This is Chapter 1: **Campaign Finance Under the Federal Election Campaign Act of 1971 (FECA)** of *Corporate Political Activities Deskbook (2025 Edition)* (#423104), by Ki P. Hong, Charles M. Ricciardelli, Tyler Rosen, Theodore Grodek, and Olivia Marshall. Reprinted with permission for Skadden, Arps, Slate, Meagher & Flom LLP.

Chapter 1

Campaign Finance Under the Federal Election Campaign Act of 1971 (FECA)

§ 1:1 FECA and the *Citizens United* Decision

Corporations play a significant role in the political process and their activities implicate a complex body of federal and state regulations. Violations of these rules can lead to criminal and civil sanctions. Even where such sanctions do not result, the mere involvement in a "political scandal" can damage the reputation of a company and its executives.

To begin, there is a broad federal prohibition on the use of corporate funds in connection with federal elections.[1] This prohibition had long applied to both corporate contributions given to candidates, as

1. 52 U.S.C. § 30118(c). The Federal Election Campaign Act was recently recodified in Title 52. See Appendix 1C for a reclassification table showing the prior and present codification.

well as direct expenditures for communications that expressly advocated the election or defeat of a candidate, but were made independently of a candidate.[2] However, in *Citizens United v. FEC*,[3] the U.S. Supreme Court overturned two of its previous decisions and declared that the federal law prohibiting corporate independent expenditures[4] violated the First Amendment rights of corporations.[5] At the same time, it upheld the reporting and disclosure requirement applied to those expenditures.[6] Since the Court held that the U.S. Constitution did not allow the government to ban corporate independent expenditures, state laws that contain a similar ban are also unconstitutional and unenforceable.[7]

In the 5–4 decision, the Supreme Court struck down the Federal Election Campaign Act (FECA) prohibition on corporations and labor unions making independent expenditures to advocate the election or defeat of federal candidates through the use of words of express advocacy or their functional equivalent.[8] The Court found that a prohibition on political speech undertaken independently of a candidate violated the First Amendment rights of corporations and was not supported by a compelling governmental interest. In so doing, the Court overruled its 1990 decision in *Austin v. Michigan Chamber of Commerce*,[9] as well as parts of its 2003 decision in *McConnell v. FEC*.[10] While this is a major change in the law governing the financing of election advocacy, the Court did not invalidate all corporate and labor restrictions.

It is important to note both the breadth of the decision and its limits, as follows:

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2. *See* 11 C.F.R. § 114.2(b) (2007) (current version at 11 C.F.R. § 114.2(b) (2016)).
3. Citizens United v. FEC, 130 S. Ct. 876 (2010).
4. An independent expenditure is an expenditure that expressly advocates for the election or defeat of a clearly identified candidate that is made without coordination with a candidate.
5. *Citizens United*, 130 S. Ct. at 912–13.
6. *Id*. at 914–16.
7. The Court expressly left open the question of whether the government had a sufficiently compelling interest to justify the ban on independent expenditures by foreign corporations. Likewise, the ban on independent expenditures by government contractors and national banks was not addressed by the Court.
8. Citizens United v. FEC, 130 S. Ct. 876 (2010).
9. Austin v. Mich. Chamber of Com., 494 U.S. 652 (1990).
10. McConnell v. FEC, 540 U.S. 93 (2003).

- The Court did not strike down the prohibition on corporations making contributions to federal candidates.[11] While corporations are now free to make independent expenditures, FECA's ban on corporate contributions is still in place.[12]
- The election advocacy activity must be undertaken independently of the candidate. This point is critical because coordination with a candidate can result in a prohibited corporate contribution. Whether an activity is coordinated requires a fact-based analysis. The Federal Election Commission (FEC) regulations defining coordination look at the content of the communication, the conduct of the entity making the communication and the timing of the communication.[13]
- The decision does not directly address the rules regarding the operation of a Political Action Committee (PAC), internal solicitation for PAC contributions, or the rules regarding corporate fundraisers for candidates. The FEC issued new rules resolving some issues.[14]
- The Court expressly upheld the disclosure requirements applicable to these expenditures.[15] This means that a corporation making an independent expenditure or an electioneering communication must comply with the law's disclaimer and reporting requirements.
- FECA limits to $5,000 per year what a contributor can give to a political committee, including those that only make independent expenditures.[16] However, in *SpeechNow v. FEC*,[17] the U.S. Court of Appeals for the D.C. Circuit held that the *Citizens United* decision also meant that it is unconstitutional to limit what a corporation or labor union can contribute to

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11. A contribution is defined as anything of value, *e.g.*, money, goods, services, or loans, given to (or provided on behalf of) a federal candidate, his/her authorized committee or authorized agent, other political committees registered with the FEC, or national party committees. An expenditure is a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for federal office. *See* 52 U.S.C. § 30101(8), (9).
12. Likewise, state prohibitions or limitations on corporate contributions were not disturbed by *Citizens United*.
13. *See generally* 11 C.F.R. § 109.21.
14. *See* www.fec.gov/updates/final-rules-on-independent-expenditures-and-electioneering-communications-by-corporations-and-labor-organizations/.
15. Citizens United v. FEC, 130 S. Ct. 876, 914–16 (2010).
16. 52 U.S.C. § 30116(a)(1)(C).
17. SpeechNow v. FEC, 599 F.3d 686 (D.C. Cir. 2010). *See also* Appendix 1B.

a political committee that only makes independent expenditures.[18] The FEC did not seek review of the ruling and subsequently ruled in an advisory opinion that this decision applies to all federal political committees making independent expenditures involving federal candidates.[19]

- The Court expressly stated this ruling does not address the restrictions on the involvement of foreign national corporations in elections in the United States.[20]

The prohibition on corporate contributions, which was left intact by *Citizens United*, extends not only to direct monetary contributions from corporate funds, but also to in-kind contributions such as the use of corporate facilities or personnel for campaign purposes, or other services, goods, and property provided to a candidate or political committee for free or less than the normal charge. We next turn to specific issues arising under this prohibition.

PRACTICE NOTES

Corporations may sponsor a separate segregated fund (that is, a corporate PAC), which can take voluntary donations from corporate executives, to make political contributions. These PACs are discussed in more detail in chapter 2.

§ 1:1.1 *FECA and the* McCutcheon *Decision*

On April 2, 2014, the Supreme Court issued its decision in *McCutcheon v. FEC*,[21] striking down the aggregate limits imposed on individual contributions under federal law. The 5–4 opinion held that the individual aggregate limits under federal law are invalid under the First Amendment because they do not serve the only permissible government objective in restricting political speech: combatting quid pro quo corruption or the appearance of it. Prior to the *McCutcheon*

18. *SpeechNow*, 599 F.3d at 696. Such committees have come to be known as "Super PACs" as they can accept unlimited corporate and labor contributions and use those funds for independent expenditures.
19. Fed. Election Comm'n, Advisory Opinion 2010-11 (July 22, 2010). (Hereinafter, FEC Advisory Opinions are cited as "AO.")
20. *Citizens United*, 130 S. Ct. at 911.
21. McCutcheon v. FEC, 134 S. Ct. 1434 (2014).

decision, the Court had largely upheld contribution limits since *Buckley v. Valeo*.[22]

In *McCutcheon*, the Court addressed the constitutionality of the $123,200 biennial aggregate limit on contributions from individuals under federal law. The Bipartisan Campaign Reform Act (BCRA) imposed two levels of contribution limits in federal elections: base limits and aggregate limits. Under the base limits for the 2013–2014 election cycle, an individual was able to contribute up to $2,600 per election to a candidate ($5,200 total for the primary and general elections); $32,400 per year to a national party committee; $10,000 per year to the federal accounts of a state or local party committee; and $5,000 per year to a political action committee (PAC). In addition to these base limits, BCRA imposed an aggregate limit, which was $123,200 for the 2013–2014 election cycle. Of this $123,200 total, an individual could contribute no more than $48,600 to all federal candidates; and $74,600 to all federal PACs, national parties, and federal accounts of state parties, of which no more than $48,600 could go to federal PACs and federal accounts of state parties. In the *McCutcheon* decision, the Court did not strike down the base limits, only the aggregate limits.

The Court had previously upheld aggregate limits in *Buckley v. Valeo*[23] as constitutional, despite their restriction on speech, because they prevented circumvention of the base limit and thus, corruption. In *McCutcheon*, however, the Court found that aggregate limits in place under BCRA are not narrowly drawn to avoid unnecessary abridgment of associational freedoms. Specifically, the Court found that there are numerous federal restrictions now in place that prevent campaign contributions from giving rise to quid pro quo corruption including limits on contributions to PACs, regulations prohibiting earmarking, "more targeted" anti-circumvention measures, and anti-proliferation rules.

This opinion had no impact on federal PAC contributions because federal PACs are not subject to an aggregate limit. Further, the opinion did not address the legality of corporate contributions and thus, the federal corporate contribution prohibition still applies. The short-term effect of the decision was not dramatic since very few individuals maxed out at the $123,200 level. However, since *McCutcheon*, more joint fundraisers have encouraged large donors to give without the aggregate limitation.

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22. Buckley v. Valeo, 424 U.S. 1 (1976).
23. *Id*.

The long-term effect may be more significant. *McCutcheon* is the first notable Supreme Court case striking down contribution limits (as opposed to limits on independent expenditures). Currently, several states impose aggregate limits on individual, PAC, and/or corporate contributions, and these laws are now subject to challenge. Soon after the Supreme Court issued its decision, Maryland announced it will not enforce its aggregate contribution limits imposed on federal PACs, individuals, and corporations,[24] and Massachusetts repealed its aggregate individual contribution limit.[25] Other jurisdictions where an aggregate individual limit is no longer applicable or enforced in the wake of *McCutcheon* include Connecticut,[26] the District of Columbia,[27] Kentucky,[28] Maine,[29] Minnesota,[30] New York,[31] and Wisconsin.[32] Moreover, the case could lead to challenges to pay-to-play rules. The first, *New York Republican State Committee v. United States Securities and Exchange Commission*,[33] challenged the Securities and Exchange Commission's (SEC's) pay-to-play rule for investment advisers (see chapter 5), citing to *McCutcheon* to make the argument that the SEC's pay-to-play rule constitutes impermissible regulation of political contributions by the SEC under the Administrative Procedure Act and the First Amendment, and that such regulations are preempted by the Federal Election Campaign Act. The case was dismissed by the D.C. District Court and, on August 25, 2015, the U.S. Court of Appeals for the District of Columbia Circuit upheld the dismissal, finding the plaintiffs' claim to be time-barred.

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24. *See* Contribution Limits—Aggregates, Guidance, Maryland State Board of Elections (Apr. 11, 2014), www.elections.state.md.us/campaign_finance/documents/Aggregate_limits_04112014_final.pdf.
25. Massachusetts House No. 4366, Chapter 210 of 2014 (Aug. 1, 2014).
26. Connecticut State Elections Enforcement Commission, Advisory Opinion 2014-03.
27. Informal oral guidance from the District of Columbia Office of Campaign Finance (2014).
28. Kentucky Registry of Election Finance, Advisory Opinion 2014-003.
29. Policy Statement of Maine Commission on Governmental Ethics and Election Practices, June 4, 2014.
30. Memorandum Opinion and Order, Seaton v. Wiener, Civil No. 14-1016 (May 19, 2014).
31. Minutes of the May 22, 2014, Meeting of the New York State Board of Elections.
32. Wisconsin Government Accountability Board, statement of September 9, 2014.
33. No. 14-1194 (consolidated with No. 14-5242) (D.C. Cir. Aug. 25, 2015).

§ 1:2 Specific Prohibitions Against Corporate Contributions

§ 1:2.1 National Bank Prohibition

Nationally chartered banks are subject to the same prohibition on making federal contributions as corporations.[34] However, unlike in the case of domestic corporations, where the federal law limits its reach to federal elections, FECA also prohibits national banks from making otherwise allowable state and local campaign contributions (that is, it prohibits contributions "in connection with any election to any political office").[35] This broad prohibition also extends to corporations organized by authority of any law of Congress, for example, federal savings banks.

PRACTICE NOTES

National banks and corporations are subject to most of the exceptions and permitted activities discussed below unless foreclosed by other applicable law.[36] State-chartered banks that make contributions to state candidates are governed only by state law. Few of the state campaign finance laws focus on banks.[37] However, as we discuss at greater length in chapter 5, many state "pay-to-play" rules applicable to non-federal political committees affect particular industries that do business with state agencies.

§ 1:2.2 Foreign National Prohibition

For many years, federal law has prohibited foreign national involvement in the financing of any U.S. elections.[38] Broadly, it prohibits

34. The FEC amended 11 C.F.R. § 114.2, preserving the current bans for national banks, including independent expenditures. 79 Fed. Reg. 62,797 (Oct. 21, 2014).
35. 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a).
36. 11 C.F.R. § 114.2(a)(1), (2).
37. *See* DEL. CODE ANN. tit. 18, § 2304(6) (an insurer or bank acting as an insurer is prohibited from making a contribution to a candidate for the office of Insurance Commissioner) and N.J. REV. STAT. §§ 19:34–:45; 5:12–:138 (certain regulated entities doing business in the state, including banks, are prohibited from making contributions for any political purpose whatsoever).
38. 52 U.S.C. § 30121(a).

foreign nationals from spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly. This is not changed by the decision in *Citizens United*.[39] The term "foreign nationals" includes individuals who are not citizens or lawfully admitted permanent residents of the United States, and entities such as foreign corporations, foreign partnerships, and foreign governments.[40] However, the FEC, in a 2021 ruling, declined to extend the ban to include spending relative to ballot initiatives,[41] although an increasing number of states are passing such prohibitions.[42]

This broad prohibition, however, does not preclude all corporations that are owned by foreign entities from participating in U.S. elections. The following rules apply to the common situation of foreign ownership interests in U.S. companies, as well as individuals from abroad who work here as executives or employees.

