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Department of Justice Secures Sentence in First Super PAC Coordination Case

The Department of Justice recently concluded its first criminal prosecution of coordination between an independent-expenditure-only committee (super PAC) and a campaign committee. On June 12, 2015, the U.S. District Court for the Eastern District of Virginia sentenced campaign consultant Tyler Harber to two years in prison for illegal coordination of campaign contributions between a super PAC and a congressional campaign. While managing an unsuccessful 2012 House of Representatives campaign, Harber set up a super PAC to benefit the campaign, solicited contributions to it and directed the expenditure of \$325,000 in super PAC funds on political advertising against the candidate's opponent.

Under current federal campaign finance law, super PACs can accept unlimited campaign contributions as long as they do not coordinate with candidates or political parties. The Federal Election Commission (FEC) has been unable to implement a clear standard delineating what is coordination and what is not, but the *Harber* case appears to be an instance of campaign staff having direct input in super PAC activities. Super PACs have become an increasingly prominent part of the campaign finance landscape following the U.S. Supreme Court's *Citizens United* decision in 2010. In a statement by the Department of Justice, an FBI spokesperson warned, "As the 2016 election gears up, there may be others, similar to Mr. Harber, who may view campaigns as a venue to misappropriate funds. With millions of dollars in play, donors should be aware of how their money will be spent prior to making a donation to a Super PAC to ensure that their contributions are being legally expended."

In order to assure that donations to super PACs will be used in a manner that is consistent with restrictions on political activity under federal, state and local law, we generally advise clients to obtain a representation letter certifying such compliance from a super PAC when making a donation.

Lastly, please be advised that the FEC has made it clear that in its view, *Citizens United* did not disturb the ban on federal contractor contributions, and thus contributions from federal contractors to super PACs present a compliance risk. The FEC defended the contractor ban before the U.S. Court of Appeals for the District of Columbia Circuit in fall 2014 in *Wagner v. FEC*. The decision is pending.

Please contact us with any questions.