

RECENT DEVELOPMENTS IN CAMPAIGN FINANCE LAW



February 12, 2014

Objectives

- ▣ Review guidance on corporate/labor expenditures, Super PACs & Hybrid PACs
- ▣ Update status of pending litigation and review recent court decisions
- ▣ Highlight latest policy developments
 - Technology: Text Contributions, Disclaimers, Bitcoins
 - Administrative Fines Extension and Expansion

CORPORATE/LABOR EXPENDITURES, SUPER PACs AND HYBRID PACs

Corporate / Labor Expenditures

- ▣ *Citizens United* decision permits:
 - Independent Expenditures
 - Electioneering Communications
- ▣ Contributions remain prohibited
- ▣ Disclaimers and disclosure required
 - IEs on FEC Form 5 (includes 24- & 48-Hour Reports)
 - ECs on FEC Form 9

I. Corporate and Labor Expenditures, Super PACs and Hybrid PACs

A. Corporate and Labor Expenditures

1. Corporations and labor organizations are now permitted to make independent expenditures and electioneering communications.
(Citizens United v. FEC)
2. The communications must contain disclaimers and corporations and labor organizations making must file disclosure reports. For independent expenditures, they file on FEC **Form 5**, and must also file **48-Hour** and **24-Hour Reports** for certain pre-election independent expenditures.
3. Congress had prohibited corporations and unions from using treasury funds to make independent expenditures or electioneering communications, but the Supreme Court struck down the ban when challenged by a corporation in *Citizens United v. FEC*, 558 U.S. 310, 130 S. Ct. 876 (2010).

***Citizens United* Rulemaking**

- ▣ Commission published Notice of Proposed Rulemaking in December 2011
- ▣ Held public hearing in March 2012

B. *Citizens United* Rulemaking

1. Press Release (Feb. 5, 2010):

“The Commission will no longer enforce statutory and regulatory provisions prohibiting corporations and labor unions from making either independent expenditures or electioneering communications,” available online at <http://www.fec.gov/press/press2010/20100205CitizensUnited.shtml>

2. Notice of Proposed Rulemaking (published December 2011)

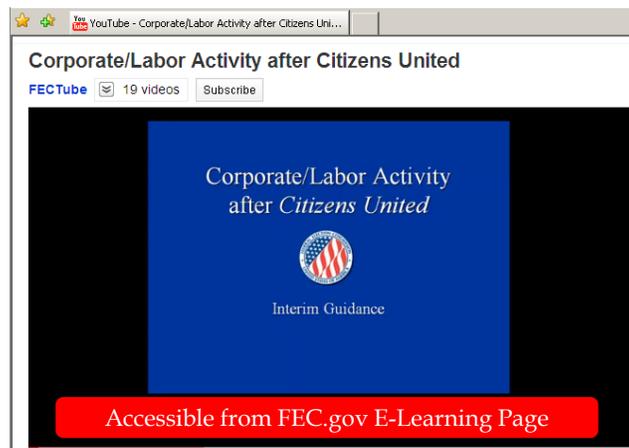
- a) The Commission issued an NPRM and received comments on proposed changes to Commission regulations to implement the Supreme Court’s ruling.
- b) Hearing was held on March 7, 2012.
- c) NPRM published in Federal Register at 76 Fed. Reg. 80803 (December 27, 2011). Available online at <http://sers.nictusa.com/fosers/showpdf.htm?docid=99892>.