A U.S. subsidiary corporation of a foreign corporation or a U.S. corporation that is owned by foreign nationals is not per se prohibited from making otherwise lawful state and local contributions, if the following requirements are met:

- The contributions may not derive from funds from the foreign parent or owner; and
- No individual foreign nationals may be involved in any way in the making of donations, including participating in related activities, such as participating in discussions regarding the selection of the recipients, approving the making of donations, or approving the issuance of donation checks.[43]

FECA also prohibits knowingly soliciting, accepting, or receiving contributions or donations from foreign nationals as well as providing substantial assistance to foreign nationals making contributions or donations.[44] The federal government treats this as a serious violation of law that can result in civil and criminal penalties,[45] so care should be taken in all circumstances to avoid problems. For instance,

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39. In *Citizens United*, the Supreme Court explicitly left open the question of whether the ban on independent expenditures by foreign national corporations is constitutional. Citizens United v. FEC, 130 S. Ct. 876, 911 (2010).
40. 52 U.S.C. § 30121(b).
41. Fed. Election Comm'n, Matter Under Review 7523, www.fec.gov/data/legal/matter-under-review/7523/ [hereinafter, FEC Matters Under Review are cited as "MUR"].
42. *See, e.g.*, TENN. CODE § 2-10-501; KAN. STAT. § 25-4180.
43. 11 C.F.R. § 110.20(i).
44. 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(h).
45. 52 U.S.C. § 30109(d).

in May 2022, the FEC entered into a conciliation agreement with two corporations resulting in a fine of $975,000, one of the highest in FEC history, because a foreign national was involved in the decision-making process to make corporate contributions to a federal independent expenditure-only committee ("super PAC").[46]

PRACTICE NOTES

These factors have special application to PAC activity of such companies. See chapter 2, below.

§ 1:3 Other Specific Prohibitions

§ 1:3.1 Contractor Ban

Besides the general ban on corporate contributions, FECA specifically prohibits contractors with the federal government from making or soliciting contributions in connection with federal elections.[47] It applies to those entering into contracts with the federal government for the rendition of personal services; for the furnishing of goods or services; or to sell land or buildings, if payment is made by appropriated funds. The ban applies between the commencement of negotiations for and the later of the completion of performance under or the termination of negotiations for, such contract.[48] Due to the corporate ban, this ban only has relevance to non-corporate entities (for example, LLCs, partnerships). The ban provides an exception for a contractor's separate segregated fund (that is, PAC).[49] In November 2012, a federal district court upheld the contractor ban.[50] On July 7, 2015, the federal circuit court for the District of Columbia, sitting en banc, issued a unanimous opinion upholding the contractor contribution ban.[51] The case was appealed to the U.S. Supreme Court, which denied certiorari on January 19, 2016.[52]

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46. MUR 7613.
47. 52 U.S.C. § 30119(a).
48. *Id*.
49. 52 U.S.C. § 30118(b).
50. Wagner v. FEC, No. 11-cv-1841, 2012 WL 1255145 (Nov. 2, 2012) (upholding FECA's prohibition on federal contractors making contributions in connection with federal elections).
51. Wagner v. FEC, 793 F.3d 1 (D.C. Cir. 2015).
52. Miller v. FEC, 793 F.3d 1 (D.C.C. 2015), *cert. denied*, 136 S. Ct. 895 (2016).

The FEC has applied the contractor ban to contributions to independent expenditure committees, imposing a $34,000 civil penalty on a construction company for violating the ban on federal contractor contributions. The company contributed $200,000 to a super PAC in 2015 and received a refund in 2016.[53]

The penalty is significant as it demonstrates a limitation of the Supreme Court's holding in *Citizens United*, which allowed corporations to contribute unlimited amounts to super PACs. That holding, however, did not necessarily cover the federal election law's ban on contributions by federal contractors and federally chartered organizations. The FEC had previously analyzed enforcement matters assuming the federal contractor ban applied to super PAC contributions, but had not found reason to believe actual violations occurred and thus had not imposed penalties.[54] In addition, in 2021, the FEC fined a contractor $56,000 for making a contribution to a super PAC.[55]

Prior to these MURs, the FEC had made clear that super PAC contributions by federal contractors may be prohibited, but some question remained open regarding the FEC's appetite for imposing penalties for such contributions. In light of the MURs, companies that have or seek federal contracts should take note of the FEC's willingness to impose penalties, and should ensure adequate controls are in place to prevent a violation. The same should also be true of federally chartered organizations.

§ 1:3.2 Officer and Director Liability

The federal prohibition on corporations making political contributions extends not only to the corporation itself, but also to the acts of officers and directors who consent to the corporate contributions.[56] The FEC most often attaches this liability to corporate managers involved in some fashion in the activities or transactions giving rise to the corporate violations.

§ 1:3.3 "Name of Another" Fraud Schemes

Attempting to hide the source of a corporate contribution is viewed as one of the most serious campaign finance violations. The most common form of this activity involves the use of "straw donors," in

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53. MUR 7099.
54. *See* MUR 6403.
55. MUR 7887.
56. 52 U.S.C. § 30117(a) makes it unlawful for "any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section."

which contributions are made by individuals who are merely acting as conduits for corporate funds. This is often done by having the contributor reimbursed by the corporation for the contribution. Federal law specifically prohibits such contributions "made in the name of another."[57] These schemes elicit among the highest civil penalties by the FEC and can result in criminal prosecutions by the Department of Justice.[58]

[A] Classic Markers of Criminal Fraud

Respondents/defendants caught up in this activity frequently maintain that they were unaware of the illegality. However, when individuals are reimbursed in cash for their contributions, or when falsified expense reports correspond to the reimbursed contributions, regulators and prosecutors generally take this as evidence that the people knew their conduct was illegal. It is the job of in-house compliance efforts to ensure that all employees know that checks made payable to campaign committees are contributions and that such campaign contributions must be treated differently than ordinary charitable or community donations.

PRACTICE NOTES

Corporate entities must be careful to avoid an inadvertent campaign contribution: An officer or employee of a company with an ordinary practice of expensing charitable and community contributions might wrongfully assume that a campaign contribution should be treated the same way.[59]

§ 1:4 What Political Activity Can Be Engaged in by Corporations?

Of course, not every interaction a corporation has with a federal candidate is considered a contribution. For example, federal law provides an exception allowing corporations to directly involve themselves in the political process by establishing, controlling and making contributions from PACs (that is, a separate segregated fund).[60] These

57. 52 U.S.C. § 30122.
58. *See, e.g.*, United States v. Hsia, 176 F.3d 517 (D.C. Cir. 1999).
59. *See, e.g.*, MUR 5643 (Carters, Inc.), www.fec.gov/files/legal/murs/current/30689.pdf.
60. 52 U.S.C. § 30118(b)(2)(C).

are entities that make contributions to candidates using voluntary funds donated by the company's executives. But PACs are not the only way corporations interact with candidates. Before turning to the ins and outs of corporate PACs, we begin with a series of permitted corporate activities drawn from FECA, FEC regulations, and long practice. Individual executive or employee activity is discussed below.

§ 1:4.1 Commercial Transactions with a Candidate

A company that in the ordinary course of business provides goods and services used by a federal campaign does not make a prohibited contribution so long as the campaign pays the usual and normal charge and the company bills the campaign in the same fashion as non-political customers, that is, the campaign receives no special treatment.[61]

Moreover, businesses can offer candidates discounts, rebates, and complimentary services in providing goods and services, as long as they do so in the regular course of their business and under the same terms and conditions they offer their non-political customers in the ordinary course of business. It is not sufficient, however, if the only non-political customers to which the discount is offered are civic groups.[62]

§ 1:4.2 Bank and Brokerage Loans

Normally, a loan to a candidate is considered a contribution, as long as the loan is outstanding. However, arm's-length bank loans to a candidate or campaign are permissible but must comply with specific rules.[63] Bank loans must be made at a usual and customary interest rate; on a basis which assures repayment (that is, there is adequate collateral); and using a written instrument with a due date.[64]

Generally, the spouse of a candidate is subject to the same contribution limits as any individual giving to that candidate. Moreover, FECA treats a guarantee or endorsement of a loan as a contribution from the person making the endorsement or guarantee.[65] Nevertheless, a bank

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61. 11 C.F.R. §§ 100.52(d), 100.111(e)(1); *see also, e.g.*, AO 1978-45 (rate of payment for billboard). It is important to evaluate the allocation of risk between a committee that purchases items it will resell to raise funds, and the vendor that supplies the items. An arrangement that provides for the committee to retain the proceeds from sales while the vendor bears the risk of carrying unsold items may be unsatisfactory. *See, e.g.*, AO 1992-24, Transaction #3 (payment for books).
62. *E.g.*, AO 1994-10; *see also, e.g.*, AO 1978-85 (discount on billboard rental, although given to civic and political groups, is an in-kind contribution).
63. 52 U.S.C. § 30101(8)(B)(vii) (bank loans).
64. *Id.*; *see also, e.g.*, AO 1994-10.
65. 11 C.F.R. §§ 100.52(b), 100.82; *e.g.*, AO 1975-04.

can require the spouse of a candidate to co-sign for a loan along with the candidate when jointly owned assets are used to collateralize the loan. The spouse's signature will not be considered a contribution to the candidate so long as the candidate's share of the collateral value exceeds the amount of the loan.[66] Note, however, that if a third-party individual signs or guarantees in any fashion the candidate's loan, that action is a contribution and subject to limits.[67]

Loans or advances from a candidate's brokerage firm, credit card, home equity line, or other line of credit are also permitted.[68] These candidate brokerage loans or line of credit advances must be made under commercially reasonable terms and only if the entity making the loan does so in the normal course of business.[69] The same spousal and third-party endorser rules discussed above apply to these transactions.

§ 1:4.3 Special Provision for Vendors of Food and Beverages

A corporate vendor of food and beverages may sell food and beverages, at cost, to a candidate's campaign or to a political party committee regardless of its usual course of business with non-political customers. The cumulative value of such discounts (that is, the difference between the normal charge and the amount paid by the committee) may not exceed $1,000 per candidate, per election, or $2,000 annually on behalf of all political committees of the same party.[70]

§ 1:5 Non-Federal Contributions

Corporations may make contributions unconnected to federal elections, such as donations to state and local candidates, as regulated under state or local law (see section 4:2 for a full discussion of this topic). If the activity does not involve federal candidates or political parties, the only applicable federal restrictions are those involving election activity by national banks and foreign nationals discussed above. State laws on corporate-funded campaign contributions fall into three categories:

1. Those that are similar to the federal law and prohibit such contributions;

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66. 11 C.F.R. §§ 100.52(b)(4), 100.82(c).
67. 11 C.F.R. § 100.82(c).
68. 52 U.S.C. § 30101(8)(B)(xiv).
69. *Id.*
70. 11 C.F.R. § 114.1(a)(2)(v).

2. Those that allow corporate contributions subject to a limit; and
3. Those that do not prohibit or limit corporate contributions.

PRACTICE NOTES

Many states have additional restrictions, such as those found in "pay-to-play" laws, that separately regulate political contributions from specific industries. These are discussed in chapter 5.

§ 1:6 Appearances by Officeholders

§ 1:6.1 "Meet and Greets" and Non-Political Appearances on Company Premises

A federal officeholder may appear on corporate premises for so-called "meet and greets," plant tours, and other such appearances, where he or she speaks on issues of interest to the company or the industry, and does not mention his or her campaign or the opponent in the election. Such appearances, if not connected to a campaign, do not implicate federal campaign finance law. Please note that in such cases, one must ensure adherence to federal lobbying and gift laws.[71] See chapter 6, Federal Lobbying and Gift Laws.

§ 1:6.2 Candidate Appearances

Under FECA, a corporation may allow a federal candidate to appear on corporate premises to make a speech to the corporation's employees promoting his or her election as long as the corporation provides the same opportunity to each candidate running in that election.[72] Note

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71. For example, there is an exemption under House gift rules (but not Senate gift rules) for meals and limited local travel provided in connection with a site visit (*see generally* COMM. ON STANDARDS OF OFFICIAL CONDUCT, HOUSE ETHICS MANUAL 116 (2022), https://ethics.house.gov/wp-content/uploads/2023/12/Dec-2022-House-Ethics-Manual-website-version.pdf), and both the House and Senate provide limited exemptions for additional "official-connected travel" paid by a private sponsor (House Rule 25, clause 5(b)(1)(A) and (C); Senate Gift Rule 35.2(a)(2)(A)).
72. 11 C.F.R. § 114.4(b)(1)(i) (concerning candidates for Congress) and (ii) (concerning presidential or vice presidential candidates seeking the nomination of a major party or on the general election ballot in enough states to win an electoral vote majority).

that the corporation need only make the time and facilities available to another candidate running in that election if such candidate requests the opportunity, and the regulations do not require the corporation to initiate the offer of an opportunity to appear. As discussed below, the corporation has more leeway in allowing candidate appearances if it limits the audience allowed to attend.

