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Federal Election Commission
999 E Street, NW
Washington, DC 20463

Commissioners:
Ellen L. Weintraub, Chair
Donald F. McGahn II, Vice Chairman
Caroline C. Hunter
Matthew S. Petersen
Steven T. Walther

Staff Director:
Alec Palmer

General Counsel:
Anthony Herman

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Toll free 800-424-9530
Local 202-694-1100
Email info@fec.gov

Greg Scott, Director
Alex Knott, Sr. Writer/Editor
Dorothy Yeager, Production Manager

Litigation

Hassan v. FEC

On March 11, 2013, the United States Court of Appeals for the District of Columbia Circuit affirmed the [district court's ruling](#) that Abdul Karim Hassan lacks standing to challenge the constitutional qualifications to be President and the laws governing the presidential public funding program. (See [Record summary](#).) The court of appeals also affirmed the district court's conclusion that the natural born citizen requirement in the constitution has not been implicitly repealed.

Mr. Hassan, a Guyana native who became a U.S. citizen, claimed that he should be able to receive public funding for his campaign under the Presidential Election Campaign Fund Act, despite his constitutional ineligibility to hold the office of President. The Commission's contrary decision in [Advisory Opinion \(AO\) 2011-15](#) prompted the lawsuit.

U.S. Court of Appeals for the District of Columbia Circuit No. 12-5335.

(Posted 03/19/2013; By: Alex Knott)

Resources:

- [*Per Curiam Order in Hassan v. FEC*](#)
- [*Hassan v. FEC litigation page*](#)
- Brochure: [*Public Funding of Presidential Elections*](#)

Free Speech v. FEC

On March 19, 2013, the U.S. District Court for the District of Wyoming dismissed a case brought by Free Speech (plaintiff) that challenged the constitutionality of a Commission regulation and certain Commission policies and sought preliminary and permanent injunctions against the Commission's enforcement of them. The Wyoming nonprofit had challenged the Commission's regulatory definition of "express advocacy," the Commission's interpretation of what constitutes a "solicitation" under the Federal Election Campaign Act (the Act), and how the Commission determines whether an organization is a political committee, including the Commission's application of the "major purpose" test.

The court denied the plaintiff's motion for a preliminary injunction in a telephonic ruling on October 3, 2012.

The plaintiff has appealed the district court's dismissal of the case to the United States Court of Appeals for the Tenth Circuit.

Express Advocacy

Commission regulations define express advocacy communications as those that: (a) use explicit words of advocacy; or (b) in context, can only be interpreted by a reasonable person as advocating a candidate's election or defeat. 11 CFR 100.22(a) and (b). Communications that meet either of the regulatory definitions and are not coordinated with a candidate or party are independent expenditures and must be disclosed. See 2 U.S.C. §434(c) and 11 CFR 109.10.

Free Speech argued that the Commission's interpretation of express advocacy at 11 CFR 100.22(b) is vague and offers no clear guidelines for speakers to tailor their constitutionally protected conduct and speech, and that the regulation fails to limit its application to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate (i.e., through use of the so-called "magic words" such as "vote for," "elect," "support," etc.).

The district court noted that the Supreme Court has ruled in several cases that the definition of express advocacy may also include, in addition to use of the "magic words," communications that are the "functional equivalent" of express advocacy. See [*McConnell v. FEC, 540 U.S. at 193 \(2003\)*](#) and [*FEC v. Wisconsin Right to Life, Inc. \(WRTL\), 551 U.S. 449 \(2007\)*](#).

In *WRTL*, the Supreme Court stated that other courts should find that a communication is the functional equivalent of express advocacy "only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *WRTL*, 551 U.S. at 460-470. The district court noted that the functional equivalent test is closely correlated to the Commission's regulation at 100.22(b), which provides that a communication is express advocacy if it "could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s)."

The Supreme Court also addressed the issue of express advocacy in *Citizens United v. FEC* (2010). The court found that a communication at issue in that case was the functional equivalent of express advocacy and further upheld the disclosure requirements as they applied to all “electioneering communications.”

As a result, the district court held that the Supreme Court’s ruling in *Citizens United* directly contradicts the plaintiff’s argument that the definition of 100.22(b) is overly broad with respect to disclosure requirements: “if mandatory disclosure requirements are permissible when applied to ads that merely *mention* a federal candidate, then applying the same burden to ads that go further and are the functional equivalent of express advocacy cannot automatically be impermissible.”

