



AO 2012-06 Conversion of a Candidate's Campaign Committee to a Non-connected Committee

Governor Rick Perry's principal campaign committee for the 2012 Presidential election (RickPerry.org) may convert to a nonconnected committee and use its remaining primary funds to finance the activities of the new nonconnected committee. However, the Commission could not approve a response by the required four affirmative votes regarding whether it is permissible for Governor Perry's campaign committee to obtain authorization from contributors to redesignate contributions that were made for the general election to the new nonconnected committee or to redesignate those contributions to Governor Perry's state campaign committee.

Background

RickPerry.org (the Committee) is Governor Perry's principal campaign committee for the 2012 Presidential election. Governor Perry sought the Republican nomination for President until January 19, 2012, when he suspended his campaign. Prior to the suspension of his campaign, the Committee had accepted approximately \$270,000 in contributions that were designated for the general election. These funds were maintained in a bank account that was separate from those funds received and used for primary election expenses.

The Committee now proposes to convert from a principal campaign committee to a nonconnected committee and to use the funds remaining in its primary election account to finance its activities as a nonconnected committee.

The Committee also asks whether it is permissible to obtain redesignations of the general election contributions to be used by the nonconnected committee, or, alternatively, whether contributors may redesignate their general election contributions to Governor Perry's state campaign account, consistent with Texas law.

Analysis

Conversion to Nonconnected Committee. The Federal Election Campaign Act (the Act) and Commission regulations identify several categories of permissible uses of contributions that are accepted by a federal candidate, including "for any other lawful purpose." 2 U.S.C. §439a(a)(6) and 11 CFR 113.2(e). However, the Act prohibits contributions that are accepted by a federal candidate from being converted to the "personal use" of any person. 2 U.S.C. §439a(b)(1) and 11 CFR 113.1(g). Personal use is defined as "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the

candidate's campaign or duties as a Federal officeholder." 11 CFR 113.1(g) and 2 U.S.C. §439a(b)(2).

The Commission has interpreted these provisions to permit candidates to convert their authorized campaign committees to nonconnected committees and to finance the activities of the nonconnected committees with contributions received by the candidates for elections in which the candidates had participated. See, e.g, AOs [1994-31 \(Gallo\)](#) and [1988-41 \(Stratton\)](#).

The Commission concluded that Governor Perry may convert the principal campaign committee of his 2012 Presidential campaign to a nonconnected committee by amending its Statement of Organization (FEC Form 1) and use the Committee's remaining primary election funds to finance the new nonconnected committee's activities. Should the nonconnected committee wish to qualify as a multicandidate committee, it may count the time that the Committee was registered with the Commission as a principal campaign committee and the number of contributions made and received by the Committee in determining whether it qualifies as a multicandidate committee. 11 CFR 100.5(e)(3) and AO [1993-22 \(Roe\)](#).

The Act and Commission regulations also provide that contributions accepted by a campaign committee may be donated to state and local candidates subject to the provisions of state law, so long as the contributions are not converted to the personal use of any person. 2 U.S.C. §439a(a)(5), (b); and 11 CFR 113.2(d), (g) and 113.1(g). Accordingly, the Commission concluded that the Committee may use its remaining primary funds to donate to Governor Perry's State campaign committee, subject to the provisions of Texas law and the personal use prohibition noted above.

Redesignation of General Election Contributions. The Commission could not approve a response by the required four affirmative votes regarding whether general election contributions accepted by the Committee could be redesignated to the nonconnected committee, nor could the Commission approve a response regarding whether the Committee could obtain redesignations of the general election contributions to fund Governor Perry's State campaign committee.

60-Day Timeframe. Since Governor Perry suspended his campaign on January 19, 2012, the 60-day period for issuing refunds (or obtaining redesignations, where permissible) would expire on March 19, 2012. However, on February 13, 2012, the Committee filed its advisory opinion request with the Commission, with 35 days remaining in the 60-day period. The Commission concluded that, while generally the filing of an advisory opinion request does not toll any statutory or regulatory deadline, because of the particular facts and circumstances presented in this advisory opinion, the Committee has 35 days to comply with the applicable rules for issuing refunds or obtaining redesignations, where permissible. See 11 CFR 110.1(b)(3)(i); 110.2(b)(3)(i), (b)(5) and 11 CFR 103.3(b)(3); see also [AO 2008-04 n.3 \(Dodd for President\)](#).

Date Issued: 3/28/2012; 5 pages.