PRACTICE NOTES

Although these appearances do not qualify as a contribution, providing the candidate with personal benefits such as meals, entertainment, lodging, or transportation in connection with the appearance may have implications under the applicable gift rules. See Appendix 1A, Checklist for Candidate and Officeholder Events, for a checklist compliance tool for officeholder and candidate appearances.

§ 1:7 Communicating with Corporate Managers and Stockholders (the "Restricted Class")

§ 1:7.1 The General Rule

PRACTICE NOTES

As discussed above, the Supreme Court's decision in *Citizens United* allows a corporation to make independent expenditures aimed at the general public, as long as they are not coordinated with a candidate. While it is clear that a corporation is no longer limited to communicating its endorsement or support of a candidate to its restricted class, communications that solicit contributions to the company's PAC, which makes contributions to candidates, as well as solicitations on behalf of candidates, present different issues. Therefore, unless the FEC or courts rule to the contrary, it should be assumed that a corporation's solicitations for its PAC or for candidate fundraisers are still limited to its restricted class.

A corporation may use its funds, employee services, and facilities to communicate to its executives, administrative personnel (those in policymaking and managerial positions), and stockholders regarding any subject, including soliciting those individuals for contributions to its PAC or to a candidate.[73] These people are referred to as the company's "restricted class" under federal rules. The "restricted class" is defined under the FEC regulations as a corporation's stockholders and executive or administrative personnel, and their families, and the executive and administrative personnel of its subsidiaries, branches, divisions, and departments and their families.[74] "Executive or administrative personnel" means the corporation's executives and employees who are paid on a salary basis (as opposed to an hourly basis) and who have policymaking, managerial, professional or supervisory responsibilities.[75] The regulations note that the Fair Labor Standards Act (FLSA) and its regulations may be used as guidelines in determining whether employees are executive or administrative personnel.[76]

A corporation may communicate with its executives and shareholders about election-related issues. This concept most often arises in the context of the rules for corporate PAC solicitations, as described in chapter 2, but it is also the basis for permitting candidate fundraising events on corporate premises, as long as the targeted audience is limited. Under this rule, a candidate may address a corporation's executives, administrative personnel and stockholders at a meeting or other corporate function. The appearance need not be a regularly scheduled event and can be scheduled solely for the purpose of meeting the candidate.[77] Care should be taken, however, to ensure that the event is extended only to the restricted class. For example, as we later discuss, a corporation may pay for the rental of restaurant space at which it holds a fundraiser for its corporate PAC or federal candidate as long as only members of the restricted class are invited.[78]

The event may include a small number of individuals outside the restricted class, such as employees who are staffing and otherwise administering the meeting, invited speakers or honorees, or invited news media. However, the corporation and its personnel cannot assist in collecting contributions for the candidate.[79] This means they cannot collect checks or even provide envelopes and postage for employees to send contributions to the candidates.[80]

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73. 52 U.S.C. § 30118(b)(2)(A).
74. 11 C.F.R. § 114.1(j).
75. 11 C.F.R. § 114.1(c).
76. 11 C.F.R. § 114.1(c)(4).
77. 11 C.F.R. § 114.3.
78. *See* 11 C.F.R. § 114.2(c).
79. 11 C.F.R. § 114.3(c)(2).
80. 11 C.F.R. § 114.3(c)(2)(iii).

PRACTICE NOTES

The corporation can provide the address of the campaign to its restricted class. In practice, when a corporation is holding an event for a candidate, the campaign will generally provide contribution forms to allow the participants to send contributions to the campaign and/or they will have campaign staff available at the event to collect contributions.

Under this "internal communication" provision, corporations may announce candidate endorsements in a publication to its restricted class or at a candidate appearance before its restricted class.[81] Note that if the publication expressly advocates election of the candidate, is not "primarily devoted to subjects other than" the candidate's election, and exceeds $2,000 in cost, special "internal communications reports" are required to be filed with the FEC.[82] This means that if election-related issues are addressed as one issue among many in a regularly circulated communication to managers, no special reporting would be triggered.

§ 1:7.2 Registration and Get-Out-the-Vote Drives

Under FECA, a corporation may conduct partisan voter registration and get-out-the-vote (GOTV) drives targeted at its restricted class.[83] This can take the form of corporate phone banks to urge its restricted class to register and/or vote for a specific candidate.[84]

After *Citizens United*, an independent expenditure urging people to vote for a specific candidate can be directed to the general public and no longer has to be confined to the restricted class. Under current FEC rules, a corporation may conduct get-out-the-vote activity directed at the general public that does not include express advocacy so long as the corporation meets certain criteria for non-partisan behavior, such as not primarily directing the efforts at voters already registered with the corporation's favored political party.[85] These efforts may include transportation, provided the services are not provided or withheld on the basis of candidate or party preference.[86]

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81. 11 C.F.R. § 114.3(c)(1), (2).
82. 11 C.F.R. § 104.6(a).
83. 11 C.F.R. § 114.3(c)(4).
84. 11 C.F.R. § 114.3(c)(3).
85. 11 C.F.R. § 114.4(d).
86. *Id.*

§ 1:8 Public Communications

§ 1:8.1 Special Rule for Public Endorsements of a Candidate

Prior to *Citizens United*, a corporation could only publicly announce its endorsement of a candidate, and its reasons for the endorsement, in a public press release that could only be disseminated to its usual media contacts and could not be coordinated with a candidate. After *Citizens United*, a corporation can make independent expenditures publicly declaring its support or endorsement of a candidate and is not required (but may) to go through its routine press outlets. However, the rules prohibiting coordination with a candidate still stand. While the company may communicate with the candidate about issues in connection with its decision whether to endorse, it may not coordinate the actual announcement with the candidate or his or her campaign.[87]

§ 1:8.2 Public Get-Out-the-Vote Efforts

A corporation may pay for and conduct voter registration and GOTV drives addressed to the general public. As noted above, after *Citizens United*, if these activities only involve communications and are not coordinated with a candidate, they no longer have to be nonpartisan. In fact, such activities may urge the public to vote for specific candidates.

However, the law is less clear if the activity goes beyond communicating the corporation's position. If the corporation provides assistance to get voters to the polls, the current rules provide that there can be no payment to GOTV workers based on the number of persons reached who are supportive of a candidate or political party.[88] In fact, during the drive, the corporation must provide written notice of the non-preferential nature of the service to those who receive the information or assistance.[89] Until the FEC or the courts rule to the contrary, the conservative course is to assume these rules are still in effect.

§ 1:8.3 Voter Education Activities

Corporations may air advertisements promoting and urging voter registration and voting. In light of *Citizens United*, corporations may also engage in express advocacy in support of or opposing candidates. Such expenditures may not, however, be coordinated with a

87. 11 C.F.R. § 114.4(c)(6)(ii).
88. 11 C.F.R. § 114.4(d)(2)(iv).
89. 11 C.F.R. § 114.4(d)(2)(v).

campaign or they will be treated as an illegal corporate contribution. As noted above, *Citizens United* did not invalidate the ban on direct corporate contributions to candidates. However, such expenditures must contain the appropriate disclaimers and be disclosed pursuant to the FEC's rules.

Corporations may distribute official voter information such as registration by mail forms, instructional materials, and absentee ballots.[90] As voter registration and the administration of elections are also governed by state law, the relevant state rules should be consulted prior to any such activity.

§ 1:9 Independent Expenditures

As discussed above, the *Citizens United* case held that corporations can make independent expenditures and electioneering communications with corporate treasury funds. An independent expenditure is a public communication that expressly advocates the election or defeat of a federal candidate.[91] The independent expenditure must not be coordinated with a candidate,[92] and reporting and disclaimer requirements must be followed.[93]

As noted in section 1:1, while the Supreme Court in *Citizens United* struck down the prohibition on corporations making independent expenditures, it expressly upheld the reporting requirements associated with such activity.[94] A corporation that makes independent expenditures aggregating more than $250 with respect to an election in a calendar year must file a report with the FEC each quarter in which independent expenditures aggregating more than $250 are made.[95] Each time a corporation makes independent expenditures aggregating $10,000 or more with respect to a given election in a calendar year, it must file a report within forty-eight hours of the communication being disseminated.[96] If independent expenditures aggregating more than $1,000 are made within twenty days of, but more than twenty-four hours before, the election, the report must be filed within twenty-four hours.[97] The report must include specific information about the expenditure and who paid for it, including the

90. 11 C.F.R. § 114.4(c).
91. 52 U.S.C. § 30101(17).
92. *Id*.
93. 52 U.S.C. § 30120.
94. Citizens United v. FEC, 130 S. Ct. 876, 916 (2010).
95. 11 C.F.R. § 109.10(b).
96. 11 C.F.R. § 109.10(c).
97. 11 C.F.R. § 109.10(d).

identification of each person who made a contribution in excess of $200 for the purpose of furthering an independent expenditure.[98]

§ 1:9.1 What Is an "Independent Expenditure"?

FECA defines an independent expenditure as an expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate, but is not made in consultation or cooperation with, or at the request or suggestion of a candidate, candidate's committee, party committee, or their agents.[99]

Independent expenditures are not contributions and are not subject to the contribution limits discussed above.[100] Expenditures not made independently of the benefiting candidate are considered "coordinated communications" that are treated as in-kind contributions to the candidate that are subject to the ban on corporate contributions and, where permissible, the contribution limits.[101] Independent expenditures most often take some form of advertising, whether newspaper, radio, television, or mailings.

Below, we discuss the basic elements of independent expenditures. It should be noted, however, that the issue of when an expenditure is considered coordinated with a candidate has been the subject of debate at the FEC for many years. The FEC's regulations contain an elaborate test for determining whether communications are "coordinated communications." But the FEC's efforts to adopt regulations on coordination took many years and were the subject of two lawsuits by members of Congress who felt the regulations were too narrow.[102] Even after the FEC adopted final regulations on coordination, the debate continued over their application. This debate intensified after *Citizens United* struck down the ban on corporations making such expenditures, as a whole new source of money for such expenditures became available.

The FEC continues to struggle with the application of the coordination rules, and has several times been unable to issue advisory opinions on the subject because the commissioners cannot agree on the application of the rules.[103] Nevertheless, it is important to understand the coordination rules, since violation of those rules can result in what was supposed to be a legal independent expenditure becoming

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98. 52 U.S.C. § 30104(c).
99. 52 U.S.C. § 30101(17).
100. *Id*.
101. 11 C.F.R. § 109.20(b).
102. Shays v. FEC (*Shays III*), 508 F. Supp. 2d 10 (D.D.C. 2007) (No. 1:06CV01247), *aff'd in part, rev'd in part*, 528 F.3d 914 (D.C. Cir. 2008), and Shays v. FEC (*Shays I*), 414 F.3d 76 (D.C. Cir. 2005) (No. 1:02CV01984).
103. AO Request 2011-23 (American Crossroads).

a prohibited in-kind contribution, which can result in serious legal problems for both the contributor and the candidate receiving the contribution.

