

Federal and State Campaign Finance Laws

Federal Election Commission

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Please Note:

Portions of this publication may be affected by the Supreme Court's decision in Citizens United v. FEC on January 21, 2010 (http://www.fec.gov/law/litigation/cu_sc08_opinion.pdf). Essentially, the Court's ruling permits corporations and labor organizations to use treasury funds to make independent expenditures in connection with federal elections and to fund electioneering communications. The ruling did not affect the ban on corporate or union contributions or the reporting requirements for independent expenditures and electioneering communications. The Commission is studying the Court's opinion and will provide additional guidance as soon as possible.

Some information presented in this publication has been modified by the Bipartisan Campaign Reform Act of 2002 (BCRA). An updated version of this publication will be available at a later date. In the interim, please visit the FEC's BCRA page for additional information.

Introduction

Federal and state campaign finance laws often address similar political activities. Consequently, when organizations and individuals choose to support both federal and nonfederal candidates, they may have to determine whether federal or state laws govern a particular election activity. This brochure has been developed to help state election officials, political committees,¹ and political organizations understand the areas of campaign finance that are subject to the Federal Election Campaign Act and those that are subject to state law. It is not intended to provide an exhaustive discussion of election laws, but to clarify the jurisdictional difference between federal and state election laws.

Citations refer to the Federal Election Campaign Act and Federal Election Commission regulations. Advisory Opinions (AOs) issued by the Commission are also cited. For more information on the subjects discussed in this brochure, please call or write:

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¹ A "political committee" is a specially defined term in the Act and regulations. Not all groups active in federal elections are considered political committees under federal law. For more information, consult 11 CFR 100.5.

When Federal Law Takes Precedence

Where federal laws and state laws appear to overlap, the Federal Election Campaign Act (the Act) and Commission regulations take precedence in two broad areas:

1. Prohibitions on election-financing activities by foreign nationals, national banks and federally chartered corporations (2 U.S.C. §441e and 11 CFR 110.4(a); §441b(a) and 11 CFR 114.2(a)); and
2. Laws that pertain to the financing of federal elections (2 U.S.C. §453; 11 CFR 108.7(a)).

Prohibitions on Foreign Nationals, National Banks and Federally Chartered Corporations

Under the Act, federal law regulates nonfederal election activity by the sources listed below:

Foreign Nationals

Prohibition. The Act prohibits foreign nationals from making contributions or expenditures in connection with any United States election (federal, state or local), either directly or through another person. 2 U.S.C. §441e; 11 CFR 110.4(a)(1). The following groups and individuals are considered "foreign nationals" and are therefore subject to the prohibition:

- Foreign governments
- Foreign political parties
- Foreign corporations
- Foreign associations
- Foreign partnerships

Federal Law Governs. In a recent enforcement case, the Commission reaffirmed that only federal law applied to contributions by foreign nationals in connection with state and local election activity and that Hawaii law could not permit what federal law prohibited. See MUR 2892.

Subsidiary of Foreign Corporation and Nonfederal Activity. A domestic subsidiary of a foreign corporation (or a domestic corporation owned by foreign nationals) may not donate funds or anything of value in connection with state or local elections if:

1. These activities are financed by the foreign parent or owner; or
2. Individual foreign nationals are involved in any way in the making of donations to nonfederal candidates and committees.² 11 CFR 110.4(a)(3). See AOs 1992-16, 1985-3 and 1982-10.

Many states place additional restrictions on donations to nonfederal candidates and committees.

Subsidiary of Foreign Corporation and Political Committee Contributions. A domestic subsidiary of a foreign corporation may not establish a nonfederal or federal committee to make contributions in connection with any election if:

1. The foreign parent finances the committee's establishment, administration or solicitation costs; or

² This means that foreign nationals may not participate in donation activity, allocate funds for donations, or make decisions regarding donations (e.g., selecting the recipients, approving the making of donations or approving the issuance of donation checks).

2. Individual foreign nationals:
 - Participate in the operation of the committee;
 - Serve as officers of the committee;
 - Participate in the selection of persons who operate the committee; or
 - Make decisions regarding committee contributions or expenditures.11 CFR 110.4(a)(2) and (3). See AOs 1990-8, 1989-29 and 1989-20.

National Banks and Federally Chartered Corporations

The Act also prohibits national banks and corporations organized by authority of any law of Congress (for example, federal savings banks) from making contributions or expenditures in connection with any election federal, state or local. 2 U.S.C. §441b(a); 11 CFR 114.2(a). They may, however, set up separate segregated funds (also called PACs) for this purpose.³ 11 CFR 114.2(a)(2); AO 1987-14.

Note: State-chartered banks should consult state laws as to the permissibility of their involvement in nonfederal election activity.

