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Regulations

[Petition for Rulemaking on Contributions from Corporations and Other Organizations to Political Committees](#)

On July 29, 2015, the Commission published a [Notice of Availability](#) seeking public comments on a Petition for Rulemaking on Contributions from Corporations and Other Organizations to Political Committees. The petition was filed by Make Your Laws PAC, Inc. and Make Your Laws Advocacy, Inc. (the "petitioners").

The petitioners request that the Commission establish a rule requiring "any person, other than a natural person, contributing [directly or indirectly] an aggregate of more than \$1,000 in any calendar year to any political committee" do so from an account that is subject to the registration and reporting requirements of the Act, and that contributions to these accounts be made only from natural persons or another such account. The petition also requests an express prohibition on direct or indirect contributions to the account from foreign nationals and disclosure of proximate and original sources "of all election-related contributions and expenditures, traceable through all intermediary entities to a natural person, regardless of the amounts or entities involved."

Public comments on the petition are due by October 27, 2015.

(Posted 07/30/2015; By: Zainab Smith)

Resources:

- *Federal Register* [Notice of Availability](#) [PDF]
- [Text of original petition for rulemaking](#) [PDF]
- [Commission consideration of Draft Notice of Availability](#) 

[Petitions for Rulemaking on Independent Spending by Corporations, Labor Organizations, Foreign Nationals and Independent-Expenditure-Only Committees](#)

On July 29, 2015, the Commission published a [Notice of Availability](#) that seeks public comments on two petitions for rulemaking filed by Make Your Laws PAC Inc. and Make Your Laws Advocacy, Inc., and Craig Holman and Public Citizen. The petitions seek modifications to FEC regulations arising from the Supreme Court's ruling in [Citizens United v. FEC](#).

Specifically, the two petitions request that the Commission revise and clarify existing rules and draft new regulations concerning the following issues:

- Disclosure of donors to organizations making independent expenditures and electioneering communications;
- The prohibition on foreign nationals making independent expenditures and electioneering communications;
- Preventing the coercion of the restricted class of an organization into providing financial support for the organization's independent spending; and
- Ensuring that independent expenditures and other election-related spending by independent expenditure-only committees (Super PACs) and non-contribution accounts set up for making independent expenditures (also known as Carey accounts or Hybrid PACs) are not coordinated with candidates or political party committees.

Public comments on the petitions are due by October 27, 2015.

(Posted 07/29/2015; By: Dorothy Yeager)

Resources:

- *Federal Register* [Notice of Availability](#) [PDF]
- [Text of Make Your Laws PAC, Inc. and Make Your Laws Advocacy, Inc. petition for rulemaking](#) [PDF]
- [Text of Craig Holman and Public Citizen's petition for rulemaking](#) [PDF]
- [Commission consideration of Draft Notice of Availability](#) 

Litigation

[Wagner, et al. v. FEC \(Appeals Court\)](#)

On July 7, 2015, the *en banc* U.S. Court of Appeals for the District of Columbia Circuit upheld the provision in the Federal Election Campaign Act (the Act) that prohibits contributions made in connection with federal elections by federal government contractors.

Background

The Act prohibits federal government contractors from making contributions, either directly or indirectly, in connection with federal elections. 52 U.S.C. § 30119 (formerly 2 U.S.C. § 441c). In *Wagner v. FEC*, three federal contractors challenged § 30119 as violating the First Amendment and the equal protection guarantee of the Fifth Amendment. On November 2, 2012, the U.S. District Court for the District of Columbia upheld the federal contractor ban and concluded that Congress had the authority to prohibit contributions from all federal contractors. On May 31, 2013, a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit held that the Act denied the district court and that appellate panel jurisdiction to consider the constitutional questions in *Wagner v. FEC*. The court vacated the lower court's judgment and remanded the case to the district court to comply with the Act's judicial review provision at 52 U.S.C. § 30110 (formerly 2 U.S.C. § 437h). On June 5, 2013, the district court entered an order issuing its findings of fact and certifying constitutional questions to the *en banc* court of appeals.