§ 1:10 What Is a "Coordinated Communication"?[104]

Under the FEC's rules, a "*coordinated* communication" is a communication paid for by a person other than the benefiting candidate or committee that meets both a "content" requirement and a "conduct" requirement.[105]

§ 1:10.1 Content Requirement: The Subject Matter of the Communication[106]

Any of the following types of communications meet the content prong of the requirements. First, broadcast ads that clearly identify a candidate and are targeted to the relevant electorate within sixty days of the general election (or thirty days of a primary).[107] Second, advertisements using general public political advertising (that is, direct mail, newspapers, etc., as well as broadcast ads), that either expressly advocate the election or defeat of a candidate or clearly identify a candidate and are distributed in that candidate's state or congressional district within ninety days of his or her primary or general election.[108] For example, in the case of a presidential candidate, the time frame begins 120 days before the first presidential primary and ends at the general election.[109] Lastly, advertisements using a candidate's own campaign materials (called "republication" of campaign materials) will also qualify.[110] A 2024 FEC advisory opinion clarified though that certain canvassing activities are not public communications.[111]

§ 1:10.2 Conduct Requirement: Level of Interaction Between the Spender and the Benefiting Candidate

The following types of conduct meet the conduct prong of the requirements. First, a request or suggestion occurs if a person carries

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104. 11 C.F.R. § 109.20 *et seq.*
105. 11 C.F.R. § 109.21(a).
106. 11 C.F.R. § 109.21(c).
107. 11 C.F.R. §§ 109.21(c)(1), 100.29.
108. 11 C.F.R. § 109.21(c)(4)(i).
109. 11 C.F.R. § 109.21(c)(4)(ii).
110. 11 C.F.R. § 109.21(c)(2).
111. AO 2024-1 (Texas Majority PAC) (proposed canvassing activities are not public communications, coordinated communications or coordinated expenditures under FEC regulations).

out the communications (whether creating, producing or distributing) at the request or suggestion of a candidate, or suggested the same to the candidate and the candidate assents to the suggestion.[112]

A second type of conduct that meets the conduct prong is material involvement. This is where the benefiting candidate or committee was "materially involved in decisions" about how, to whom, or in what form the communications would be aired or otherwise distributed.[113]

A third potential conduct is what is referred to as "substantial discussion." This would occur where advertisements were aired or distributed after "substantial discussion" between the expender and the candidate or committee, defined to consist of material information conveyed about the campaign's plans, projects, activities, or needs.[114]

Employment of a common vendor is a fourth type of conduct that satisfies the conduct prong. In this case, if the PAC running the ads employs a commercial vendor to create or distribute the ads and that commercial vendor within the last 120 days (that is, four months) has provided substantive campaign-related services to the benefiting candidate's campaign and uses or conveys the valuable inside campaign information gained through that previous work, this qualifies under the conduct prong.[115]

Fifth, the conduct prong is also satisfied in the case of a former employee/independent contractor if a PAC running the ads hires an employee to work on them and this employee or independent contractor worked for the benefiting campaign within the last four months and uses or conveys the valuable inside campaign information gained through that previous work.[116]

Furthermore, the act of disseminating, distributing, or republishing campaign material is a sixth way of satisfying the conduct prong. The benefiting campaign would only be responsible (that is, for accepting the in-kind contribution from the republication of campaign materials) if the request or suggestion, material involvement, or substantial discussion took place later in time than the campaign's original preparation of the materials.[117]

§ 1:10.3 Safe Harbor Exception

The regulations carve out several protections to safeguard corporate actors from the reach of the coordination rules. Activity that would otherwise be subject to the coordination rules can fall into a

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112. 11 C.F.R. § 109.21(d)(1).
113. 11 C.F.R. § 109.21(d)(2).
114. 11 C.F.R. § 109.21(d)(3).
115. 11 C.F.R. § 109.21(d)(4).
116. 11 C.F.R. § 109.21(d)(5).
117. 11 C.F.R. § 109.21(d)(6).

safe harbor when it consists of responses to inquiries about legislative or policy issues; the PAC designs and requires use of a firewall by commercial vendors or former employees; and the source of information used is publicly available rather than insider information.[118]

Note that no smoking gun is required to demonstrate a coordinated communication. The regulations explicitly state that no actual agreement or formal collaboration is necessary for a communication to be a coordinated communication.[119]

§ 1:11 What Is an "Electioneering Communication"?

An electioneering communication is a broadcast ad (radio, television, cable and satellite communications) taken out within thirty days of a primary or sixty days of a general election that names a federal candidate and is targeted to his or her voters.[120] The communication must be done independently of a candidate.[121] As with independent expenditures, it is permissible for a corporation to make electioneering communications, but reporting and disclaimer requirements must be followed.

§ 1:11.1 Reporting Requirements for Electioneering Communications

The reporting requirements applicable to electioneering communications differ from the reporting requirements applicable to independent expenditures in some material respects. An entity making the electioneering communication must file a report when its expenditure for electioneering communications *exceeds* $10,000 in a year.[122] The report must also identify certain donors to the entity who contribute $1,000 or more.[123] The entity may set up a segregated bank account from which it makes expenditures for electioneering communications, and thereby limit its reporting to only those who donated $1,000 or more to that account.[124] Otherwise, the report must identify all donors to the entity who donated $1,000 or more for the purpose

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118. 11 C.F.R. § 109.21(f), (h).
119. 11 C.F.R. § 109.21(e).
120. 11 C.F.R. § 100.29(a).
121. *See* 11 C.F.R. § 109.21(c)(1).
122. 11 C.F.R. § 104.20(a). Compare with independent expenditure reporting which starts with quarterly reports when expenditures exceed $250 and requires 48-hour reports when expenditures aggregating $10,000 or more are made.
123. 11 C.F.R. § 104.20(c)(8), (9), (10).
124. 11 C.F.R. § 104.20(c)(8), (9).

of furthering electioneering communications.[125] Electioneering communications must also carry a disclaimer notice.[126]

§ 1:12 Donations to Nonprofit Issue or Advocacy Organizations

As a practical matter, many for-profit corporations may not want to directly make independent expenditures advocating the election or defeat of candidates or electioneering communications. However, various trade associations, issue groups, and organizations operating under sections 501(c)(4) or 527 of the Internal Revenue Code (IRC) are making these expenditures and are expected to increase their efforts in this area. These organizations can now turn to corporations for donations to support this activity, which means that corporations can expect an increase in the solicitation of funds from these groups.

Prior to *Citizens United*, many of the corporate donors to these organizations sought assurances that their funds would not be used for activity for which corporate funds could not be used. This included independent expenditures or electioneering communications. As corporations are now able to make these expenditures, this restriction on the use of corporate funding is no longer required. However, there are still a number of restrictions on corporate political activity about which a corporate donor should be concerned. For example, corporate contributions to federal candidates are still prohibited by FECA and coordinating what would otherwise be a lawful independent expenditure with a candidate can result in a prohibited corporate in-kind contribution. Moreover, as discussed in chapter 5, such activity may implicate federal and state pay-to-play laws for certain businesses. As 501(c)(3) charitable organizations are not permitted to engage in political activity, including the making of independent expenditures, donations to such groups generally do not present much of a risk and should not cause much concern, especially when dealing with a well-known, longstanding independent 501(c)(3) charity. However, some 501(c)(3) organizations are associated with 501(c)(4) and 527 organizations, which can and do make independent expenditures. While such associations are not illegal, their activities must be separate and cross-subsidization can raise legal issues both under FECA and the IRC. In addition, under certain state or local rules, making a donation at the behest or request of a public candidate can raise additional concerns.

When dealing with a 501(c)(4) or 527 organization, or a 501(c)(3) organization that is affiliated with another group, it is often difficult to tell the exact nature of the group's intended activity from

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125. 11 C.F.R. § 104.20(c)(10).
126. 11 C.F.R. § 110.11.

its solicitation for a donation. In these situations, it is often prudent to seek assurance as to the intended use of your donation if you do not want it used for political activity. The approval process should include review of the type of organization making the request, as well as obtaining information regarding the specific activities it proposes to undertake with the donation. A check of its website to see how it describes itself and its activities should be part of the review. Based on this review, the corporation may decide to seek written assurances from the intended recipient specifying the purpose of the organization, that its activities comply with state and federal law, that it will not undertake any activity for which it would be unlawful to use corporate funding, and any other restrictions on the use of the donation. For example, as discussed above, there are disclosure rules that may require the recipient organization to publicly disclose the identity of donors whose gifts support independent expenditures and electioneering communications. A corporate donor who does not want to support such activity can restrict the use of its donation to general support and prohibit its use for election advocacy.[127]

§ 1:13 Use of Corporate Assets

§ 1:13.1 Facilities and Employee Services

A corporation is prohibited from using its facilities and employees to assist a campaign in fundraising unless a specific exemption applies. For example, a corporation can make its facilities available for a campaign fundraiser, so long as it is paid, within a reasonable period of time, the normal and usual rental charge for the use of the facilities.[128] A corporation may also direct its employees to assist a campaign with a campaign fundraiser only if the corporation is paid in advance for the fair market value of such use.[129]

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127. Note, however, that a written restriction on the use of the funds does not guarantee that the donor will not be disclosed as supporting the election advocacy. The decision on whether to report the donation as furthering an election advocacy expenditure is made by the reporting organization. Moreover, evidence that the intent of the donor was to fund such advocacy, such as records of conversations discussing the advocacy ads, could be used to contradict the written restrictions.
128. 11 C.F.R. § 114.9(d) (referring to 11 C.F.R. § 100.52(d)(2) (defining usual and normal charge)).
129. 11 C.F.R. § 114.2(f).

§ 1:13.2 Corporate Aircraft

PRACTICE NOTES

The following addresses the rules for those traveling for a campaign purpose, subject to FECA, and does not address non-campaign travel that is subject to the gift rules.

Special rules have long applied if a corporate aircraft is used in connection with a federal election (for example, the aircraft is used to transport a candidate or his or her campaign staff to a fundraiser).[130] Prior to the enactment of the Honest Leadership and Open Government Act of 2007 (HLOGA), candidates could fly on private corporate aircraft between two cities that were served by commercial airlines, and only pay the equivalent of first class airfare. Often, the candidate would be accompanied by a corporate officer or lobbyist. Concerned that allowing federal candidates to pay first class fare for what was effectively a private charter service was giving rise to a perception that candidates were being unduly influenced by their corporate hosts, Congress tightened the rules regarding air travel for candidates.

The current rules applicable to candidate and campaign staff travel on non-commercial aircraft were enacted as part of HLOGA as amendments to the travel rules found in FECA. In order to bridge the differences in how the House and Senate viewed candidates using private aircraft, the rules treat House candidates differently from candidates for the Senate and office of the President. On November 19, 2009, the FEC approved final regulations regarding the use of campaign funds for travel on non-commercial aircraft.

Under the travel regulation, House members and candidates, their campaign committees, and their leadership PACs are prohibited from using campaign funds to pay for travel on private aircraft, regardless of the amount paid.[131] In contrast, Senate, Presidential, and Vice Presidential candidates and their authorized committees are permitted to pay for travel on private aircraft, but are required to pay pro rata charter rates for such travel.[132] The aircraft regulations provide guidance for determining the pro rata cost, as well as require that payment must be made within seven days of such travel to avoid

130. 11 C.F.R. § 100.93.
131. 11 C.F.R. § 100.93(c)(2).
132. 11 C.F.R. § 100.93(c)(1).

the travel being deemed an in-kind contribution to the candidate.[133] However, the rules provide that the requirement to pay the charter rate (as opposed to the lower first class airfare) applies only when the Senator/candidate is traveling for his or her own authorized campaign.[134] If the Senator/candidate is traveling on behalf of other political committees (such as his or her leadership PAC or a party committee) that political committee may pay the lower first class airfare.[135]

Other notable points regarding the travel regulations include the following:

- The rules apply not only to all federal candidates, but also to any individuals traveling on behalf of such candidates, political party committees, and other political committees, if the travel is in connection with a federal election.[136]
- The regulation replaces the term "airplanes" with the term "aircraft," which includes helicopters (previously, the FEC grouped helicopters with buses and other non-airplane transportation).
- The regulation took effect January 6, 2010.[137]

PRACTICE NOTES

These rules do not apply to airplanes that are operating for hire under Part 121, 129, or 135 of the Federal Aviation Administration rules, that is, by licensed air charter companies. If a campaign uses such planes, it must pay the "usual and normal" charge, that is, the charter rate for these planes regardless of which cities it flies between.

§ 1:13.3 Legal and Accounting Services

If a corporation regularly employs attorneys and accountants, it may pay these employees to provide legal and accounting services as follows:

(1) To political parties, for services that do not further the election of specific candidates;[138]

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133. 11 C.F.R. §§ 100.93(c)(1), 100.93(e), (f).
134. 11 C.F.R. § 100.93(b), (c)(1).
135. 11 C.F.R. § 100.93(c)(3).
136. 11 C.F.R. § 100.93(a)(3)(i).
137. 74 Fed. Reg. 63,951 (Dec. 7, 2009).
138. 11 C.F.R. § 114.1(a)(2)(vi).

(2) To candidate campaigns directly, but only for the purpose of FECA compliance activities, for example, accounting tasks necessary for timely filing of FEC reports, or legal advice about the propriety of campaign activities.[139]

PRACTICE NOTES

Companies may not pay a third party to provide legal and accounting services, hire additional employees to provide the services, nor hire employees to take the place of the persons providing the services.

- **Recordkeeping:** Because recipient committees must report the value of donated legal and accounting services, the corporation must keep and provide to the committee the following information:
  - The cost of the services,
  - The date they were performed, and
  - The name(s) of the individual(s) performing them.[140]

§ 1:14 Media Companies—Press Exemption

FECA contains a provision applicable to a media company when acting as a press entity. This press or media exemption applies to "any news story, commentary, or editorial" that is "distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication." It does not extend, however, to such facilities that are owned or controlled by a candidate or political party.[141] Activity falling under the press exemption is not subject to the contribution limits or corporate prohibition.

While the press exemption has been an important part of FECA, as the Internet and other technology has provided virtually anyone with a computer the ability to blog and produce a steady flow of content that is available to the public, the line between the "institutional press" and the various forms of the "new media" has blurred. As media companies rely more and more on the Internet to present news and other content, while bloggers and "citizen journalists" produce

139. 11 C.F.R. § 114.1(a)(2)(vii).
140. 11 C.F.R. § 104.3(h).
141. 52 U.S.C. § 30101(9)(B)(i).

commentary and sometimes breaking news stories, whether the media exemption will, or can, be adapted to keep up with the rapidly evolving methods of journalism is an open question. For example, the FEC has ruled that the online publications of a traditional media entity are covered by the exception, as are Internet-only media operations. As new questions have arisen, the FEC has generally extended the media exemption to other Internet operations.[142] Nevertheless, the core provisions of the media exemption are still an important part of the law and provide a shield for traditional press activity.

PRACTICE NOTES

The FEC has also approached the question from the other end, by exempting most Internet activity conducted by an individual from regulation.