3. More information:

<http://www.fec.gov/law/recentdevelopments.shtml#CorpLaborExpenditures>

Corporate/Labor Expenditures

Additional interim guidance on FECTube

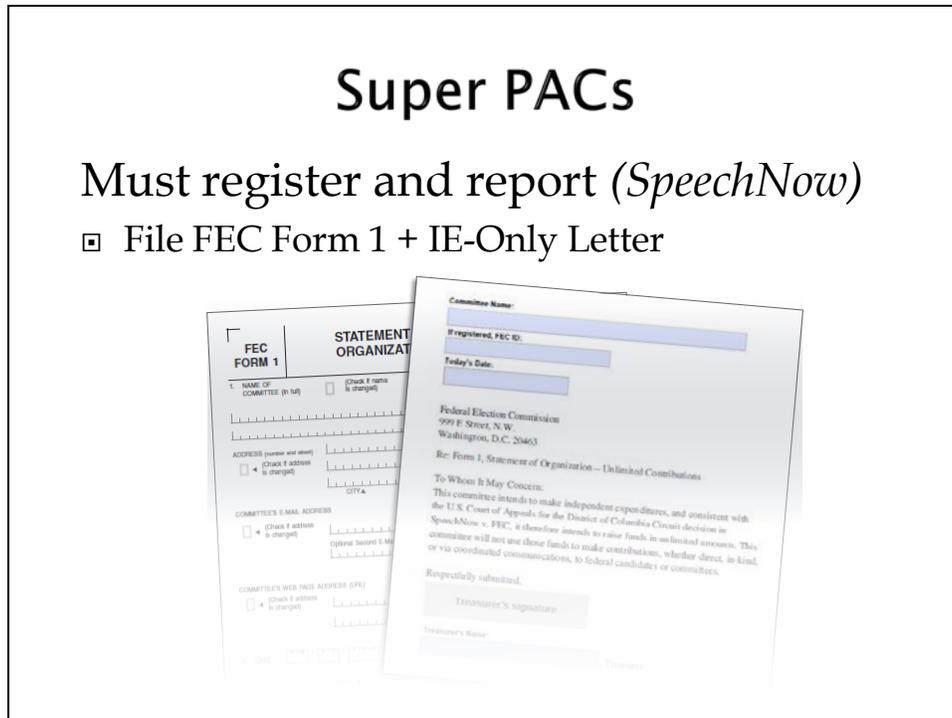


Super PACs

- ▣ Groups making only independent expenditures are permitted to:
 - Accept unlimited contributions from individuals (*SpeechNow*)
 - Accept unlimited contributions from corporations and labor organizations (AO 2010-11 (Commonsense Ten))

II. Super PACs

- A. Groups making only independent expenditures are permitted to accept unlimited contributions from individuals, corporations and labor organizations.
- B. There had been contribution limits for all PACs, but following *Citizens United*, the U.S. Court of Appeals for the D.C. Circuit struck down the limits as applied to independent expenditure-only groups in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc).
- C. Following those two decisions and *EMILY's List v. FEC*, 581 F.3d 1 (D.C. Cir. 2009), the Commission determined in Advisory Opinion 2010-11 (Commonsense Ten) that limits on contributions from corporations, labor organizations, and other political committees to independent expenditure-only groups were also unconstitutional.



D. Super PAC Reporting

1. Independent expenditure-only/Super PACs must register with the Commission and file disclosure reports.
2. To register with the Commission, must file FEC Form 1 and an IE-Only Letter, as shown in Advisory Opinion 2010-09 (Club for Growth).
3. The court upheld the organizational and reporting requirements for independent expenditure-only political committees in *SpeechNow.org*.

Super PACs

- ❑ Federal candidates may only solicit funds subject to federal limits (AO 2011-12 (Majority PAC))
- ❑ Corporations may establish and administer; costs are reportable contributions
(AO 2010-09 (Club for Growth), 2012-18 (NRLC))
- ❑ Application of media exemption (AO 2011-11 (Colbert))
- ❑ Leftover campaign funds
(AO 2012-34 (Freedom PAC, Friends of Mike H))

E. Super PAC Advisory Opinions

In the wake of the *Citizens United*, *SpeechNow*, and *EMILY's List* cases, the Commission was presented with other advisory opinion requests that explored the boundaries of those cases and, in some cases, what they meant when read together. All AOs are available at the Commission's searchable system at <http://saos.nictusa.com/saos/searchao>.

1. **AO 2011-12 (Majority PAC)**
Federal officeholders, candidates, and officers of national party committees can solicit funds for IE-only committees, but only up to \$5,000.
2. **AO 2010-09 (Club for Growth) and 2012-18 (National Right to Life Committee, Inc.)**
A corporation may establish, administer, and pay the costs of an “independent expenditure-only” committee that solicits and accepts funds from only individuals for independent expenditures – much like the one at issue in the *SpeechNow* case. Corporate payments for the administration and solicitation costs would be a reportable contribution to the IE-only committee.
3. **AO 2011-11 (Colbert)**
Application of media exemption to Super PAC created by TV personality.
4. **2012-34 (Freedom PAC and Friends of Mike H)**
A former Senate candidate’s campaign committee may use leftover campaign funds to contribute \$10,000 or more to an IE-only political committee.

Hybrid PACs

PAC with separate bank accounts that operates as both a regular nonconnected PAC and as a Super PAC.

- Account 1: FECA-limited funds used for contributions to federal candidates and committees
- Account 2: Unlimited contributions used to finance independent expenditures

(EMILY's List and Carey)

III. Hybrid PACs

- A. Nonconnected political committees are permitted to maintain separate accounts for independent expenditures and contributions. Unlimited contributions from individuals, corporations, and labor organizations may be accepted to finance independent expenditures, while FECA-limited contributions must be used to make contributions.
- B. Under *EMILY's List v. FEC*, 581 F.3d 1 (D.C. Cir. 2009), and *Carey v. FEC*, 791 F. Supp. 2d (D.D.C. 2011), the contribution limits that would otherwise apply to all bank accounts of a nonconnected committee are unconstitutional.