Court Decision and Analysis

On July 7, 2015, the *en banc* court of appeals unanimously rejected the plaintiffs' constitutional challenges and upheld the statute.

The court first addressed the standing of the three plaintiffs. Nearly four years have passed since the case was filed, and in that time, Wendy Wagner and Lawrence Brown completed their federal contracts. Since they are once again able to make contributions in connection with a federal election, the court declared Wagner and Brown's claims moot. Jan Miller, the remaining plaintiff, has an ongoing federal contract, but the court determined that its jurisdiction was narrowed by Miller's limited claim: application of the statute to contributions by an individual contractor to a federal candidate or political party. (Wagner and Brown wanted to support a variety of political "causes" and had contributed to PACs and other political committees in the past.)

In addressing the remaining plaintiff's First Amendment challenges, the court rejected the argument that it must review the claims under a strict scrutiny standard. The court referenced the Supreme Court's instructions to review laws that regulate campaign contributions under a "closely drawn" standard—"a lesser but still rigorous standard of review" where even a significant interference with protected rights of political association may be sustained if the state 1) demonstrates a sufficiently important interest and 2) employs means closely drawn to avoid unnecessary abridgment of associational freedoms.

Applying this "closely drawn" standard, the court accepted the FEC's assertions that the statute demonstrates a sufficiently important interest because it protects against *quid pro quo* corruption and its appearance and prevents interference with merit-based public administration. The court found persuasive the lengthy review of federal and state legislative efforts to combat corruption and concluded that "substantial evidence demonstrates" that individuals and firms continue to test the limits of the contractor contribution ban at both the federal and state levels. "[T]he evidence canvassed thus far suffices to show that, in government contracting, the risk of *quid pro quo* corruption and its appearance, and of interference with merit-based administration, has not dissipated. Taken together, 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.... The interests supporting the contractor contribution statute are legally sufficient, and the dangers it seeks to combat are real and supported by the historical and factual record."

The court also found that the statute employed means closely drawn to avoid unnecessary abridgment of associational freedoms. The plaintiffs had argued that the statute fails this test because it is overinclusive and bans their contributions entirely, and that it is underinclusive because it permits too much speech and fails to ban contributions by certain groups. In rejecting the overinclusive argument, the court pointed out that, although campaign contributions are banned, there are other forms of unrestricted political engagement in which the plaintiffs could participate. The ban was also temporally limited to the time between commencement of negotiations and completion of the contract's performance. See 52 U.S.C. § 30119(a)(1). The court also rejected the plaintiffs' underinclusive argument by stating that although Congress could have swept in more potential contributors, the statute aims squarely at the conduct most likely to undermine its underlying interests. Finally, the court rejected the plaintiffs' equal protection argument. The plaintiffs had maintained that the statute subjects individual contractors to a ban that does not apply to certain similarly situated persons. The court rejected this approach as an attempt to get the court to reevaluate the same claims under a strict scrutiny standard.

The court issued its judgment and order in favor of the FEC, finding that the flat prohibition of contractor contributions was closely drawn to the important goals of preventing *quid pro quo* corruption and its appearance and interference with merit based administration. Therefore, application of 52 U.S.C. § 30119 to contributions by an individual contractor to a federal candidate or political party does not violate the First Amendment or the equal protection component of the Fifth Amendment's Due Process Clause.

(Posted 07/22/2015; By: Zainab Smith)

Resources:

- *Wagner v. FEC* [Ongoing Litigation Page](#)

[Pursuing America's Greatness v. FEC \(New\)](#)

On July 27, 2015, Pursuing America's Greatness (PAG) filed suit in the U.S. District Court for the District of Columbia challenging Commission regulations and a recently-issued advisory opinion that restrict an unauthorized committee's use of a candidate's name in social media and other Internet activities supporting that candidate. PAG also seeks a preliminary injunction to prevent the Commission from enforcing those restrictions. PAG maintains that the challenged regulations are an unconstitutional violation of their First Amendment guarantee of freedom of speech. It also challenges the Commission's Advisory Opinion (AO) 2015-04 as invalid under the Administrative Procedure Act.