§ 1:15 Other Activity Subject to Exemption or Special Treatment Under FECA

Federal law provides for special treatment of certain types of activities connected to elections, but not seen as being directly for the purpose of influencing an election.[143]

§ 1:15.1 Sponsorship of Candidate Debates

Candidate debates may be sponsored by media entities but also by a tax-exempt nonprofit organization (a 501(c)(3) or 501(c)(4) organization) that neither supports nor opposes any candidate or party.[144] In such circumstances, a business corporation may donate funds to the tax-exempt nonprofit organization to defray the cost of staging the candidate debate.[145]

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142. AO 2005-16 (Fired Up) (website of for-profit advocacy group commentary on news articles and "some original news reporting").
143. Prior to *Citizens United*, the Supreme Court had carved out an exemption from the corporate prohibitions to permit certain incorporated 501(c)(4) organizations to make independent expenditures. These were referred to as "MCFL" or qualified nonprofit corporations. However, this exemption was made basically irrelevant when the Court held in *Citizens United* that all corporations could make independent expenditures. Therefore, we do not discuss this exemption in this book.
144. 11 C.F.R. §§ 110.13(a), 114.4(f)(1), (2).
145. 11 C.F.R. §§ 114.4(f)(3), 114.4(f)(1).

The regulations provide guidance about how such debates must be structured as well as candidates selected to participate.[146]

PRACTICE NOTES

At the core of the debate regulations is the rule that the entity sponsoring a debate between federal candidates must use "pre-established objective criteria" in selecting which candidates it will allow to appear in the debate. While the FEC has given a certain amount of discretion to the sponsors, the failure to meet this standard could result in the cost of the debate being treated as an in-kind contribution to the candidates who were allowed to participate.

§ 1:15.2 Presidential Nominating Convention Activities

Presidential nominating conventions are considered elections under FECA. Therefore, unless covered by an exemption, providing free or discounted services to help put on a convention would be considered a contribution. Under FEC rules, businesses may support a national presidential nominating convention in a variety of ways next discussed.

[A] Convention Activity of Commercial Vendors

The national political parties establish and register convention committees to produce the party's national convention. A corporation may act as a commercial vendor to the convention committee and in general may offer discounts and other special treatment to these committees as long as it is consistent with the vendor's ordinary course of business practice or is an established practice of the vendor's trade or industry.[147]

[B] Services and Goods

Standard Discounts: Permissible discounts include standard volume discounts and reduced rates for corporate, governmental, or preferred customers.[148]

Promotional Items: In addition, a vendor may also provide a convention committee with samples, discounts coupons, maps, pens,

146. 11 C.F.R. § 110.13(b), (c).
147. 11 C.F.R. § 9008.9.
148. 11 C.F.R. § 9008.9(a).

pencils, or other items of minimal value at little or no charge to be passed on to convention attendees. This exemption is based on the assumption that providing such items to those attending the convention is for the benefit of the vendor as it promotes their business.

Promotional Arrangements: In addition to providing small promotional items to the attendees, vendors may also provide the convention committee with more substantial goods and services to be used at the convention in exchange for promotional consideration so long as such arrangements are customary ("in the ordinary course of business, that is, provided on similar scale and terms to non-political customers") either to the vendor itself or if doing so is the established practice in the particular trade or industry.

Two rules must be kept in mind: First, "the value of the goods or services provided shall not exceed the commercial benefit reasonably expected to be derived from the unique promotional opportunity presented by the national nominating convention."[149]

PRACTICE NOTES

The "ordinary course of business" requirement is similar to the exemption for commercial activity with campaigns noted above. However, the concept of goods provided in exchange for promotional consideration discussed above is specific to the FEC's convention regulations and not available when providing services directly to candidates, campaigns, and other political committees.

Second, the convention committee receiving the goods or services must disclose the details on the reports it files with the FEC and maintain documentation for a post-convention FEC audit.[150] If the documentation the convention committee keeps raises questions regarding whether the provision of goods and services was in the ordinary course of the vendor's business, the FEC may also seek records from the vendor.

149. 11 C.F.R. § 9008.9(b)(3).

150. *See, e.g.*, 11 C.F.R. § 9008.9(b)(4) (describing the documentation required to be maintained by the convention committee); *see also* AO 1996-17.

[C] Host Committee Contributions

Host Committees are local entities in a city bidding for and/or hosting a national party convention whose "principal purpose is the encouragement of commerce in the convention city, as well as the projection of a favorable image of the city to convention attendees."[151] A Host Committee may be set up as a separate fund or account of a government agency or municipality[152] to pay for the expenses of the city in bidding for the convention or putting on the convention[153] or may be established by a Chamber of Commerce or a board of trade. Businesses (including banks) may donate funds or goods and services to the committee.[154]

While Host Committees were originally intended to allow a city to promote itself when competing for the convention and to promote local businesses during the convention, over time the FEC has allowed these committees to take on more of the infrastructure costs for the actual convention on the theory that providing such support is necessary to be selected as the convention city and assists local businesses. However, as they can be supported by corporate donations, there are limits and restrictions on what can be provided to the committee and what expenses the Host Committee can pay for to assist the convention committee. As long as the Host Committee uses the donations for permissible purposes, they are not considered contributions under FECA.[155]

Corporations (including banks) may donate funds, goods, or services to such Host Committees, for the following specific convention-related activities:

- To promote the suitability of the city as a convention site;
- To welcome convention attendees (for example, by providing information booths, receptions, or tours);
- To facilitate commerce (for example, by providing convention attendees with shopping or entertainment guides, samples, maps, pens, pencils, or other items of de minimis value);
- To defray the Host Committee's administrative expenses (for example, salaries, rent, travel, or liability insurance);
- To provide the national committee use of an auditorium or convention center and to provide related services (for example,

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151. 11 C.F.R. § 9008.50(b)(3).
152. 11 C.F.R. § 9008.53(b).
153. *Id*.
154. 11 C.F.R. § 9008.52(b).
155. *Id*.

construction of podiums, press tables, camera platforms, lighting and electrical systems; offices; office equipment; and/or decorations);

- To defray the cost of local transportation services (for example, by providing buses and automobiles);
- To defray the cost of law enforcement services;
- To defray the cost of using central housing and reservation services;
- To provide hotel rooms at no charge or a reduced rate on the basis of the number of rooms actually booked for the convention;
- To provide accommodations and hospitality for committees of the parties responsible for choosing the sites of the conventions; and
- To provide other similar convention-related facilities and services.[156]

§ 1:16 Presidential Inaugural Activities

Corporations may donate from corporate funds to the Presidential Inaugural Committee[157] if such committee is accepting donations (President Obama's inaugural committee voluntarily chose not to accept such donations in 2009, but did accept corporate donations in 2013, and President Biden's committee accepted most corporate donations subject to voluntary limits).[158] Note that such committees now file reports of receipts that disclose all contributions. In addition, all registered lobbyists and lobbying entities must report such contributions on the Form LD-203.[159] Issues may arise, however, under federal pay-to-play laws.

§ 1:17 Best Practices

A firm need not be reluctant to invite legislators and candidates to the company. Under these rules, the firm can keep its executives abreast of legislative and political developments.

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156. *Id.*
157. AO 1980-144.
158. *See, e.g.*, David A. Nakamura, *Presidential Inaugural Committee Sets $50,000 Donation Limit*, WASH. POST, Nov. 25, 2008.
159. 2 U.S.C. § 1604(d)(1)(F). See chapter 6, Federal Lobbying and Gift Laws, for a full discussion.

- Use judgment about written communications. Even where something falls short of being a violation of the law, you should consider how it may be perceived if it is made public.
- In planning events/activities, distinguish between campaign/electoral activities and legislative activities that could implicate federal or state lobbying rules.
- Create and maintain documentation that establishes compliance (for example, records about the purpose of a politician's visit or about payment for use of a corporate plane).
- Unless the firm wants seriously to engage all candidates in a given race, it is best not to structure a company-wide partisan candidate event. Far more flexibility is afforded for candidate events inside a company for its restricted class only, or entirely outside the company (discussed below under executive fundraising).

Appendix 1A

CHECKLIST FOR CANDIDATE AND OFFICEHOLDER EVENTS

I. Is it a Campaign Visit or an Official Visit?

A Campaign Visit is one where the purpose of the visit is related to the Member's election campaign, whereas the purpose of an Official Visit is the performance of the Member's official duties. Generally, non-incumbents have no plausible reason for visiting a facility unless it is a Campaign Visit, and a visit from non-incumbents running for office should be presumed to be a Campaign Visit. Otherwise, to determine the purpose of an incumbent's visit, one should look to the totality of the circumstances surrounding the visit, including, but not limited to:

(1) the activities engaged in during the visit, such as whether there is fundraising, a discussion of the Member's election, or the Member is collecting names so he or she can solicit them later; as opposed to an informational tour of the facility or a discussion of the issues on the Hill.

(2) the timing of the visit in relation to the Member's election (the closer to the election the more likely it is a Campaign Visit). There is no set time frame when this concern comes into play. However, a visit that occurs within 30 days of a primary or 60 days of a general election should carry a presumption that it is a Campaign Visit. The presumption can be rebutted, but careful scrutiny should be given to Official Visits during this time frame;

(3) whether the corporation is dealing with the Member's campaign staff or Congressional staff in organizing the visit;

(4) whether the visit is to a facility in the Member's district (or in the case of a Senator, his or her State) so that the Member can address the voters in his or her election; and

(5) whether the candidate is a challenger who is not a sitting public official at the time (*i.e.*, it is difficult to characterize the visit of such challenger as being related to his or her official duties when he or she is not in public office).

II. Legal Restrictions for Campaign Visits

Under the Federal Election Campaign Act of 1971, as amended, (FECA), any use of corporate resources in connection with a Campaign Visit (such as the use of the facility being visited, personnel time and overhead spent on organizing the event, catering, payment of related travel expenses, etc.) would be prohibited as an illegal corporate contribution. There are, however, the following exemptions from this prohibition:

(1) Restricted Class Events—A corporation may use its resources and incur expenses related to holding an event to which only its Restricted Class (*i.e.*, the corporation's and its affiliates' individual shareholders, executive or administrative personnel, and their spouses) are invited. The corporation may endorse, or solicit contributions for, a federal candidate in connection with such events, and may have the news media present under certain circumstances.

It may not, however, pay for travel costs related to the event given that this exemption only covers communication costs. Moreover, campaign-prepared materials, such as campaign brochures or invitations, may not be distributed in connection with a restricted class event.

(2) Events Open to All Employees of Corporation—A corporation may permit a federal candidate (or his or her representative) to come onto corporate premises and address/meet its employees (including rank and file employees outside of the Restricted Class) if the following requirements are met:

- The corporation must give other candidates who are running for the same seat an equal opportunity (similar timing and location) to address/meet its employees. The corporation need not necessarily invite these other candidates, but must provide equal opportunity if requested by the candidate.
- The corporation and its employees may not solicit contributions in connection with the appearance, or otherwise endorse or advocate the election or defeat of a candidate.
- The candidate may ask for contributions during the appearance but may not collect contributions before, during or after the appearance. The candidate may leave behind campaign materials and envelopes for the audience.

- The corporation may coordinate with the candidate regarding the logistics of the appearance and candidate's positions on issues, but not regarding the plans or needs of the campaign.
- News media may be present under certain circumstances.

(3) External Event Open to Individuals Outside the Corporation—A corporation may permit its resources (*e.g.*, facilities and personnel) to be used in connection with a Campaign Visit if the campaign, a corporate executive, or a PAC pays the corporation in advance for the fair market value of such use. If an executive or PAC makes this payment, it is treated as an in-kind contribution and counts toward the payor's limits.

(4) Bundling Prohibited—Note that regardless of the exemption used, a corporate employee, acting on behalf of the corporation, may not "bundle" a contribution by accepting and forwarding, or otherwise physically handling, a contribution check to a candidate. There is a narrow exemption if the employee receives written authorization from the campaign to raise funds for the campaign and occupies a significant position at the campaign. Also, corporate employees should not hand out envelopes or postage in which to send contributions.

III. Legal Restrictions for Official Visits

Non-campaign Official Visits do not implicate the restrictions under FECA. Rather, the federal lobbying law and the Congressional gift rules may come into play. Given that the scope of this memorandum is limited to Congressional Members, we do not address federal executive branch or state gift rules that may apply if their respective officials are visiting.

(1) Federal Lobbying Law—Assuming the corporation is registered under the Lobbying Disclosure Act of 1995, as amended, (LDA), it may have to include the cost of the visit in its calculation of lobbying expense for Form LD-2, to the extent the purpose of the visit is to help influence the Member's official decision.

Moreover, the corporation may have to itemize the cost of the visit in Form LD-203 if the Member is honored or recognized during the visit (*e.g.*, given an award or plaque

or the event is otherwise billed out as honoring or recognizing the Member).

(2) Congressional Gift Rules—The Congressional Gift Rules prohibit a corporation that employs a federal lobbyist from providing gifts (such as meals, entertainment, travel, lodging or anything else of value) to a Congressional Member or staff, regardless of value. The corporation must also certify that it is in compliance with these rules to the extent it files Form LD-203.