Solicitation Standard

Commission regulations require any person who solicits a contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing or any other type of general public political advertising to include an explicit disclaimer on the solicitation. 2 U.S.C. §441d(a).

The Commission determines whether a request for funds amounts to a “solicitation” based on whether the request indicates that the contributions will be targeted to the election or defeat of a clearly identified federal candidate. See *FEC v. Survival Education Fund, Inc.*, 65 F.3d 285, 293 (2d Cir. 1995). The plaintiff challenged this approach, arguing that it is unconstitutionally vague and overbroad.

The court disagreed with the plaintiff and noted that the plaintiff is free to spend unlimited funds on its solicitations and to solicit unlimited funds for its express advocacy activities. Communications that amount to solicitations merely trigger disclosure requirements; they do not prevent the plaintiff from speaking. Since disclosure serves an important governmental interest in insuring that the voters are fully informed about the person or the group who is speaking, the court held that the plaintiff had failed to establish any constitutional deficiency in the Commission’s approach to determining whether a communication is a solicitation for contributions.

Political Committee Status

The plaintiff also challenged the Commission’s method of determining when an organization meets the definition of “political committee.” The Act and Commission regulations define a political committee as “any committee, club, association or other group of persons” that makes more than \$1,000 in expenditures or receives more than \$1,000 in contributions during a calendar year. 2 U.S.C. 431(4)(A). In *Buckley v. Valeo* (1976), the Supreme Court concluded that defining a political committee only in terms of contributions and expenditures “could be interpreted to reach groups engaged purely in issue discussion.” As such, the Court limited application of the Commission’s political committee requirement to organizations either controlled by a candidate or those groups whose “major purpose” is the nomination or election of candidates.

The Commission has adopted a case-by-case analysis of an organization’s conduct and activities for evaluating whether an organization’s major purpose is the nomination or election of federal candidates. See *Political Committee Status, 72 Fed. Reg. 5595, 5601 (Feb. 7, 2007)*.

The district court held that the Commission's method of determining political committee status is a permissible approach that is consistent with Supreme Court precedent and does not unlawfully hinder protected speech.

Court Decision

The district court granted the Commission's motion to dismiss.

(Posted 4/2/13; By: Myles Martin)

Resources:

- [*Free Speech v. FEC* Litigation Page](#)
- [Record article \(posted July 11, 2012\) on *Free Speech v. FEC*](#)

Outreach

FEC to Host April 24 Seminar/Webinar for Corporations and their Political Action Committees

The Commission will hold a seminar for corporations and their political action committees (PACs) at its Washington, DC, headquarters on Wednesday, April 24, 2013. The seminar will also be offered as a webinar for those who cannot attend in person. Commissioners and staff will conduct a variety of technical workshops on the federal campaign finance laws affecting corporations and their PACs. Workshops are designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law. To view the agenda or to register for the seminar, please visit the seminar website at<http://www.fec.gov/info/conferences/2013/corporateseminar.shtml>

Webinar Information. Seminar workshops will be simulcast for online attendees, who will see workshop slides, hear the presentations and be able to ask questions via live chat. Additional instructions and technical information will be provided to those who register for the webinar.

In-Person Attendees. The seminar will be held at the FEC's headquarters at 999 E Street, NW, Washington, DC. The building is within walking distance of several subway stations. Attendees are responsible for making their own arrangements for accommodations. The FEC recommends that individuals planning to travel to attend the seminar wait to finalize travel arrangements until their conference registration has been confirmed by Sylvester Management Corporation.

Workshop Materials. Webinar participants will receive electronic copies of workshop materials in advance, and those attending in-person may choose that option when they register. Alternatively, seminar attendees may elect to receive a binder with printed materials the morning of the event.

Registration Information. The registration fee is \$100 to attend in-person or \$75 to participate online. Registration fees include a \$25 nonrefundable transaction fee. A full refund (minus the transaction fee) will be made for all cancellations received before 5 p.m. EDT on Friday, April 19; no refund will be made for cancellations received after that time. Complete registration information is available online at <http://www.fec.gov/info/conferences/2013/corporateseminar.shtml>.

Registration Questions

Please direct all questions about seminar/webinar registration and fees to Sylvester Management Corporation (Phone: 1-800/246-7277; email: Rosalyn@sylvestermanagement.com). For other questions call the FEC's Information Division at 1-800/424-9530 (press 6), or send an email to Conferences@fec.gov.

(Posted 3/14/2013; By: Molly Niewenhous)

Resources:

- [FEC Educational Outreach Opportunities](#)