Hybrid PACs

Commission Guidance:

- Notify FEC by letter or electronic submission
- Report all receipts and disbursement for both accounts
- Allocate administrative expenses based on activity for each account

C. **Commission guidance on Hybrid PACs**

1. The Commission issued a Statement on 10/5/11 that provides reporting guidance for hybrid PACs. The statement is available at <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.
2. **More information:**
<http://www.fec.gov/law/recentdevelopments.shtml#HybridPACs>.

Hybrid SSFs?

- ▣ AO 2012-01 (Stop This Insanity, Inc. Employee Leadership Fund)
- ▣ A corporation's SSF wanted to use a non-contribution account to fund independent expenditures free of the usual restrictions
- ▣ The district court dismissed the case, distinguishing between SSFs and non-connected PACs (*Stop This Insanity, Inc. Employee Leadership Fund et al v. FEC*)

D. Hybrid SSFs?

1. AOR 2012-01: request by a corporation's separate segregated fund ("SSF") to establish a non-contribution account and to solicit unlimited contributions from members of its restricted class, as well as other persons, in order to fund independent expenditures. The Commission could not reach a majority response.
2. Stop This Insanity, its SSF the Leadership Fund, and a group of potential contributors filed a complaint in the U.S. District Court for the District of Columbia challenging the application of contribution and solicitation restrictions to a non-contribution account of an SSF as an unconstitutional limit on their First Amendment rights of freedom of speech and association.
3. On 11/5/12, the court denied the plaintiffs' request for a preliminary injunction and granted the Commission's motion to dismiss the case. The court distinguished between SSFs and nonconnected PACs, stating that an SSF may receive unlimited and undisclosed administrative support from a sponsoring organization, and in exchange, the SSF must limit its solicitations to a restricted class of individuals associated with the connected organization.
4. The plaintiffs appealed to the Court of Appeals for the D.C. Circuit and oral argument was held on November 19, 2013.

PACs Americana

	SSF	Nonconnected	Super PAC	Hybrid PAC
Paying Admin Expenses	Connected Organization	Limited Contributions	Unlimited Contributions	Allocation corresponding to Activity
Funding Sources	Restricted Class of Individuals	Public, but no Corp/Union \$	Public, including Corp/Union \$	Account #1- Public, but no Corp/Union \$ Account #2 - Public, Corp/Union \$ okay
Limits & Prohibitions	All Federal Limits and Prohibitions	All Federal Limits and Prohibitions	No Limits or Corp/Labor Ban	Acct. #1- All Limits and Prohibitions Acct.#2- No Limits or Corp/Labor Ban
Supporting Candidates	Contributions & Ind Exp's	Contributions & Ind Exp's	Ind Exp's Only	Acct.#1 - Contrib's & Ind Exp's Acct.#2 - IE's Only

Key Results

- ▣ Corporations & unions can spend treasury funds on independent expenditures and electioneering communications
- ▣ SuperPACs & Hybrid PACs can use unlimited contributions, including corporate/union funds, to finance independent expenditures

LITIGATION UPDATE

Litigation Topics

- ▣ Express Advocacy
- ▣ PAC Status
- ▣ Electioneering Communications
- ▣ Contributions

I. Express Advocacy and PAC Status

Free Speech v. FEC

- ▣ AO 2012-11 (Free Speech)
- ▣ 10th Circuit Rejected Challenges to:
 - Only-reasonable-interpretation test in FEC's definition of express advocacy
 - Enforcement approach to political committee status
 - Clear indication test for determining solicitations under FECA
- ▣ Petition for Supreme Court review pending

Free Speech v. FEC

Example: “Environmental Policy”



“President Obama opposes the Government Litigation Savings Act. This is a tragedy for Wyoming ranchers and a boon to Obama’s environmentalist cronies. Obama cannot be counted on to represent Wyoming values and voices as President. This November, call your neighbors. Call your friends. Talk about ranching.”

- A. *Free Speech v. FEC*, Civ. No. 12-127 (D. Wy. March 19, 2013), *aff'd*, --- F.3d ---, 2013 WL 3192086 (10th Cir. June 25, 2013).**
1. This case challenges the regulatory definition of express advocacy in 11 CFR 100.22(b) and the FEC's approach to determining political committee status and when a "solicitation" for "contributions" subject to FECA is made.
 2. Before the litigation, Free Speech submitted an advisory opinion request asking whether eleven proposed advertisements about President Obama were express advocacy, whether four proposed donation requests would be "solicitations," and whether the group's proposed activities would require it to register as a political committee. AO 2012-11: Two of eleven Free Speech ads are express advocacy, four are not, and two of the proposed donation requests are not "solicitations."
 3. Free Speech filed suit in the U.S. District Court for the District of Wyoming, arguing that the challenged regulation and enforcement practices violate the First Amendment.
 4. The district court concluded that the FEC's regulatory definition of express advocacy and its case-by-case application of the major purpose test are essential in identifying the communications and entities that are subject to FECA disclosure requirements, which help the electorate make informed decisions. The court also ruled that the FEC's standard for determining when a request for funds "solicits" a "contribution" under FECA is not vague or overbroad.
 5. On 6/25/13, the U.S. Court of Appeals for the 10th Circuit affirmed the district court's dismissal of Free Speech's complaint and adopted the district court's opinion as its own.
 6. Free Speech's petition for certiorari to have the case heard by the Supreme Court is pending.