Federal Election Laws

With respect to the financing of federal elections, federal law specifically supersedes state law in the following areas:

1. The organization and registration of political committees supporting federal candidates;
2. The disclosure of receipts and expenditures in connection with federal elections by federal candidates and political committees; and
3. The limits on contributions and expenditures that apply to federal candidates and political committees. 11 CFR 108.7(b).

Examples of Federal Preemption

Listed below are selected situations in which the Commission has ruled that the Act supersedes state or local laws.

State Public Financing and Spending Limits

- The Act preempts a Minnesota law under which candidates for the House and Senate received state funding if they agreed to abide by spending limits. AO 1991-22.
- The Act also preempts a New Hampshire law that restricted party spending on behalf of federal candidates. AO 1989-25.

Contributions to Federal Candidates or Committees

- Federal law preempts Minnesota, Wisconsin and California laws that prohibited or restricted contributions from lobbyists to the federal campaign committees of state and local officials who were running for federal office. AOs 1994-2, 1993-25, 1988-21 and 1978-66.

³ Even if organized solely for nonfederal activity, the separate segregated fund of a national bank or federally chartered corporation must comply with federal rules on soliciting contributions at 11 CFR 114.5, but not with the Act's disclosure rules. See AO 1987-14.

- Federal law preempts a Tennessee law that prohibited contributions to a party committee from a federal candidate's committee that had incorporated for liability purposes only. AO 1993-8.
- The Act preempts a Washington law that prohibited fundraising for debt retirement at certain times by a state representative who had unpaid debts from his previous federal election campaign. AO 1992-43.

Fundraising by PACs

- The Act supersedes state laws that prohibit a corporation from using payroll deduction to raise funds for its federal PAC. AO 1982-29.
- The Act also supersedes an Oregon law that prohibited a corporation from matching contributions to its federal PAC with charitable donations. AO 1990-6.

Registration, Records and Reporting

- The Act preempts a North Carolina law with respect to the determination of who has title to and ownership of committee records. AO 1995-10.
- Federal law supersedes a Rhode Island law that imposed registration, reporting and contribution requirements on the federal account of a state party committee. AO 1993-14.
- The Act preempts an Alabama law that directed how federal candidates must designate their committees. AO 1978-54.

Building Funds

- Federal law preempts Michigan, Tennessee and West Virginia laws that prohibited the committees of state-wide political parties from receiving corporate contributions for the construction or purchase of office buildings. AOs 1993-9, 1991-5 and 1986-40.

Advertising by/for Federal Candidates

The Act preempts state and local laws that require campaign ads to disclose information not required under federal law. The Commission specifically concluded that federal committees do not have to comply with state and local laws that require campaign ads to include:

- The candidate's party affiliation. AO 1978-24.
- The names of campaign officers responsible for the ads. AO 1980-36.
- Specific wording in campaign logos. AO 1986-11.
- An anti-littering warning. AO 1981-27.

Allocation of Expenses Between Federal and Nonfederal Accounts

Federal law preempts Massachusetts and Ohio laws that regulated methods of allocating expenses from nonfederal and federal accounts. AOs 1993-17 and 1993-21.

When Federal Law Does Not Supersede State Law

The Act and Commission regulations do not supersede state laws governing the following areas:

- Methods of qualifying candidates and political party organizations for the ballot;
- Dates and places of elections;
- Voter registration;⁴
- Prohibitions on false registration, voting fraud, theft of ballots and similar offenses;
- Candidates' disclosure of their personal finances⁵ (11 CFR 108.7(c)); and
- Activity by state and local candidates and their committees (unless they engage in sufficient federal election activity to trigger the Act's provisions).

In a number of advisory opinions, the Commission has determined that the Act does not preempt state laws. For example, the Commission said the Act did not preempt:

- A state law prohibiting a committee from making payments for "walk around services" on election day i.e., payments to campaign workers for distributing campaign literature (AO 1980-47); or
- Applicable state laws restricting transfers received by a state campaign committee from a federal candidate's committee (AOs 1993-10, 1986-5 and 1985-2).

Nonfederal and Federal Accounts

Political committees that engage in both federal and nonfederal election activities must follow certain rules to ensure that the federal activity is financed with funds that comply with the limits and prohibitions of federal law. Federal activity includes, for example:

- Contributions and expenditures on behalf of specific federal candidates;
- Contributions to federally registered PACs;
- Transfers of funds and payments made to a federally registered party committee; and
- Payments for voter drives and other activities that influence federal elections even if they do not promote specific candidates.

An organization that is active in both federal and nonfederal elections and that has qualified as a political committee has two options. It can:

- Establish a separate account for federal activity and a second account used exclusively for state and local activity; or
- Conduct both federal and nonfederal activity from one account.
11 CFR 102.5(a)(1)(i) and (ii).

