



Political Law Alert

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FEC Dismisses Wal-Mart PAC Match Case

The Federal Election Commission (FEC) recently dismissed a complaint filed against Wal-Mart Stores, Inc. and its political action committee (PAC), finding that Wal-Mart's 2-for-1 PAC match program did not violate federal election law. *See* FEC MUR 6873.

Under the Wal-Mart program, for each dollar an employee contributes to the PAC, Wal-Mart makes a matching charitable donation of \$2 to Wal-Mart Associates in Critical Need Trust (ACNT), a 501(c)(3) charitable organization.

In September 2014, three watchdog groups — Public Citizen, Common Cause and the Organization United for Respect at Walmart — filed the complaint with the FEC, alleging that the 2-for-1 PAC match program constituted an improper exchange of corporate funds for PAC contributions and exerted improper coercive pressure on employees to contribute to the PAC. By a vote of 4-2, the FEC decided to dismiss the complaint and approve the FEC general counsel's report finding Wal-Mart's PAC match program to be permissible under the law. While the FEC has long held that corporate charitable matching programs designed to increase PAC participation are a permissible solicitation expense, this is the first time the FEC has approved a charitable PAC match of more than 1-for-1 or a charitable match in which the only eligible charity is a foundation solely benefiting employees of the company. Indeed, in 2009 the FEC deadlocked 3-3 regarding the approval of a 1.5-to-1 and 2-to-1 charitable PAC match. *See* FEC AO 2009-03.

In determining the permissibility of the Wal-Mart PAC match program, the FEC general counsel report focused on whether the contributor would receive a financial, tax or other tangible benefit from either the corporation or the recipient charity as a result of the contribution. Regarding the 2-for-1 match, the report concluded that, while a contributor wishing to donate to ACNT would be able to halve the out-of-pocket expense of making a charitable contribution of a certain size, such fact alone does not constitute indirect compensation to the contributor and thus would not result in an impermissible payment to the contributor pursuant to FEC rules. Further, the report rejected the claim that a contributor received a direct benefit as a result of his or her eligibility as a Wal-Mart employee to receive a grant from ACNT since PAC donor status is not a factor in awarding grants. Finally, the report rejected the claim that employees were coerced to contribute.

Please note neither the contributor nor the corporation may take a tax deduction for the matched donation, pursuant to IRS advice.

A copy of the report may be found here: <http://eqs.fec.gov/eqsdocsMUR/15044384979.pdf>.

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