed by her campaign and payments to the candidate herself for her campaign's use of real or personal property that she owns as long as those payments are made at fair market value).