Public Citizen v. FEC

Challenge to FEC dismissal of complaint alleging Crossroads GPS should have registered and reported as Super PAC

- Must the Commission count non-express advocacy ads critical of candidates towards political committee status?
- Must the Commission analyze spending per calendar year?

- B. Public Citizen v. FEC**, No. 14-cv-00148 (D.D.C. filed 1/31/14)
1. Plaintiffs Public Citizen, Craig Holman, ProtectOurElections.org, and Kevin Zeese challenge the Commission's dismissal of their allegations Crossroads Grassroots Political Strategies, an entity that chose to organize under Section 501(c)(4) of the Internal Revenue Code, violated FECA by failing to register and report as a political committee.
 2. Plaintiffs contend that the group of Commissioners whose votes prevented the Commission from moving forward with an investigation acted contrary to law.
 3. The case raises a number of issues regarding the determination of political committee status, including whether it was reasonable for the controlling group of Commissioners to decline to count ads that were not express advocacy towards political committee status and whether it was reasonable to examine Crossroads GPS's spending according to the entity's fiscal year rather than by calendar year.

Hispanic Leadership Fund v. FEC

- ▣ *See* AO 2012-19 (American Future Fund)
- ▣ Challenge to:
 - FECA's regulation of certain electioneering communications
- ▣ Whether advertisements included references to “clearly identified” federal candidate

II. Electioneering Communications

- A.** *Hispanic Leadership Fund, Inc. v. FEC*, 897 F. Supp. 2d 407 (E.D. Va. 2012). This is another constitutional challenge based on whether FECA applies to a group of proposed advertisements, in this case whether proposed television ads qualified as “electioneering communications” based on whether they included references to “clearly identified” federal candidates under 2 U.S.C. 434(f). That in turn depends on whether the candidate’s identity is “apparent by unambiguous reference” under 2 U.S.C. 431(18).

Hispanic Leadership Fund v. FEC

Examples:

“Since this Administration began, gas prices are up 104%. . . . The White House says Tell the White House”

“Since 2008 began, gas prices are up 104%. . . . The government says Tell the government it’s time”

1. **AO 2012-19 (American Future Fund)**
 - a) Two broadcast advertisements referencing “Obamacare” and “Romneycare” are electioneering communications because they clearly identify a federal candidate during the electioneering time periods.
 - b) The Commission was unable to approve a response about whether five of eight proposed television ads by American Future Fund referenced a clearly identified federal candidate. The five ads used phrases such as “this Administration” and “the White House” (with visual depictions of the White House), and one included an unidentified audio clip of President Obama’s voice.
2. HLF filed a complaint in the U.S. District Court for the Eastern District of Virginia. HLF wanted to produce essentially identical ads and claimed that its proposed ads were not electioneering communications because they did not reference a clearly identified candidate, but said it was harmed by uncertainty as to whether electioneering communication disclosure requirements applied.

3. On 10/4/12, the district court held that three of the five HLF ads referenced a clearly identified federal candidate and were thus electioneering communications. The court found that an ad criticizing the oil policies of “the White House” and “the Administration” and an ad that referred to “the parents of government run healthcare” together with a textual reference to “the White House” both clearly identified President Obama. But the court held that the ad with the audio clip of Obama’s voice did not clearly identify him unless there was an evidentiary showing that the candidate’s voice was well-recognized. The court rejected HLF’s constitutional challenge to the reporting requirements as applied to the advertisements found to be electioneering communications.
4. Neither party appealed the district court’s decision.

Van Hollen v. FEC

- ▣ Challenge to rules on:
 - Disclosure of contributors to corporations and unions making electioneering communications
- ▣ Alleges:
 - Regulation requires too little disclosure because
 - Only persons giving “for the purpose of furthering electioneering communications” must be disclosed
- ▣ D.C. Circuit decision and remand

- B.** *Van Hollen v. FEC*, 851 F. Supp. 2d 69 (D.D.C.), *rev'd and remanded*, 694 F.3d 108 (D.C. Cir. 2012).
1. Challenge to FEC regulations on the disclosure of donations given to fund electioneering communications.
 2. Representative Van Hollen claims that 11 CFR 104.20(c)(9), which requires the disclosure of any donation of \$1,000 or more to corporations (including nonprofits) or labor organizations when the donation “was made for the purpose of furthering electioneering communications” is arbitrary, capricious and contrary to law.

