

October 17, 2016

**By Electronic Mail**

Lisa J. Stevenson  
Acting General Counsel  
Federal Election Commission  
999 E Street NW  
Washington, D.C. 20463

**RE: Comments on Advisory Opinion Request 2016-20**

Dear Ms. Stevenson

These comments are filed on behalf of the Campaign Legal Center and Democracy 21 in regard to Advisory Opinion Request 2016-20, a request submitted by Christoph Mlinarchik, the sole owner of a single-member LLC that is a government contractor. Mr. Mlinarchik seeks permission to make contributions from his personal funds, a request which we submit would allow an evasion of the ban on contributions by federal contractors.

This effort to create new loopholes in the longstanding federal contractor contribution ban should be rejected. Federal law prohibits individuals and sole proprietors who are government contractors from making contributions, and the Commission treats single-member LLCs that do not elect to be treated as corporations for tax purposes as indistinguishable from their single member—and subjects both to the same contribution limitations and prohibitions. Thus, because the single-member LLC is prohibited from making contributions because it is a federal contractor, so too is the individual who is identical to, and treated as indistinguishable from, the LLC.

For over 75 years, federal law has prohibited federal government contractors from making contributions, either directly or indirectly, in connection with federal elections. 52 U.S.C. § 30119. Among other things, the ban prohibits “individuals or sole proprietors who are Federal contractors” from making contributions “from their business, personal, or other funds under their dominion or control.” 11 C.F.R. § 115.5.

The federal contractor ban, as applied to individuals who hold government contracts, was recently upheld unanimously by the *en banc* D.C. Circuit in *Wagner v. Fed. Election Comm’n*, 793 F.3d 1 (D.C. Cir. 2015) (*en banc*), *cert. denied sub nom. Miller v. Fed. Election Comm’n*, 136 S. Ct. 895 (2016). The *en banc* court stressed that “the record offers every reason to believe that, if the dam barring contributions were broken, more money in exchange for contracts would flow through the same channels already on display.” *Id.* at 18.

The fact that the requestor here is an individual who operates as a government contractor through a single-member LLC does not make a difference. As a single-member LLC that does not elect to be treated as a corporation for tax purposes, the income of Christoph LLC is treated by the IRS as part of its owner's tax return (a "disregarded entity"). Thus, the LLC's income is treated as income of Mr. Mlinarchik. "Because of the unity of the member and the LLC in this situation,"<sup>1</sup> a contribution from a single-member LLC is treated as a contribution from its single member. 11 C.F.R. § 110.1(g)(4).

In other words, for purposes of FECA, a single-member LLC is considered indistinguishable from the individual member. Accordingly, the contribution limitations and prohibitions that apply to the single-member LLC apply equally to the individual who is the single member. *See e.g.* AO 2009-02 at 3 (finding a single-member LLC subject to the contribution limits and prohibitions of its sole member).

Therefore, Mr. Mlinarchik is subject to the same contribution limitations and prohibitions that apply to Christoph LLC, his single-member LLC whose profits are attributed to Mr. Mlinarchik. Allowing an individual whose single-member LLC is a government contractor to make contributions is clearly barred under federal law and regulations, and would certainly constitute a break in the "dam barring contributions" from government contractors. *Wagner, supra* at 18.

Because Christoph LLC is a single-member LLC and a federal government contractor, Christoph Mlinarchik as its single-member cannot make contributions to federal candidates, political committees, or party committees. 11 C.F.R. § 115.5.

Respectfully,

/s/ J. Gerald Hebert

/s/ Fred Wertheimer

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<sup>1</sup> Explanation and Justification for the Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 FR 37,397, 37,399 (July 12, 1999).

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