Generally, visiting or touring a facility is not considered a gift (unless the facility charges admission to the public, such as a theme park) in that there is no fair market value for such visit. However, to the extent the corporation provides the Member with other things of value in connection with the visit (such as food and beverage, transportation or lodging, entertainment, or gift items), they would be treated as gifts, and thus would have to fall within one of the numerous exemptions to the Congressional gift rules. Some of the more useful exemptions for Official Visits are described below.

- Site Visit Exemption (Only for House and Not Senate)—A corporation may provide a meal at the facility and local travel between the airport and the facility if it is in connection with a site visit, where the House Member is traveling in the Member's own district, or is traveling to the site at House expense.
- Reception Exemption—Food or refreshments of nominal value offered other than as part of a meal. Under this "reception" exemption, the items must be consumed while standing up. In addition, this exemption does not apply to one-on-one settings but must be part of an organized reception.
- Widely Attended Gatherings—Free attendance at, and local travel to, a widely attended event where the following requirements are met:
  - There must be at least 25 non-Congressional attendees comprising a range of persons interested in the issue (not all from one corporation);
  - The invitation must come from the organizer of the event; and
  - The Member's attendance must be related to his or her official duties and not primarily recreational.

- Constituent Events (Only for Senate and Not the House)—This exemption permits a Senator or Senate staff to accept free attendance at "constituent events." However, to qualify under this exemption:
  - no federal lobbyist may be present;
  - attendance must be provided by an event sponsor, who must be a Senator's constituent (or group thereof);
  - the event must be held in the Senator's home state and attended primarily by constituents (5 or more);
  - the cost of meals provided to the Senator or Staffer at the event must be less than $50; and
  - the Senator or Staffer must participate in the event, or attendance must be related to his or her official duties.
- Fact-Finding Trip Exemption—There is a narrow exemption for necessary transportation, lodging, and related expenses for travel, from an organizer of a trip to a speaking engagement, fact-finding trip, meeting, or similar event in connection with the official duties of the Member. Among other things, lobbyists are prohibited from accompanying the official on the trip, and are restricted from being involved with organizing the trip except for a de minimis amount. Furthermore, such trips require Ethics Committee pre-approval and are limited to one day.

Appendix 1B

SPEECHNOW V. FEC

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued January 27, 2010 Decided March 26, 2010

No. 08-5223

SPEECHNOW.ORG, ET AL.,
APPELLANTS

v.

FEDERAL ELECTION COMMISSION,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:08-cv-00248-JR)

No. 09-5342

DAVID KEATING, ET AL.,
APPELLANTS

v.

FEDERAL ELECTION COMMISSION,
APPELLEE

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Appeal from the United States District Court
for the District of Columbia
(No. 1:08-cv-00248-JR)

Steven M. Simpson argued the cause for appellants. With him on the brief were *William H. Mellor*, *Robert W. Gall*, *Robert P. Frommer*, *Paul M. Sherman*, and *Stephen M. Hoersting*.

Heidi K. Abegg and *Alan P. Dye* were on the briefs for *amici curiae* Alliance for Justice, et al. in support of appellants.

David B. Kolker, Associate General Counsel, Federal Election Commission, argued the cause for appellee. With him on the briefs was *Vivien Clair*, Attorney.

Joseph G. Hebert, *Donald J. Simon*, *Scott L. Nelson*, *Fred Wertheimer* were on the briefs for *amici curiae* Campaign Legal Center and Democracy 21.

Howard R. Rubin was on the briefs for *amici curiae* The Brennan Center for Justice and Professor Richard Briffault in support of appellee.

Before: SENTELLE, *Chief Judge*, GINSBURG, HENDERSON, ROGERS, TATEL, GARLAND, BROWN, GRIFFITH, and KAVANAUGH, *Circuit Judges*.

Opinion for the Court filed by *Chief Judge* SENTELLE.

SENTELLE, *Chief Judge*: David Keating is president of an unincorporated nonprofit association, SpeechNow.org

(SpeechNow), that intends to engage in express advocacy[1] supporting candidates for federal office who share his views on First Amendment rights of free speech and freedom to assemble. In January 2008, the Federal Election Committee (FEC) issued a draft advisory opinion concluding that under the Federal Election Campaign Act (FECA), SpeechNow would be required to organize as a "political committee" as defined by 2 U.S.C. § 431(4) and would be subject to all the requirements and restrictions concomitant with that designation. Keating and four other individuals availed themselves of 2 U.S.C. § 437h, under which an individual may seek declaratory judgment to construe the constitutionality of any provision of FECA. As required by that provision, the district court certified the constitutional questions directly to this court for en banc determination. Thereafter, the Supreme Court decided *Citizens United v. FEC*, 130 S. Ct. 876 (2010), which resolves this appeal. In accordance with that decision, we hold that the contribution limits of 2 U.S.C. § 441a(a)(1)(C) and 441a(a)(3) are unconstitutional as applied to individuals' contributions to SpeechNow. However, we also hold that the reporting requirements of 2 U.S.C. §§ 432, 433, and 434(a) and the organizational requirements of 2 U.S.C. § 431(4) and 431(8) can constitutionally be applied to SpeechNow. In this action the district court also denied the plaintiffs' motion to enjoin FEC enforcement of FECA's contribution limits against SpeechNow. Because we hold that those provisions cannot be constitutionally applied, we vacate

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[1]"Express advocacy" is regulated more strictly by the FEC than so-called "issue ads" or other political advocacy that is not related to a specific campaign. In order to preserve the FEC's regulations from invalidation for being too vague, the Supreme Court has defined express advocacy as "communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" *Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976).

the order denying that injunction and remand the matter to the district court for further proceedings consistent with our decision.

I. Background

SpeechNow is an unincorporated nonprofit association registered as a "political organization" under § 527 of the Internal Revenue Code. Its purpose is to promote the First Amendment rights of free speech and freedom to assemble by expressly advocating for federal candidates whom it views as supporting those rights and against those whom it sees as insufficiently committed to those rights. It intends to acquire funds solely through donations by individuals. SpeechNow further intends to operate exclusively through "independent expenditures." FECA defines "independent expenditures" as expenditures "expressly advocating the election or defeat of a clearly identified candidate" that are "not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents." 2 U.S.C. § 431(17). SpeechNow has five members, two of whom are plaintiffs in this case: David Keating, who is also SpeechNow's president and treasurer, and Edward Crane. Keating makes the operational decisions for SpeechNow, including in which election campaigns to run advertisements, which candidates to support or oppose, and all administrative decisions.

Though it has not yet begun operations, SpeechNow has made plans both for fundraising and for making independent expenditures. All five of the individual plaintiffs – Keating, Crane, Fred Young, Brad Russo, and Scott Burkhardt – are prepared to donate to SpeechNow. Keating proposes to donate $5500. Crane proposes to donate $6000. Young, who is

otherwise unaffiliated with SpeechNow, proposes to donate $110,000. Russo and Burkhardt want to make donations of $100 each. In addition, as of August 2008, seventy-five other individuals had indicated on SpeechNow's website that they were interested in making donations. As for expenditures, SpeechNow planned ads for the 2008 election cycle against two incumbent candidates for federal office who, in the opinion of SpeechNow, did not sufficiently support First Amendment rights. These ads would have cost around $12,000 to produce. Keating intended to place the ads so that the target audience would view the ads at least ten times, which would have cost around $400,000. As SpeechNow never accepted any donations, it never produced or ran these ads. However, SpeechNow intends to run similar ads for the 2010 election cycle if it is not subject to the contribution limits of § 441a(a) at issue in this case.

On November 19, 2007, SpeechNow filed with the FEC a request for an advisory opinion, asking whether it must register as a political committee and if donations to SpeechNow qualify as "contributions" limited by § 441a(a)(1)(C) and 441a(a)(3). At the time, the FEC did not have enough commissioners to issue an opinion, but it did issue a draft advisory opinion stating that SpeechNow would be a political committee and contributions to it would be subject to the political committee contribution limits. Believing that subjecting SpeechNow to all the restrictions imposed on political committees would be unconstitutional, SpeechNow and the five individual plaintiffs filed a complaint in the district court requesting declaratory relief against the FEC under 2 U.S.C. § 437h. Because § 437h allows only the FEC, political parties, or individuals the right to bring such actions, this court removed SpeechNow from the § 437h proceedings. SpeechNow remains in the caption for this case because it, along with the individual plaintiffs, also sought a preliminary injunction

prohibiting the FEC from enforcing the political committee contribution limits with respect to contributions to SpeechNow, and the denial of that injunction is also on appeal before this court. Because this court was already scheduled to hear the constitutional issues en banc, we consolidated the appeal with the en banc proceeding.

Section 437h provides that a "district court immediately shall certify all questions of constitutionality of this Act [FECA] to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc." The district court made findings of fact, and certified to this court five questions:

> 1. Whether the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) violate the First Amendment by preventing David Keating, SpeechNow.org's president and treasurer, from accepting contributions to SpeechNow.org in excess of the limits contained in §§ 441a(a)(1)(C) and 441a(a)(3).
>
> 2. Whether the contribution limit mandated by 2 U.S.C. § 441a(a)(1)(C) violates the First Amendment by preventing the individual plaintiffs from making contributions to SpeechNow.org in excess of $5000 per calendar year.
>
> 3. Whether the biennial aggregate contribution limit mandated by 2 U.S.C. § 441a(a)(3) violates the First Amendment by preventing Fred Young from making contributions to SpeechNow.org that would exceed his individual biennial aggregate limit.
>
> 4. Whether the organizational, administrative, and continuous reporting requirements set forth in 2 U.S.C. §§ 432, 433, and 434(a) violate the First Amendment by

> requiring David Keating, SpeechNow.org's president and treasurer, to register SpeechNow.org as a political committee, to adopt the organizational structure of a political committee, and to comply with the continuous reporting requirements that apply to political committees.
>
> 5. Whether 2 U.S.C. §§ 431(4) and 431(8) violate the First Amendment by requiring David Keating, SpeechNow.org's president and treasurer, to register SpeechNow.org as a political committee and comply with the organizational and continuous reporting requirements for political committees before SpeechNow.org has made any expenditures or broadcast any advertisements.

SpeechNow.org v. FEC, No. 08-0248 (D.D.C. Sept. 28, 2009).

Under FECA, a political committee is "any committee, club, association, or other group of persons" that receives contributions of more than $1000 in a year or makes expenditures of more than $1000 in a year. 2 U.S.C. § 431(4). Once a group is so designated, contributions to the committee are restricted by 2 U.S.C. § 441a(a)(1)(C) and 441a(a)(3). The first provision limits an individual's contribution to a political committee to $5000 per calendar year; the second limits an individual's total contributions to all political committees to $69,900 biennially.[2] *See* Price Index Increases for Contribution

[2]Subject to exceptions not here relevant, FECA defines "contributions" as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). Again subject to exceptions, the Act defines "expenditure" as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of

and Expenditure Limitations, 74 Fed. Reg. 7437 (Feb. 17, 2009) (increasing § 441a(a)(3)(B)'s limit from $57,500 to $69,900). A political committee also must comply with all applicable recordkeeping and reporting requirements of 2 U.S.C. §§ 432, 433, and 434(a). Under those sections, if the FEC regulates SpeechNow as a political committee, SpeechNow would be required to, among other things: appoint a treasurer, § 432(a); maintain a separately designated bank account, § 432(b), 432(h); keep records for three years that include the name and address of any person who makes a contribution in excess of $50, § 432(c)(1)-(2), 432(d); keep records for three years that include the date, amount, and purpose of any disbursement and the name and address of the recipient, § 432(c)(5), 432(d); register with the FEC within ten days of becoming a political committee, § 433(a); file with the FEC quarterly or monthly reports during the calendar year of a general election detailing cash on hand, total contributions, the identification of each person who contributes an annual aggregate amount of more than $200, independent expenditures, donations to other political committees, any other disbursements, and any outstanding debts or obligations, § 434(a)(4), 434(b); file a pre-election report and a post-election report detailing the same, *id.*; file semiannual or monthly reports with the same information during years without a general election, *id.*; and file a written statement in order to terminate the committee, § 433(d).

II. Analysis

A. *Contribution Limits (Certified Questions 1-3)*

The First Amendment mandates that "Congress shall make no law . . . abridging the freedom of speech." In *Buckley v.*

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influencing any election for Federal office; and [ ] a written contract, promise, or agreement to make an expenditure." 2 U.S.C. § 431(9)(A)(i)-(ii).

Valeo, 424 U.S. 1 (1976), the Supreme Court held that, although contribution limits do encroach upon First Amendment interests, they do not encroach upon First Amendment interests to as great a degree as expenditure limits. In *Buckley*, the Supreme Court first delineated the differing treatments afforded contribution and expenditure limits. In that case, the Court struck down limits on an individual's expenditures for political advocacy, but upheld limits on contributions to political candidates and campaigns. In making the distinction, the Court emphasized that in "contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication." *Id.* at 20-21. However, contribution limits still do implicate fundamental First Amendment interests. *Id.* at 23.