3. Van Hollen argues that FECA requires corporations and unions to disclose all donations they receive of \$1,000 or more unless the donations for electioneering communications have been segregated in a separate bank account.
4. On 3/30/12, the U.S. District Court for the District of Columbia found that BCRA clearly requires every person who funds electioneering communications to disclose all contributors. The court also stated that Congress did not delegate authority to the FEC to narrow BCRA's disclosure requirement through agency rulemaking.
5. On 9/18/12, the U.S. Court of Appeals for the District of Columbia Circuit found that the lower court had erred in holding that Congress "spoke plainly" when it enacted BCRA, thus foreclosing any regulatory construction of the statute by the FEC. The appeals court reversed and remanded the case with instructions to "refer the matter to the FEC for further consideration." The district court directed the Commission to inform the court whether the Commission "intends to pursue rulemaking or defend its current regulation."
6. On 10/4/12, the Commission notified the district court that the agency would not initiate a rulemaking and would continue to defend the current regulation at 11 CFR 104.20(c)(9). Following additional briefing and a hearing, the matter remains pending with the district court.

III. Contributions

McCutcheon v. FEC

- ▣ Challenge to biennial aggregate limits on overall individual contributions to:
 - ▣ Candidates
 - ▣ Party Committees
 - ▣ PACs
- ▣ District court dismissed case
- ▣ Awaiting Supreme Court decision

- A.** *McCutcheon v. FEC*, 893 F. Supp. 2d 133 (D.D.C. 2012) (three-judge court), *noting probable jurisdiction*, 133 S. Ct. 1242 (U.S. Feb. 19, 2013).
1. Plaintiffs Shaun McCutcheon and the RNC argue that the biennial aggregate contribution limits at 2 U.S.C. 441a(a)(3), which currently mean individuals can give \$48,600 to candidates and \$74,600 to non-candidate committees, are unconstitutionally low and violate the First Amendment.
 2. A three-judge panel of the U.S. District Court for the District of Columbia dismissed the action. The district court re-affirmed that contribution limits are subject to intermediate scrutiny, not strict scrutiny, because they primarily implicate the First Amendment rights of association, not expression, and contributors remain able to express their associational interest in other ways.
 3. The district court held that the government had justified the aggregate contribution limits as a means of preventing circumvention of base contribution limits imposed to further the government's interest in deterring corruption and its appearance. The court found no "danger signs" that the limits were not closely drawn to achieve the governmental anti-corruption interest. The court also noted that despite the aggregate limits, individuals remain free to volunteer, join political associations and engage in independent expenditures.
 4. On 10/9/12, Plaintiffs filed a notice of appeal to the U.S. Supreme Court, and on 2/19/13, the Supreme Court noted probable jurisdiction, agreeing to review the case. The Supreme Court held oral argument on October 8, 2013.
- B.** *James v. FEC*, ___ F. Supp. 2d ___, 2012 WL 5353565 (D.D.C. 2012) (three-judge court), *appeal filed*, 81 U.S.L.W 3329 (U.S. Nov. 30, 2012).
1. Similar to *McCutcheon v. FEC*, in the *James* suit an individual challenges the constitutionality of 2 U.S.C. §441a(a)(3)(A) and its aggregate biennial limit on contributions to candidates, which is currently \$48,600.
 2. On 9/19/12, the U.S. District Court for the District of Columbia stayed the *James* suit until it resolved *McCutcheon*. After the district court dismissed *McCutcheon*, it also dismissed *James*, finding no basis to distinguish between the two cases.
 3. On 11/1/12, Plaintiffs filed a notice of appeal to the U.S. Supreme Court. On 2/4/13, the FEC filed its motion to dismiss or affirm.

Wagner v. FEC

- ▣ Challenge to:
 - Prohibition on contributions by individual federal government contractors

- ▣ District court finds ban does not violate:
 - First Amendment
 - Equal Protection aspect of Fifth Amendment

- ▣ Remand: Jurisdictional issue

- C. ***Wagner v. FEC***, 901 F. Supp. 2d 101 (D.D.C. Nov. 2, 2012), *vacated*, 717 F.3d 1007 (D.C. Cir. May 31, 2013), *questions certified by*, No. 11-1841 (D.D.C. June 5, 2013).
1. Challenge to the prohibition on contributions by federal government contractors as applied to individual contractors.
 2. Plaintiffs claim that 2 U.S.C. § 441c violates the First Amendment and the Equal Protection component of the Fifth Amendment.
 3. On 11/2/12, the United States District Court for the District of Columbia upheld the Act's prohibition on contributions by individual federal contractors. The district court held that the ban is consistent with the First Amendment because it is closely drawn to serve the government's important interest in preventing actual and apparent corruption. The court also held that the contractor contribution ban does not violate the Fifth Amendment because individual contractors are not similarly situated to other persons who can generally make contributions, specifically federal employees and persons associated with corporations.