Background

PAG is a nonconnected independent expenditure-only committee (Super PAC) supporting Governor Mike Huckabee's 2016 campaign for president. PAG controls a website and a Facebook page that use Gov. Huckabee's name and indicate PAG's support for his candidacy. PAG maintains, however, that it does not intend to use these pages to solicit contributions to PAG or otherwise engage in fundraising activities.

The Federal Election Campaign Act (the Act) states that “any political committee which is not an authorized committee [of a federal candidate]...shall not include the name of any candidate in its name.” 52 U.S.C. § 30102(e)(4). Commission regulations further state that any political committee that is not the authorized committee of a candidate shall not include the name of any candidate in its name, which also includes “any name under which a committee conducts activities, such as solicitations or other communications, including a special project name or other designation.” 11 CFR 102.14(a). However, Commission regulations do state that an unauthorized committee **may** include the name of a candidate in the title of a special project name or other communication if the title clearly and unambiguously shows **opposition** to the named candidate. 11 CFR 102.14(b)(3).

On July 16, 2015, the Commission applied these provisions in an advisory opinion issued to Collective Actions PAC, a Super PAC that supports the presidential campaign of Senator Bernie Sanders. In [AO 2015-04](#), the Commission concluded that Collective Actions PAC’s use of Senator Sanders’s name in the Committee’s websites and social media pages is inconsistent with 11 CFR 102.14 and thus impermissible. PAG maintains that it is similarly situated to Collective Actions PAC. It is an unauthorized political committee that maintains a website and other online media that advocate independently the election of a candidate for president (Gov. Huckabee) and wants to use the candidate’s name in the name of its website and other online media, but is precluded from doing so by the Commission’s naming requirements for unauthorized political committees.

Legal Challenge

PAG challenges Advisory Opinion 2015-04 under the Administrative Procedure Act as arbitrary and capricious and in excess of the Commission’s statutory authority. PAG argues that the Commission’s naming regulation was promulgated based on concerns about fraud and confusion in fundraising activities. Since it will not conduct fundraising activities through its websites and social media pages, PAG contends the Commission’s application of the rules is arbitrary, capricious and contrary to law.

PAG also challenges the political committee naming requirements under the First Amendment. It argues that prohibiting it from using a candidate’s name in the name of its websites and other social media platforms when the name of such media do not clearly show opposition to that named candidate amounts to an unconstitutional prior restraint, in violation of the First Amendment.

PAG also argues that the exception in 11 CFR 102.14(b)(3), which permits an unauthorized committee to use a federal candidate’s name in a special project name that clearly and unambiguously shows opposition to the named candidate, renders the general naming requirements an unconstitutional content-based restriction on speech, which should not withstand strict scrutiny.

PAG seeks a declaratory judgment from the court that the challenged naming requirements for unauthorized political committees are void under the Administrative Procedure Act and unconstitutional under the First Amendment. PAG also seeks a preliminary injunction which would prevent the Commission from enforcing the general naming requirements for unauthorized committees against PAG and its intended activities.

(Posted 08/03/2015; By: Myles Martin)

Resources:

- [Pursuing America's Greatness v. FEC Ongoing Litigation Page](#)
- [Record article on AO 2015-04](#)

Advisory Opinions

[AO 2015-02: Matching SSF Contributions with Donations to Foreign Charity](#)

The Grand Trunk Western Railroad Company – Illinois Central Railroad Company (GTW-IC) connected organizations may match individual contributions made to their separate segregated fund (GTW-IC PAC) with charitable donations to a Canadian registered charity.