When the government attempts to regulate the financing of political campaigns and express advocacy through contribution limits, therefore, it must have a countervailing interest that outweighs the limit's burden on the exercise of First Amendment rights. Thus a "contribution limit involving significant interference with associational rights must be closely drawn to serve a sufficiently important interest." *Davis v. FEC*, 128 S. Ct. 2759, 2772 n.7 (2008) (quoting *McConnell v. FEC*, 540 U.S. 93, 136 (2003)) (internal quotation marks omitted). The Supreme Court has recognized only one interest sufficiently important to outweigh the First Amendment interests implicated by contributions for political speech: preventing corruption or the appearance of corruption. *Id.* at 2773; *FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 496-97 (1985) ("*NCPAC*"). The Court has rejected each of the few other interests the government has, at one point or another, suggested as a justification for contribution or expenditure limits. Equalization of differing viewpoints is not a legitimate

government objective. *Davis*, 128 S. Ct. at 2773. An informational interest in "identifying the sources of support for and opposition to" a political position or candidate is not enough to justify the First Amendment burden. *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 298 (1981). And, though this rationale would not affect an unincorporated association such as SpeechNow, the Court has also refused to find a sufficiently compelling governmental interest in preventing "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form." *Citizens United v. FEC*, 130 S. Ct. 876, 902, 905 (2010) (quoting *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652, 660 (1990), and rejecting *Austin*'s and subsequent cases' reliance on that interest).

Given this precedent, the only interest we may evaluate to determine whether the government can justify contribution limits as applied to SpeechNow is the government's anti-corruption interest. Because of the Supreme Court's recent decision in *Citizens United v. FEC*, the analysis is straightforward. There, the Court held that the government has *no* anti-corruption interest in limiting independent expenditures.[3]

Citizens United involved a nonprofit corporation that in January 2008 produced a film that was highly critical of then-Senator Hillary Clinton, a candidate in the Democratic Party's 2008 Presidential primary elections. The film was, "in essence, . . . a feature-length negative advertisement that urges viewers to vote against Senator Clinton for President." *Citizens United*, 130 S. Ct. at 890. As such, the film was subject to the restrictions of 2 U.S.C. § 441b. That provision made it unlawful for any corporation or union to use general treasury funds to

[3] Of course, the government still has an interest in preventing *quid pro quo* corruption. However, after *Citizens United*, independent expenditures do not implicate that interest.

make independent expenditures as defined by 2 U.S.C. § 431(17) or expenditures for speech defined as "electioneering communications," which are certain types of political ads aired shortly before an election or primary, 2 U.S.C. § 434(f)(3). The Supreme Court declared this expenditure ban unconstitutional, holding that corporations may not be prohibited from spending money for express political advocacy when those expenditures are independent from candidates and uncoordinated with their campaigns. 130 S. Ct. at 913.

The independence of independent expenditures was a central consideration in the Court's decision. By definition, independent expenditures are "not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents." 2 U.S.C. § 431(17). As the *Buckley* Court explained when it struck down a limit on independent expenditures, "[t]he absence of prearrangement and coordination of an expenditure with the candidate or his agent . . . alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." *Citizens United*, 130 S. Ct. at 908 (quoting *Buckley*, 424 U.S. at 47). However, the *Buckley* Court left open the possibility that the future might bring data linking independent expenditures to corruption or the appearance of corruption. The Court merely concluded that independent expenditures "do[] not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions." 424 U.S. at 46.

Over the next several decades, Congress and the Court gave little further guidance respecting *Buckley*'s reasoning that a lack of coordination diminishes the possibility of corruption. Just a few months after *Buckley*, Congress codified a ban on corporations' independent expenditures at 2 U.S.C. § 441b. In

1978, in *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), the Court "struck down a state-law prohibition on corporate independent expenditures related to referenda," but did not "address the constitutionality of the State's ban on corporate independent expenditures to support candidates." *Citizens United*, 130 S. Ct. at 902, 903. Though the *Bellotti* Court sweepingly rejected "the proposition that speech that otherwise would be within the protection of the First Amendment loses that protection simply because its source is a corporation," 435 U.S. at 784, it limited the implications of that rejection by opining in a footnote that "Congress might well be able to demonstrate the existence of a danger of real or apparent corruption in independent expenditures by corporations to influence candidate elections," 435 U.S. at 788 n.26. Then, in *Austin*, the Court expressly upheld a Michigan law that prohibited corporate independent expenditures. 494 U.S. at 654-55. And in *McConnell*, the Court relied on *Austin* to uphold the Bipartisan Campaign Reform Act of 2002's (BCRA's) extension of § 441b's ban on corporate expenditures to electioneering communications. 540 U.S. at 203-09.

The *Citizens United* Court reevaluated this line of cases and found them to be incompatible with *Buckley*'s original reasoning. The Court overruled *Austin* and the part of *McConnell* that upheld BCRA's amendments to § 441b. More important for this case, the Court did so by expressly deciding the question left open by the footnoted caveat in *Bellotti*. The Court stated, "[W]e now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." *Citizens United*, 130 S. Ct. at 909.

The Court came to this conclusion by looking to the definition of corruption and the appearance of corruption. For several decades after *Buckley*, the Court's analysis of the

government's anti-corruption interest revolved largely around the "hallmark of corruption," "financial *quid pro quo*: dollars for political favors," *NCPAC*, 470 U.S. at 497. However, in a series of cases culminating in *McConnell*, the Court expanded the definition to include "the appearance of undue influence" created by large donations given for the purpose of "buying access," 540 U.S. at 144, 148. *See also FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 441 (2001); *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 389 (2000). The *McConnell* Court concluded that limiting the government's anti-corruption interest to preventing *quid pro quo* was a "crabbed view of corruption, and particularly of the appearance of corruption" that "ignores precedent, common sense, and the realities of political fundraising." 540 U.S. at 152. The *Citizens United* Court retracted this view of the government's interest, saying that "[t]he fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt." 130 S. Ct. at 910. The Court returned to its older definition of corruption that focused on *quid pro quo*, saying that "[i]ngratiation and access . . . are not corruption." *Id.* Therefore, without any evidence that independent expenditures "lead to, or create the appearance of, *quid pro quo* corruption," and only "scant evidence" that they even ingratiate, *id.*, the Court concluded that independent expenditures do not corrupt or create the appearance of corruption.

In its briefs in this case, the FEC relied heavily on *McConnell*, arguing that independent expenditures by groups like SpeechNow benefit candidates and that those candidates are accordingly grateful to the groups and to their donors. The FEC's argument was that large contributions to independent expenditure groups "lead to preferential access for donors and undue influence over officeholders." Appellee's Br. in *Keating v. FEC*, at 16. Whatever the merits of those arguments before *Citizens United*, they plainly have no merit after *Citizens United*.

In light of the Court's holding as a matter of law that independent expenditures do not corrupt or create the appearance of *quid pro quo* corruption, contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption. The Court has effectively held that there is no corrupting "quid" for which a candidate might in exchange offer a corrupt "quo."

Given this analysis from *Citizens United*, we must conclude that the government has no anti-corruption interest in limiting contributions to an independent expenditure group such as SpeechNow. This simplifies the task of weighing the First Amendment interests implicated by contributions to SpeechNow against the government's interest in limiting such contributions. As we have observed in other contexts, "something . . . outweighs nothing every time." *Nat'l Ass'n of Retired Fed. Employees v. Horner*, 879 F.2d 873, 879 (D.C. Cir. 1989). Thus, we do not need to quantify to what extent contributions to SpeechNow are an expression of core political speech. We do not need to answer whether giving money is speech per se, or if contributions are merely symbolic expressions of general support, or if it matters in this case that just one person, David Keating, decides what the group will say. All that matters is that the First Amendment cannot be encroached upon for naught.

At oral argument, the FEC insisted that *Citizens United* does not disrupt *Buckley*'s longstanding decision upholding contribution limits. This is literally true. But, as *Citizens United* emphasized, the limits upheld in *Buckley* were limits on contributions made *directly to candidates*. Limits on direct contributions to candidates, "unlike limits on independent expenditures, have been an accepted means to prevent *quid pro quo* corruption." *Citizens United*, 130 S. Ct. at 909 (citing *McConnell*, 540 U.S. at 136-38 & n.40).

The FEC also argues that we must look to the discussion about the potential for independent expenditures to corrupt in *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604 (1996). This, too, is unavailing. In *Colorado Republican*, the Court considered the constitutionality of FECA provisions that exempted political party committees from the general political committee contribution limits, but imposed limitations on political party committees' independent expenditures. *Id.* at 611-13. A majority of the Court agreed that the independent expenditure limitations were unconstitutional, but no more than three Justices joined any single opinion. It is true that the opinion of Justice Breyer did discuss the potential for corruption or the appearance of corruption potentially arising from independent expenditures, saying that "[t]he greatest danger of corruption . . . appears to be from the ability of donors to give sums up to $20,000 to a party which may be used for independent party expenditures for the benefit of a particular candidate," thus evading the limits on direct contributions to candidates. *Id.* at 617 (opinion of Breyer, J.). But *Colorado Republican* concerned expenditures by political parties, which are wholly distinct from "independent expenditures" as defined by 2 U.S.C. § 431(17). Moreover, a discussion in a 1996 opinion joined by only three Justices cannot control our analysis when the more recent opinion of the Court in *Citizens United* clearly states as a matter of law that independent expenditures do not pose a danger of corruption or the appearance of corruption.

The FEC argues that the analysis of *Citizens United* does not apply because that case involved an expenditure limit while this case involves a contribution limit. [Oral Tr. at 30, 31.] Alluding to the divide between expenditure limits and contribution limits established by *Buckley*, the FEC insists that contribution limits are subject to a lower standard of review than expenditure limits, so that "what may be insufficient to justify

an expenditure limit may be sufficient to justify a contribution limit." Oral Arg. Tr. at 39. Plaintiffs, on the other hand, argue that *Citizens United* stands for the proposition that "burdensome laws trigger strict scrutiny." Oral Arg. Tr. at 58. We do not find it necessary to decide whether the logic of *Citizens United* has any effect on the standard of review generally afforded contribution limits. The *Citizens United* Court avoided "reconsider[ing] whether contribution limits should be subjected to rigorous First Amendment scrutiny," 130 S. Ct. at 909, and so do we. Instead, we return to what we have said before: because *Citizens United* holds that independent expenditures do not corrupt or give the appearance of corruption as a matter of law, then the government can have no anti-corruption interest in limiting contributions to independent expenditure–only organizations. No matter which standard of review governs contribution limits, the limits on contributions to SpeechNow cannot stand.

We therefore answer in the affirmative each of the first three questions certified to this Court. The contribution limits of 2 U.S.C. § 441a(a)(1)(C) and 441a(a)(3) violate the First Amendment by preventing plaintiffs from donating to SpeechNow in excess of the limits and by prohibiting SpeechNow from accepting donations in excess of the limits. We should be clear, however, that we only decide these questions as applied to contributions to SpeechNow, an independent expenditure–only group. Our holding does not affect, for example, § 441a(a)(3)'s limits on direct contributions to candidates.

B. *Organizational and Reporting Requirements (Certified Questions 4 & 5)*

Disclosure requirements also burden First Amendment interests because "compelled disclosure, in itself, can seriously

infringe on privacy of association and belief." *Buckley*, 424 U.S. at 64. However, in contrast with limiting a person's ability to spend money on political speech, disclosure requirements "impose no ceiling on campaign-related activities," *id.*, and "do not prevent anyone from speaking," *McConnell*, 540 U.S. at 201 (internal quotation marks and alteration omitted). Because disclosure requirements inhibit speech less than do contribution and expenditure limits, the Supreme Court has not limited the government's acceptable interests to anti-corruption alone. Instead, the government may point to any "sufficiently important" governmental interest that bears a "substantial relation" to the disclosure requirement. *Citizens United*, 130 S. Ct. at 914 (quoting *Buckley*, 424 U.S. at 64, 66, and citing *McConnell*, 540 U.S. at 231-32). Indeed, the Court has approvingly noted that "disclosure is a less restrictive alternative to more comprehensive regulations of speech." *Citizens United*, 130 S. Ct. at 915 (citing *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986)).

The Supreme Court has consistently upheld organizational and reporting requirements against facial challenges. In *Buckley*, the Court upheld FECA's disclosure requirements, including the requirements of §§ 432, 433, and 434(a) at issue here, based on a governmental interest in "provid[ing] the electorate with information" about the sources of political campaign funds, not just the interest in deterring corruption and enforcing anti-corruption measures. 424 U.S. at 66. In *McConnell*, the Court upheld similar requirements for organizations engaging in electioneering communications for the same reasons. 540 U.S. at 196. *Citizens United* upheld disclaimer and disclosure requirements for electioneering communications as applied to Citizens United, again citing the government's interest in providing the electorate with information. 130 S. Ct. at 913-14. And while the Court in *Davis v. FEC* found that a certain disclosure requirement

violated the First Amendment, it only did so because that disclosure triggered the application of an unconstitutional provision which imposed asymmetrical contribution limits on candidates based on how much of their personal funds they planned to spend. Because the asymmetrical limits were unconstitutional, there was no justification for the disclosure requirement. 128 S. Ct. at 2775.

Plaintiffs do not disagree that the government may constitutionally impose reporting requirements, and SpeechNow intends to comply with the disclosure requirements that would apply even if it were not a political committee. *See* 2 U.S.C. § 434(c) (reporting requirements for individuals or groups that are not political committees that make independent expenditures); § 441d (disclaimer requirements for independent expenditures and electioneering communications). Instead, plaintiffs argue that the additional burden that would be imposed on SpeechNow if it were required to comply with the organizational and reporting requirements applicable to political committees is too much for the First Amendment to bear. We disagree.