4. On 5/31/13, the United States Court of Appeals for the District of Columbia Circuit vacated the district court's ruling. The Court held that parties enumerated in 2 U.S.C. § 437h -- the Commission, the national committee of a political party, and individual voters -- must initiate litigation over the constitutionality of the Act under that provision, with its attendant procedures of fact-finding and certification of nonfrivolous merits questions by the district court to the en banc court of appeals. Because the plaintiffs in *Wagner* (who are individual voters) ultimately chose to proceed under federal question jurisdiction and ordinary judicial review procedures, i.e., a merits determination by the district court and appeal in the first instance to a three-judge panel of the court of appeals, the Court determined that it lacked jurisdiction. It remanded to the district court with instructions to make findings of fact and certify constitutional questions.
5. On 6/5/13, the district court issued an order certifying the following two questions to the en banc D.C. Circuit: (1) whether the contractor contribution ban violates the First Amendment; and (2) whether the ban violates the equal-protection guarantee of the Fifth Amendment. In addition, the district court made findings of fact.
6. The *en banc* D.C. Circuit has postponed further proceedings in the case until after the Supreme Court has ruled in *McCutcheon*.

FEC v. Craig

- ▣ Preliminary ruling

- ▣ Using campaign funds for legal expenses that would have existed irrespective of duties as an officeholder = prohibited personal use

- D. FEC v. Craig, ___ F. Supp. 2d ___, 2013 WL 1248271 (D.D.C Mar. 28 2013)**
1. Commission's complaint alleges defendants violated 2 U.S.C. § 439a(b) by spending more than \$200,000 in campaign funds to pay legal expenses not incurred in connection with Mr. Craig's campaign for federal office or with his ordinary and necessary duties as a Senator, resulting in impermissible personal use.
 2. Defendants moved to dismiss the suit arguing that the use of campaign funds for Mr. Craig's legal expenses was expressly permitted under the statute and not subject to the prohibition against personal use.
 3. On 3/28/13, the United States District Court for the District of Columbia denied the defendants' motion to dismiss. The Court found that Senator Craig's legal expenses were not ordinary and necessary expenses in connection with his duties as an officeholder. The Court also found that the campaign funds at issue were converted to Senator Craig's personal use because the legal bills would have existed irrespective of his duties as an officeholder.
 4. The parties are now in the process of briefing dispositive motions to the district court.

POLICY UPDATE

Policy Topics

- ▣ Technology-Related Developments
- ▣ Reporting
- ▣ Corporate and Labor Activity
- ▣ Contributions by Same-Sex Spouses

I. Technology-Related Developments

Using Technology

- ▣ Contributions by Text
- ▣ Electronic Contribution Redesignation
- ▣ Text and Internet Disclaimers
- ▣ Tech Modernization
- ▣ Bitcoins

Contributions by Text

- 2012-17 (m-Qube I)
- 2012-26 (m-Qube II)
- 2012-28 (CTIA II)
- 2012-30 (Revolution Messaging)
- 2012-31 (AT&T)
- 2012-35 (GTSG)



A. Text Contributions

The Commission issued AOs analyzing contributions made or initiated by text message.

1. **AO 2012-17 (m-Qube I)**
A vendor may provide political committees the option to accept individual contributions via text message because its business practices are consistent with the recordkeeping and reporting requirements of the Act.
2. **AO 2012-26 (m-Qube II)**
Campaigns that receive texted contributions are solely responsible for determining the eligibility of contributors, and must satisfy their responsibilities under the Act.
3. **AO 2012-28 (CTIA-II)**
Trade association and its members may offer their text-to-donate services to political committees without assuming responsibility for the legality of the resulting contributions under the Act when the contributions are processed by a connection aggregator.
4. **AO 2012-30 (Revolution Messaging)**
A telecommunications company may use text messaging technology to process campaign contributions in excess of \$50 per billing cycle and \$200 per calendar year or election cycle. It may also share premium common short codes among various federal campaigns and committees when processing such transactions.

5. **AO 2012-31 (AT&T)**
A wireless cell phone service provider may charge political committees a lower rate for fundraising by text message than it charges to commercial content providers, without making a prohibited corporate contribution.
6. **AO 2012-35 (GTSG)**
An e-commerce transaction company may receive small-dollar contributions initiated via text message and paid for by credit or debit card, deduct its fee and forward the net amount to its political committee customers.