Two Accounts

If an organization uses two accounts, the federal account alone must register as a federal political committee, subject to federal reporting rules and other requirements. Only funds permissible under the Act may be deposited into the federal account, and all federal activity must be transacted from this account. The nonfederal account is generally not subject to the Act's reporting requirements; however, the federal account must disclose the nonfederal portion of disbursements for shared federal/nonfederal activity, in addition to its own portion. 11 CFR 102.5(a)(1)(i); see also 11 CFR 104.10, 106.5(g) and 106.6(e).

In addition, the nonfederal account may be subject to state reporting requirements.

⁴ In 1993, however, Congress adopted the National Voter Registration Act, which requires states to implement voter registration procedures including registration of individuals applying for driver's licenses, registration by mail, and registration at designated government agencies. 42 U.S.C. 1973gg-1 et seq.

⁵ The Ethics Reform Act of 1989 requires personal financial disclosure reports from federal candidates.

One Account

Alternatively, an organization may conduct both federal and nonfederal activity from one account, and treat that account as a federal political committee. Contributions to the account must comply with federal limits and prohibitions regardless of whether the funds are ultimately used for federal or nonfederal elections. All receipts and disbursements, including those that pertain to nonfederal election activity, must be reported. 11 CFR 102.5(a)(1)(ii).

Nonfederal/Federal Transfers of Funds

Between Candidate Committees Established by the Same Candidate

Under FEC regulations, a candidate's federal campaign committee may not accept funds or assets transferred from a committee established by the same candidate for a nonfederal election campaign. 11 CFR 110.3(d).

There are two exceptions:

- If the two committees share facilities and personnel, the nonfederal committee may transfer funds to the federal committee to cover its portion of shared allocable expenses. See AO 1994-37.
- If the nonfederal committee purchases assets from the federal committee, it may transfer funds as payment to the federal committee. See AO 1989-4.

Between Affiliated PACs

The Commission has permitted the transfer of funds from a nonfederal PAC to an affiliated federal PAC, subject to certain restrictions on transferred funds. However, the transferred funds are considered contributions and may trigger registration and reporting requirements for the nonfederal PAC. 11 CFR 102.6(a)(1)(i) and (a)(2); AOs 1990-16 and 1983-3.

Between Accounts of the Same Organization

A transfer of funds from an organization's federal account to its state account is permissible under the Act. However, any applicable state laws which limit or prohibit such a transfer would not be preempted or superseded by federal law. See AO 1983-42. Conversely, an organization may not transfer funds from its nonfederal account to the federal account except under specific circumstances described below:

Collecting Agent Activity

A nonfederal account may act as a collecting agent for contributions to the federal account without triggering registration requirements. 11 CFR 102.6(b)(2). See AO 1984-31.

Allocated Expense Payments

In the case of a committee that supports both federal and nonfederal candidates, a nonfederal account may transfer funds to the federal account to cover the nonfederal portion of shared expenses benefiting both federal and nonfederal candidates or committees. 11 CFR 102.5(a)(1)(i) and 106.6(e)(1)(i).

Unregistered Organizations

An organization which does not qualify as a federal political committee but which nevertheless wants to influence federal election activity must comply with certain federal rules.

Permissible Funds Only for Federal Activity

The organization must use permissible funds to pay for federal election activities. To ensure this, it must adopt one of the two following approaches:

1. It must be able to demonstrate through a reasonable accounting method that it has sufficient funds permissible under federal law to cover the amount of the federal disbursement at the time it is made. This includes direct monetary contributions to federal candidates and committees and the federal share of disbursements for activities, such as voter drives, that benefit federal candidates.
2. Alternatively, it must make the federal disbursement from a separate account reserved for funds permissible under federal law. 11 CFR 102.5(b).
See "Two Accounts" above.

Becoming a Federal Political Committee

When a political organization⁶ makes federal contributions or expenditures (or a combination of both) aggregating over \$1,000 per year, it becomes a political committee. Within 10 days of exceeding this threshold, the committee must register with the FEC.⁷ 11 CFR 100.5(a) and 102.1(d).

*This publication provides guidance on certain aspects of federal campaign finance law. This publication is not intended to replace the law or to change its meaning, nor does this publication create or confer any rights for or on any person or bind the Federal Election Commission (Commission) or the public. The reader is encouraged also to consult the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 *et seq.*), Commission regulations (Title 11 of the Code of Federal Regulations), Commission advisory opinions, and applicable court decisions. For further information, please contact:*

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⁶ The term "political organization" means a party, committee, association, fund or other organization (whether or not incorporated) organized and operated primarily for the purpose of accepting contributions or making expenditures to influence elections or appointments to public office. 26 U.S.C. §527(e).

⁷ A local party organization may also trigger federal registration requirements if it spends over \$5,000 per year for exempt party activities or receives over \$5,000 per year in contributions to influence federal elections.