Background

The GTW-IC PAC operates a “charity-match” program, under which its connected organizations match contributions to the PAC with donations to a U.S. charity of the contributor’s choice. One such contributor has chosen the Taylor Birks Foundation (the “Foundation”), which is a Canadian registered charity. GTW-IC PAC asked whether its connected organizations could make a dollar-for-dollar matching donation to a non-U.S. charity, as designated by the PAC contributor.

Analysis

Under the Act and Commission regulations, a corporation may use its general treasury funds to pay its SSF’s establishment, administrative and solicitation expenses, but must not exchange treasury monies for voluntary contributions. 52 U.S.C. § 30118(b)(2)(C); 11 CFR 114.5(b). A contributor may not be paid for his or her contributions through a bonus, expense account or other form of direct or indirect compensation. 11 CFR 114.5(b)(1).

The Commission has previously approved contribution-matching programs for charities operating under 501(c)(3) of the Internal Revenue Code. Matching charitable donations are permissible solicitation expenses under the Act. Also, a contribution-matching program is not a prohibited exchange of corporate treasury monies for voluntary contributions so long as the contributor does not receive in exchange any tangible benefit from the SSF, its connected organizations, or the charity receiving the matching donation. See, for example, AOs [1986-44 \(Detroit Edison PAC\)](#), and [2003-04 \(Freeport-McMoRan Copper & Gold Citizenship Committee\)](#).

The GTW-IC PAC’s proposal is identical to those proposals previously approved, except that the charity operates under Canadian law, rather than U.S. law. The Commission approved the proposal, noting that donations to the Canadian charity do not implicate the Act’s prohibition on foreign nationals making any contribution or donation in connection with an election. 52 U.S.C. § 30102(a); 11 CFR 110.20(f).

Date Issued: July 16, 2015; Length: 4 pages

(Posted 07/21/2015; By: Jonella Culmer)

Resources:

- [Advisory Opinion 2015-02](#) [PDF]
- [Commission Discussion of Advisory Opinion Request 2015-02](#) 

[AO 2015-04: Use of Candidate's Name by Collective Actions PAC](#)

Collective Actions PAC (CAPAC), an unauthorized independent expenditure only committee, may not use the name of Sen. Bernard Sanders, a candidate for President, in the names of its various websites and social media accounts supporting the candidate, even if they do not solicit contributions. However, CAPAC is free to promote Sen. Sanders by name within the body of any website or other communication.

Background

CAPAC is an unauthorized independent expenditure only committee (a.k.a., Super PAC) originally organized as "Draft Bernie" to encourage Sen. Sanders to become a candidate in the 2016 Presidential election. On June 15, 2015, CAPAC amended its Statement of Organization to make itself a non-draft independent-expenditure only committee and changed its name. CAPAC operates a number of websites and social media accounts with names such as BelieveInBernie.com, ProBernie.com, @Bernie_Run and Run Bernie Run (a Facebook account). CAPAC asks if it may continue to use Sen. Sanders's name in these websites and social media accounts, as they do not currently solicit contributions for CAPAC, but instead promote Sen. Sanders's candidacy by providing information about the candidate and linking to his website.

Analysis

CAPAC may not use Sen. Sanders's name in the names of its websites and social media accounts. The Act and Commission regulations prohibit the use of a candidate's name within the name of an unauthorized committee, unless the name is clearly in opposition to that candidate. 52 USC § 30102(e)(4); 11 CFR 102.14(a); 11 CFR 102.14(b)(3). For purposes of these regulations, the "name" of the committee includes "any name under which [the] committee conducts activities, such as solicitations or other communications, including a special project name or other designation." 11 CFR 102.14(a). Committees' online activities are special projects that fall under the scope of this regulation. See [AO 1995-09](#) (NewtWatch).