Electronic Redesignation

Interpretive Rule

- ▣ Redesignation of contributions:
 - Must be written
 - Must be signed
- ▣ Electronic redesignation should ensure:
 - Contributor identity
 - Contributor intent

- B. Interpretive Rule on Electronic Contributor Redesignations**
The interpretive rule describes the particular method of electronic redesignation approved by the Commission in the course of a recent audit:
http://www.fec.gov/law/cfr/ej_compilation/2011/notice_2011-02.pdf

Internet/Text Disclaimers

- ▣ 2013-18 (Revolution Messaging)

- ▣ Whether banner ads in mobile phone apps qualify for “small items” exception to disclaimer requirements

C. **Advance Notice of Proposed Rulemaking (ANPRM) on Text and Internet Communication Disclaimers**

1. ANPRM asks whether the Commission should begin a formal rulemaking to revise its regulations on disclaimers on certain Internet and text communications and, if so, what changes should be made to those regulations.
2. Published in the *Federal Register* on October 13, 2011. Available online at <http://sers.nictusa.com/fosers/showpdf.htm?docid=97168>.
3. The pending advisory opinion request from Revolution Messaging relates to whether banner ads in mobile phone apps qualify for the “small items” exception to the political-committee disclaimer requirements.

Technological Modernization

- ▣ ANPRM possible updates to address electronic transactions, including:
 - Credit and debit cards
 - Internet-based payment processing
 - ▣ *See also:* AOs 2012-08 (Repledge), 2012-22 (skimmerhat), 2012-09 (Points for Politics), 2012-03 (ActRight)
 - Text Contributions
 - “Signatures” and “writings,” including electronic redesignations

D. Advance Notice of Proposed Rulemaking (ANPRM) on Technological Modernization

1. ANPRM asks whether the Commission should begin a formal rulemaking to revise its regulations to address contributions and expenditures made by electronic means (such as by credit card, debit card, internet-based payment processing and text messaging); to eliminate or update references to outdated technologies; and to address other technological modernization issues.
2. Published in the *Federal Register* on May 2, 2013. See <https://www.federalregister.gov/articles/2013/05/02/2013-10326/technological-modernization>
3. The comment period closed on June 3, 2013. Comments received are available at <http://sers.nictusa.com/fosers/viewreg.htm?regno=2013-01>.

Using Bitcoins

AO 2013-15 (Conservative Action Fund)

- Permissibility
- Valuation
- Reporting
- Disbursements



- E. Bitcoins: AO 2013-15 (Conservative Action Fund)**
Addresses whether political committees may accept Bitcoin contributions and, if so, how to value, report, and disburse them.

II. Reporting

Reporting Ultimate Payees

Interpretive Rule clarifies reporting of:

- ▣ Reimbursements to individuals for out of pocket expenses
- ▣ Payments to credit card companies
- ▣ Unreimbursed payments by candidate

A. **Interpretive Rule on Political Committee Reporting of Ultimate Payees of Disbursements (78 FR 40625 July 8, 2013)**

Clarifies the reporting requirements for disbursements made through intermediaries in three specific situations:

1. When a political committee reimburses an individual who used personal funds to pay committee expenses over \$200 to a vendor;
2. When a political committee's payment of its credit card bill includes charges of over \$200 to a single vendor; and
3. When a candidate uses personal funds to pay committee expenses aggregating over \$200 to a single vendor without receiving reimbursement.

Administrative Fines

- ▣ Legislation enacted December 26, 2013 authorizes extension and expansion
 - AFP to cover reporting periods through December 31, 2018; and
 - May cover certain reports not previously subject to administrative fines
- ▣ Commission approves rules on January 13, 2014 to extend AFP through 2018
- ▣ Expansion considered in separate rulemaking

B. Extension of Administrative Fines Program (79 FR 3302 January 21, 2014)

Extends AFP to cover reporting periods through December 31, 2018

1. Implements Public Law 113-72, sec. 1 (December 26, 2013), which also authorizes Commission to expand scope of AFP to cover additional categories of reporting violations.
2. Future rulemaking will address possible expansion.

Administrative Fines

- ▣ Expansion may include:
 - IE reports filed by individuals and others (Form 5)
 - Certain FEA reports filed by parties (Form 3X)
 - Electioneering Communication reports (Form 9)
 - 24- and 48-Hour IE reports filed by political committees (Schedule E) and by individuals and others (Form 5)
 - Lobbyist bundling reports (Form 3L)
 - Convention reports filed by convention/host committees

Reporting Nationwide IEs in Presidential Primaries

- ▣ Three draft notices of interpretive rule available for public comment offer alternative:
 - Triggers for 24- and 48-hour notices
 - Methods for reporting
- ▣ Available at www.fec.gov/law/policy.shtml
- ▣ Comment deadline: 2/20/14

III. Corporate/Labor Activity

Corporate/Labor Activity

- ▣ SSFs: Restricted Class
- ▣ SSFs: Affiliation
- ▣ Limited Liability Partnerships

Restricted Class & SSF Administration

- ▣ 2012-02 (Wawa)
- ▣ 2012-15 (American PT Assn.)
- ▣ 2013-12 (SEIU)

A. SSF: Restricted Class / PAC Administration

A corporation may solicit contributions from its restricted class (i.e. executive or administrative personnel, stockholders and their families), and to its SSF.