(Posted 4/2/12: By: Myles Martin)

Resources:

[Advisory Opinion 2012-06](#) [PDF; 5 pages]

[Commission Discussion of AO 2012-06](#) 

Van Hollen v. FEC

On March 30, 2012, the U.S. District Court for the District of Columbia found in favor of a plaintiff who challenged a Federal Election Commission regulation regarding disclosure by corporations and unions that fund "electioneering communications." Brought by U.S. Representative Chris Van Hollen in April 2011, the lawsuit challenged the regulation at 11 CFR 104.20(c)(9) that requires the disclosure of donations of \$1,000 or more to corporations (including nonprofits) or labor organizations when the donation "was made for the purpose of furthering electioneering communications." Representative Van Hollen claimed that the regulation is arbitrary, capricious and contrary to the disclosure regime of the law it implements, the Bipartisan Campaign Reform Act (BCRA).

The Court granted the plaintiff's motion for summary judgment and denied the FEC's cross motion for summary judgment. The Court also dismissed motions to dismiss filed by two intervenor-defendants, the Hispanic Leadership Fund and the Center for Individual Freedom.

Background

The BCRA amended the Federal Election Campaign Act (FECA) by placing certain reporting obligations on persons who fund "electioneering communications," a term that is defined as any broadcast, cable or satellite communication that refers to a clearly identified candidate for federal office and is made within 30 days of a primary or 60 days of a general election and is targeted to the relevant electorate. 2 USC §434(f)(1)-(2).

Under the BCRA, every person (including a corporation or labor organization) who makes such a disbursement for electioneering communications that exceeds an aggregate \$10,000 per year must file a report with the Commission stating, among other things, the identification of the person making the disbursement, of any person sharing or exercising direction or control over the activities of such person and the custodian of the books and accounts of the person making the disbursement. If the disbursement is paid out of a segregated bank account which consists of funds contributed by individuals directly to this account for electioneering communications, the "person" must also disclose the names and addresses of all those who contributed an aggregate of \$1,000 or more to such account. If the disbursements were not made from a segregated bank account, the "person" must disclose the names and addresses of all "contributors who contributed" an aggregate of \$1,000 or more in a calendar year to the person making the disbursement.

As enacted, the BCRA prohibited corporations and labor organizations from making electioneering communications with their general treasury funds, but in *FEC v. Wisconsin Right to Life*, the Supreme Court in 2007 held that those restrictions were unconstitutional as applied to communications that are not the “functional equivalent of express advocacy.” In 2010, the Supreme Court in *Citizens United v. FEC* invalidated those spending restrictions regarding all electioneering communications. In that case, the Supreme Court also upheld FECA’s disclosure provisions, stating that, “the public has an interest in knowing who is speaking about a candidate shortly before an election.”

The regulation at issue in this case, 11 CFR 104.20(c)(9), was promulgated in 2007 after the Supreme Court’s decision in *Wisconsin Right to Life*. It requires corporations or labor organizations that make electioneering communications to disclose “the name and address of each person who made a donation aggregating \$1,000 or more to the corporation or labor organization, aggregating since the first day of the preceding calendar year, which was made for the purpose of furthering electioneering communications.”

Analysis

Van Hollen’s lawsuit states this regulation is inconsistent with the provision of the Bipartisan Campaign Reform Act it implements because “the regulation requires corporations, including non-profit corporations, to disclose only some contributors of \$1,000 or more, i.e., donors who have manifested a particular state of mind or ‘purpose.’”

The Court opinion states that BCRA clearly provides that every person who funds electioneering communications must disclose “all contributors.” The Court found that the language of this BCRA provision is not ambiguous, and “there is no question that the regulation promulgated by the FEC directly contravenes the Congressional goal of increasing transparency disclosure in electioneering communications.” The Court thus declined to defer to the Commission’s interpretation of the statutory provision.

The opinion states that the disclosure provision plainly requires every person who funds electioneering communications to disclose contributors who contributed more than \$1,000 during the reporting period, “and there are no terms limiting that requirement to call only for the names of those who transmitted funds accompanied by an express statement that the contribution was intended for the purpose” of making electioneering communications.

The full text of the Court opinion may be found here: http://www.fec.gov/law/litigation/van_hollen_dc_memo_opinion.pdf.

U.S. District Court for the District of Columbia: Case 1:11-cv-00766-ABJ.

(Posted 4/10/12; By: Isaac Baker)

Resources:

[Van Hollen v. FEC Ongoing Litigation Page](#)

Wagner v. FEC

On April 16, 2012, the U.S. District Court for the District of Columbia denied a motion for a preliminary injunction filed against the Commission by three plaintiffs who are federal contractors. The plaintiffs alleged that the Federal Election Campaign Act's (the Act's) prohibition on federal contributions by federal contractors violates the First and Fifth Amendments. The plaintiffs had moved to enjoin the Commission from enforcing the ban until a final determination had been made in their action. The court denied the plaintiffs' motion because they did not have a likelihood of success on the merits of their claims.