Because the names of CAPAC's websites and social media accounts that include Sen. Sanders's name do not express clear opposition to his election, those sites and accounts are impermissible under 11 CFR 102.14. This prohibition, however, applies only to the titles of these websites and accounts. CAPAC is free to promote any federal candidate by name within the body of its websites or other communications. [59 Fed. Reg. 17628](#) (April 12, 1994).

Date Issued: July 16, 2015; 9 pages.

(Posted 07/23/2015; By: Christopher Berg)

Resources:

- [Advisory Opinion 2015-04](#) [PDF]
- [Commission Discussion of AO 2015-04](#) 

[Pending Advisory Opinion Requests as of July 31, 2015](#)

Advisory Opinion Requests (AORs) pending before the Commission as of the end of the month are listed below. Procedures for commenting on pending AORs are [described here](#).

- [AOR 2015-03](#) [PDF]
Vendor collecting and forwarding contributions from individuals to political committees (Democracy Rules, Inc., June 4, 2015)
- [AOR 2015-05](#) [PDF]
Testamentary bequest to national party committee (Alexina Shaber, June 22, 2015)
- [AOR 2015-06](#) [PDF]
Contributions by Member of Congress to foreign candidate (Maxine Waters, July 28, 2015)

(Posted 07/31/2015; By: Dorothy Yeager)

Resources:

- [Advisory Opinion Search](#)

Outreach

[Chair Ravel to Host Public Forum on Campaign Finance Issues](#)

FEC Chair Ann Ravel will host a public forum on federal campaign finance law at the conclusion of the agency's [Chicago Regional Conference](#) on Wednesday, August 26, from 3:00 to 5:00 p.m. at the Doubletree Magnificent Mile. The forum is part of Chair Ravel's effort to increase public engagement on issues relating to the financing of federal elections. If you'd like to attend, please RSVP by email to CommissionerRavel@fec.gov.

(Posted 08/03/2015)



Chicago Conference Nearly Sold Out

The Commission's August 25-26 regional conference in Chicago, Illinois, is nearly sold out, with registration fees set to increase on August 1. **Don't miss out — register now** for this full two-day conference on federal campaign finance law for candidates, party committees and corporate/labor/trade PACs.



Conference Information:

Commissioners and staff will conduct a variety of technical workshops on the federal campaign finance laws affecting federal candidates, parties and 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 conference agenda or to register for the conference, please visit the conference website at <http://www.fec.gov/info/conferences/2015/chicago.shtml>.

Hotel Information. The conference will be held at the DoubleTree Hotel Chicago - Magnificent Mile, centrally located at 300 East Ohio Street. To make hotel reservations and reserve the group rate of \$166 per night, visit the hotel website at http://doubletree.hilton.com/en/dt/groups/personalized/C/CHIMMDT-FEC-20150825/index.jhtml?WT.mc_id=POG **by August 3, 2015**. Alternatively, participants can call the Central Reservations Office at 1-800-222-8733, 24-hours a day, 7 days a week (be sure to use the group name "FEC Regional Conference" in order to receive the contracted rate.) Please wait to make hotel and air reservations until you have received confirmation of your conference registration from our contractor, Sylvester Management Corporation.

Registration Information. The registration fee is \$590 per attendee, which includes a \$30 nonrefundable transaction fee. **The registration fee increases to \$615 per attendee for registrations received after July 31, 2015.** A refund (minus the transaction fee) will be made for all cancellations received by July 31, 2015; no refund will be made for cancellations received after that date. Complete registration information is available online at <http://www.fec.gov/info/conferences/2015/chicago.shtml>.

Workshop Materials. Attendees may elect to receive electronic copies of workshop materials in advance for use on their personal electronic devices. Alternatively, conference attendees may elect to receive a binder with printed materials at the conference.

FEC Conference Questions

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

Posted 07/29/2015; By: Dorothy Yeager

Resources:

- [FEC Educational Outreach Opportunities](#)