1. AO 2012-02 (Wawa)

Salaried managers who supervise hourly employees are members of the restricted class.

2. AO 2012-15 (American Physical Therapy Assn.)

Corporations owned by individual members of a membership organization (that also qualifies as a trade association) may provide payroll deduction to enable member-employees to contribute to the membership organization's SSF. The membership organization must pay the corporations in advance for their services.

3. AO 2013-12 (SEIU)

A labor organization may obtain its restricted class members' authorizations for payroll-deduction contributions to the organization's SSF through recorded telephone calls.

SSF Affiliation

- ▣ 2012-12 (Dunkin' Brands)
- ▣ 2012-21 (Primerica, Inc.)
- ▣ 2012-23 (Snake River)
- ▣ 2013-08 (AVMA)

B. Affiliation

1. AO 2012-12 (Dunkin' Brands)

SSF may solicit and accept contributions from non-corporate franchisees/licensees (and their executive and administrative personnel), because its franchisees/licensees are "affiliated."

2. **AO 2012-21 (Primerica, Inc.)**
Corporations and their PACs are disaffiliated after spin-off.
3. **AO 2012-23 (Snake River)**
With prior approval, a group of trade associations may solicit their corporate members' executives and stockholders for contributions to the SSF of an affiliated cooperative.
4. **AO 2013-08 (AVMA)**
Veterinary students who join student chapters of the American Veterinary Medical Association while in veterinary school are members of the AVMA's restricted class.

Limited Liability Partnerships

Notice of Proposed Rulemaking:

- AO 2008-05 (Holland & Knight)
- Rules for LLPs electing corporate tax status
- Comments were due February 11, 2013

- C. Treatment of LLPs**
1. **AO 2008-05 (Holland & Knight)**
 2. Revises rules on partnerships so that LLPs opting for association treatment ("Corporate LLPs") would be treated as corporations under Part 114.
 - a) Would no longer be able to make contributions or attribute them to their partners;
 - b) Would be able to establish SSFs.
 3. Comments were due by February 11, 2013.
 4. NPRM published in Federal Register on at 77 FR 74121 (December 13, 2012). Available online at <http://sers.nictusa.com/fosers/showpdf.htm?docid=103514>.

IV. Contributions by Same-Sex Spouses

Contributions by Same-Sex Spouses

- ▣ AO 2013-02 (Winslow I)
- ▣ AO 2013-06 (DSCC)
- ▣ AO 2013-07 (Winslow II)
 - Spousal contribution rule
 - Candidates' spousal assets
 - Restricted-class membership

- A. AO 2013-02 (Winslow I),**
This AO concluded that the Commission's rule regarding attribution of joint spousal contributions could not be applied to same-sex spouses because of the Defense of Marriage Act.
- B. AO 2013-06 (DSCC), and AO 2013-07 (Winslow II)**
1. Shortly after the Supreme Court declared the Defense of Marriage Act unconstitutional, the Commission superseded AO 2013-02 (Winslow I) in AOs 2013-06 (DSCC) and 2013-07 (Winslow II).
 2. These AOs explained that the Commission would look to state law to define the terms "spouse" and "family" in the Act and in Commission regulations. Same-sex couples legally married under state law are therefore spouses and families for these purposes, which include the Commission's regulations regarding spousal contributions, a candidate's use of spousal assets, and membership in a restricted class.

Coming Soon

- ▣ Deadline for Revolution Messaging AOR re: Disclaimers on Text Messages – 2/28
 - Supplemental information received on 2/3
- ▣ Supreme Court Decision in *McCutcheon* challenge to Biennial Limit
- ▣ IT survey re: possible E-Filing Changes

Stay Up-to-Date



VI. Stay Up to Date:

- A. **FEC RECORD:** <http://www.fec.gov/pages/fecrecord/fecrecord.shtml>
- B. **FEC Weekly Digest**
- C. **Twitter Feed: FECUpdates**
- D. **FECMail:** website subscription service; email updates on topics of your choice
- E. **Web Site**
 - 1. **Litigation:** <http://www.fec.gov/law/litigation.shtml>
 - 2. **New/Current Statutes:** <http://www.fec.gov/law/feca/feca.shtml>
 - 3. **Rulemakings:** http://www.fec.gov/law/law_rulemakings.shtml
 - 4. **Updates:** <http://www.fec.gov/law/recentdevelopments.shtml>