Background

The Act prohibits any person who is under contract with the federal government for either the rendition of personal services or for the furnishing any material, supplies or equipment to the federal government from making federal contributions to any political party, committee or candidate for public office or to any person for any political purpose or use. 2 U.S.C. §441c; see 11 C.F.R. §115.2(a). The plaintiffs in this case, Wendy E. Wagner, Lawrence M.E. Brown and Jan W. Miller, are three individuals who have contracts with federal agencies and wish to donate to candidates, but are forbidden by law from doing so because of their status as contractors. The plaintiffs argue that the Act's ban on contributions by federal contractors is facially unconstitutional as it applies to individual government contractors (as opposed to incorporated contractors) because the ban violates the First Amendment and the Fifth Amendment's guarantee of equal protection. The plaintiffs sought a preliminary injunction that would bar the Commission from enforcing the federal contractor ban against them during the time that this case was pending.

First Amendment Claims

Previous case law has established that political contributions are protected by the First Amendment, *see, e.g., Buckley v. Valeo*, 424 U.S. 1, 22 (1976), but restrictions on such political contributions are constitutional as long as they are "closely drawn to match a sufficiently important interest." *FEC v. Beaumont*, 539 U.S. 146, 161 (2003). The ban on federal contractor contributions dates to the 1940 amendments to the federal Hatch Act. Congress, in passing the ban, was responding to a then-recent history of political corruption involving government contractors. The ban was enacted by Congress to prevent corruption and the appearance of corruption by ensuring that federal contracts were awarded based on merit.

The plaintiffs argued that there is no current evidence that individual federal contractors may corrupt the electoral process or be pressured to give, but the court held that an absence of corruption does not necessarily mean that the ban is no longer needed; indeed it may indicate instead that the ban is working. Additionally, the court also stated that contractors, while prohibited from making contributions directly to federal candidates, may exercise their associational rights in other ways, such as by volunteering for campaigns or offering the use of their homes for candidate-related or political party-related activities. *See* 2 U.S.C. §431(8)(B) and 11 CFR 100.74-100.77.

The court stated that there is no need for it to interfere in legislative judgments made by Congress in enacting the ban on contributions by federal government contractors. Furthermore, the court also noted that the plaintiffs voluntarily chose to become federal contractors and are thus only subject to the ban as long as they are under contract with the federal government.

Equal Protection Claims

The plaintiffs also contended that the Act's ban on federal contractor contributions violates the equal-protection guarantee of the Fifth Amendment by banning contributions from federal contractors but not by similarly situated individuals such as federal employees, or officers, employees or stockholders of contracting corporations.

In examining the claims made by the plaintiffs, the court held that while federal employees and federal contractors may have overlapping duties, a government contract may be "worth far more than an employment position with the federal government and specific protections in place to ensure that federal employment is awarded based on merit do not exist for federal contractors." The court stated that federal employees and federal contractors therefore were not similarly situated with respect to Congress's interest in preventing corruption or the appearance of corruption and that it would defer to the legislative judgment of Congress in this area.

The plaintiffs also claim that corporate contractors and individual contractors are similarly situated but are unconstitutionally treated differently under the statute. Contracting corporations are subject to the same ban on contributions as individual contractors, but the officers, directors, employees and stockholders of contracting corporations are permitted to make political contributions from their personal funds.

The court held that this distinction is constitutional because the individual employees and stockholders of a contracting corporation are acting in their personal capacity rather than speaking for the corporation; thus, their contributions do not necessarily express the views or associations of the corporation. Individual contractors are not similarly situated, and the court stated that their disparate treatment did not pose an equal protection problem.

Since the plaintiffs did not show a likelihood of success on the merits of their claim, the court denied their motion for a preliminary injunction.

(Posted 4/20/12; By: Myles Martin)

Resources:

[Wagner v. FEC Ongoing Litigation Page](#)
[Record Article on Wagner v. FEC Complaint \(January 27, 2012\)](#)

FEC to Host May 23 Seminar/Webinar for Trade/Membership/Labor Organizations and their Political Action Committees

The Commission will hold a seminar for trade associations, membership organizations, labor organizations and their political action committees (PACs) at its Washington, DC headquarters on Wednesday, May 23. New this year, 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/webinar, please visit the seminar/webinar website at <http://www.fec.gov/info/conferences/2012/tradememberlaborseminar.shtml>.

Webinar Information. Seminar workshops will be simulcast for online attendees, who will see and hear all workshops and will be able to ask questions via live chat or email. 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. **NOTE: The seminar workshops are now SOLD OUT, but you may still register for the webinar. If you would prefer to be placed on the seminar waiting list, please email your contact information to Rosalyn@sylvestermanagement.com or call Sylvester Management at 1-800/246-7277.**

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, May 18; no refund will be made for cancellations received after that time. Complete registration information is available online at <http://www.fec.gov/info/conferences/2012/tradememberlaborseminar.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 4/17/12; By: Dorothy Yeager)

Resources:

[FEC Educational Outreach Opportunities](#)