SpeechNow, as we have said, intends to comply with the disclosure requirements applicable to those who make independent expenditures but are not organized as political committees. Those disclosure requirements include, for example, reporting much of the same data on contributors that is required of political committees, 2 U.S.C. § 434(c); information about each independent expenditure, such as which candidate the expenditure supports or opposes, *id.*; reporting within 24 hours expenditures of $1000 or more made in the twenty days before an election, § 434(g)(1); and reporting within 48 hours any expenditures or contracts for expenditures of $10,000 or more made at any other time, § 434(g)(2).

Because SpeechNow intends only to make independent expenditures, the additional reporting requirements that the FEC would impose on SpeechNow if it were a political committee are minimal. Indeed, at oral argument, plaintiffs conceded that "the reporting is not really going to impose an additional burden" on SpeechNow. Oral Arg. Tr. at 14 ("Judge Sentelle: So, just calling you a [PAC] and not making you do anything except the reporting is not really going to impose an additional burden on you right? . . . Mr. Simpson: I think that's true. Yes."). Nor do the organizational requirements that SpeechNow protests, such as designating a treasurer and retaining records, impose much of an additional burden upon SpeechNow, especially given the relative simplicity with which SpeechNow intends to operate.

Neither can SpeechNow claim to be burdened by the requirement to organize as a political committee as soon as it receives $1000, as required by the definition of "political committee," 2 U.S.C. § 431(4), 431(8), rather than waiting until it expends $1000. Plaintiffs argue that such a requirement forces SpeechNow to comply with the burdens of political committees without knowing if it is going to have enough money to make its independent expenditures. This is a specious interpretation of the facts before us. As the district court found, SpeechNow already has $121,700 in planned contributions from plaintiffs alone, with dozens more individuals claiming to want to donate. SpeechNow can hardly compare itself to "ad hoc groups that want to create themselves on the spur of the moment," as plaintiffs attempted at oral argument. Oral Arg. Tr. at 17. In addition, plaintiffs concede that in practice the burden is substantially the same to *any* group whether the FEC imposes reporting requirements at the point of the money's receipt or at the point of its expenditure. Oral Arg. Tr. at 15-16. A group raising money for political speech will, we presume, always hope to raise enough to make it worthwhile to spend it. Therefore, groups would need to collect and keep the necessary

data on contributions even before an expenditure is made; it makes little difference to the burden of compliance *when* the group must comply as long as it anticipates complying at some point.

We cannot hold that the organizational and reporting requirements are unconstitutional. If SpeechNow were not a political committee, it would not have to report contributions made exclusively for administrative expenses. *See* 2 U.S.C. § 434(c)(2)(C) (requiring only the reporting of contributions "made for the purpose of furthering an independent expenditure"). But the public has an interest in knowing who is speaking about a candidate and who is funding that speech, no matter whether the contributions were made towards administrative expenses or independent expenditures. Further, requiring disclosure of such information deters and helps expose violations of other campaign finance restrictions, such as those barring contributions from foreign corporations or individuals. These are sufficiently important governmental interests to justify requiring SpeechNow to organize and report to the FEC as a political committee.

We therefore answer the last two certified questions in the negative. The FEC may constitutionally require SpeechNow to comply with 2 U.S.C. §§ 432, 433, and 434(a), and it may require SpeechNow to start complying with those requirements as soon as it becomes a political committee under the current definition of § 431(4).

Conclusion

We conclude that the contribution limits set forth in certified questions 1, 2, and 3 cannot be constitutionally applied against SpeechNow and the individual plaintiffs. We further conclude that there is no constitutional infirmity in the

application of the organizational, administrative, and reporting requirements set forth in certified questions 4 and 5. We further conclude that because of our decision today, as guided by *Citizens United*, which intervened since the entry of the district court's denial of plaintiffs' petition for injunctive relief, the district court's order denying injunctive relief is vacated and remanded for further proceedings consistent with our decision.

So ordered.

Appendix 1C

UNITED STATES CODE EDITORIAL RECLASSIFICATION TABLE TITLE 52—VOTING AND ELECTIONS

This table tracks the relocation of federal campaign finance laws from title 2 to title 52 of the U.S. Code, effective September 1, 2014.

United States Code		Provision of Law Affected
Former Classification	New Classification	
2:431	52:30101	Pub. L. 92-225, title III, § 301, Feb. 7, 1972, 86 Stat. 11
2:431 note	52:30101 note	Pub. L. 107-155, title IV, § 402, Mar. 27, 2002, 116 Stat. 112
2:431 note	52:30101 note	Pub. L. 106-346, § 101(a) [title V, § 502(d)], Oct. 23, 2000, 114 Stat. 1356, 1356A-50
2:431 note	52:30101 note	Pub. L. 96-187, title III, § 301, Jan. 8, 1980, 93 Stat. 1368
2:431 note	52:30101 note	Pub. L. 93-443, title IV, § 410, Oct. 15, 1974, 88 Stat. 1304
2:431 note	52:30101 note	Pub. L. 92-225, title IV, § 408, formerly § 406, Feb. 7, 1972, 86 Stat. 20
2:431 note	52:10101 note	Pub. L. 107-155, § 1(a), Mar. 27, 2002, 116 Stat. 81
2:431 note	52:10101 note	Pub. L. 96-187, Jan. 8, 1980, 93 Stat. 1339
2:431 note	52:10101 note	Pub. L. 94-283, § 1, May 11, 1976, 90 Stat. 475
2:431 note	52:10101 note	Pub. L. 93-443, Oct. 15, 1974, 88 Stat. 1263
2:431 note	52:10101 note	Pub. L. 92-225, Feb. 7, 1972, 86 Stat. 3
2:431 note	52:30101 note	Pub. L. 96-187, title III, § 303, Jan. 8, 1980, 93 Stat. 1368
2:431 note	52:30101 note	Pub. L. 107-155, title III, § 310, Mar. 27, 2002, 116 Stat. 104
2:431 note	52:30101 note	Pub. L. 96-187, title III, § 302, Jan. 8, 1980, 93 Stat. 1368

United States Code		Provision of Law Affected
Former Classification	New Classification	
2:432	52:30102	Pub. L. 92-225, title III, § 302, Feb. 7, 1972, 86 Stat. 12
2:432 note	52:30102 note	Pub. L. 104-79, § 1(c), Dec. 28, 1995, 109 Stat. 791
2:432 note	52:30102 note	Pub. L. 104-79, § 3(d), Dec. 28, 1995, 109 Stat. 793
2:433	52:30103	Pub. L. 92-225, title III, § 303, Feb. 7, 1972, 86 Stat. 14
2:434	52:30104	Pub. L. 92-225, title III, § 304, Feb. 7, 1972, 86 Stat. 14
2:434 note	52:30104 note	Pub. L. 110-81, title II, § 204(b), Sept. 14, 2007, 121 Stat. 746
2:434 note	52:30104 note	Pub. L. 110-81, title II, § 215, Sept. 14, 2007, 121 Stat. 751
2:434 note	52:30104 note	Pub. L. 106-58, title VI, § 639(b), Sept. 29, 1999, 113 Stat. 476
2:434 note	52:30104 note	Pub. L. 106-58, title VI, § 641(b), Sept. 29, 1999, 113 Stat. 477
2:434 note	52:30104 note	Pub. L. 107-155, title II, § 201(b), Mar. 27, 2002, 116 Stat. 90
2:434 note	52:30104 note	Pub. L. 93-443, title II, § 204(e), Oct. 15, 1974, 88 Stat. 1278
2:437	52:30105	Pub. L. 92-225, title III, § 305, formerly § 307, Feb. 7, 1972, 86 Stat. 16
2:437c	52:30106	Pub. L. 92-225, title III, § 306, formerly § 310, as added Pub. L. 93-443, title II, § 208(a), Oct. 15, 1974, 88 Stat. 1280
2:437c note	52:30106 note	Pub. L. 105-61, title V, § 512(b), Oct. 10, 1997, 111 Stat. 1305
2:437c note	52:30106 note	Pub. L. 94-283, title I, § 101(e)-(g), May 11, 1976, 90 Stat. 476, 477
2:437c note	52:30106 note	Pub. L. 93-443, title II, § 208(b), Oct. 15, 1974, 88 Stat. 1286

United States Code		Provision of Law Affected
Former Classification	**New Classification**	
2:437d	52:30107	Pub. L. 92-225, title III, § 307, formerly § 311, as added Pub. L. 93-443, title II, § 208(a), Oct. 15, 1974, 88 Stat. 1282
2:437f	52:30108	Pub. L. 92-225, title III, § 308, formerly § 313, as added Pub. L. 93-443, title II, § 208(a), Oct. 15, 1974, 88 Stat. 1283
2:437f note	52:30108 note	Pub. L. 94-283, title I, § 108(b), May 11, 1976, 90 Stat. 482
2:437g	52:30109	Pub. L. 92-225, title III, § 309, formerly § 314, as added Pub. L. 93-443, title II, § 208(a), Oct. 15, 1974, 88 Stat. 1284
2:437g note	52:30109 note	Pub. L. 113-72, § 3, Dec. 26, 2013, 127 Stat. 1211
2:437g note	52:30109 note	Pub. L. 110-433, § 1(c), Oct. 16, 2008, 122 Stat. 4971
2:437g note	52:30109 note	Pub. L. 107-155, title III, § 312(b), Mar. 27, 2002, 116 Stat. 106
2:437g note	52:30109 note	Pub. L. 107-155, title III, § 315(c), Mar. 27, 2002, 116 Stat. 108
2:437g note	52:30109 note	Pub. L. 106-58, title VI, § 640(c), Sept. 29, 1999, 113 Stat. 477
2:437h	52:30110	Pub. L. 92-225, title III, § 310, formerly § 315, as added Pub. L. 93-443, title II, § 208(a), Oct. 15, 1974, 88 Stat. 1285
2:437h note	52:30110 note	Pub. L. 107-155, title IV, § 403, Mar. 27, 2002, 116 Stat. 113
2:438	52:30111	Pub. L. 92-225, title III, § 311, formerly § 308, Feb. 7, 1972, 86 Stat. 16
2:438a	52:30112	Pub. L. 107-155, title V, § 502, Mar. 27, 2002, 116 Stat. 115
2:439	52:30113	Pub. L. 92-225, title III, § 312, formerly § 309, Feb. 7, 1972, 86 Stat. 18
2:439a	52:30114	Pub. L. 92-225, title III, § 313, as added Pub. L. 107-155, title III, § 301, Mar. 27, 2002, 116 Stat. 95

United States Code		Provision of Law Affected
Former Classification	New Classification	
2:439a note	52:30114 note	Pub. L. 110-81, title VI, § 601(b), Sept. 14, 2007, 121 Stat. 775
2:439c	52:30115	Pub. L. 92-225, title III, § 314, formerly § 320, as added Pub. L. 93-443, title II, § 210, Oct. 15, 1974, 88 Stat. 1289
2:441a	52:30116	Pub. L. 92-225, title III, § 315, formerly § 320, as added Pub. L. 94-283, title I, § 112(2), May 11, 1976, 90 Stat. 486
2:441a note	52:30116 note	Pub. L. 107-155, title III, § 307(e), Mar. 27, 2002, 116 Stat. 103
2:441a note	52:30116 note	Pub. L. 107-155, title II, § 214(c), Mar. 27, 2002, 116 Stat. 95
2:441a-1	52:30117	Pub. L. 92-225, title III, § 315A, as added Pub. L. 107-155, title III, § 319(a), Mar. 27, 2002, 116 Stat. 109
2:441b	52:30118	Pub. L. 92-225, title III, § 316, formerly § 321, as added Pub. L. 94-283, title I, § 112(2), May 11, 1976, 90 Stat. 490
2:441c	52:30119	Pub. L. 92-225, title III, § 317, formerly § 322, as added Pub. L. 94-283, title I, § 112(2), May 11, 1976, 90 Stat. 492
2:441d	52:30120	Pub. L. 92-225, title III, § 318, formerly § 323, as added Pub. L. 94-283, title I, § 112(2), May 11, 1976, 90 Stat. 493
2:441e	52:30121	Pub. L. 92-225, title III, § 319, formerly § 324, as added Pub. L. 94-283, title I, § 112(2), May 11, 1976, 90 Stat. 493
2:441f	52:30122	Pub. L. 92-225, title III, § 320, formerly § 325, as added Pub. L. 94-283, title I, § 112(2), May 11, 1976, 90 Stat. 494
2:441g	52:30123	Pub. L. 92-225, title III, § 321, formerly § 326, as added Pub. L. 94-283, title I, § 112(2), May 11, 1976, 90 Stat. 494
2:441h	52:30124	Pub. L. 92-225, title III, § 322, formerly § 327, as added Pub. L. 94-283, title I, § 112(2), May 11, 1976, 90 Stat. 494

United States Code		Provision of Law Affected
Former Classification	**New Classification**	
2:441i	52:30125	Pub. L. 92-225, title III, § 323, as added Pub. L. 107-155, title I, § 101(a), Mar. 27, 2002, 116 Stat. 82
2:441k	52:30126	Pub. L. 92-225, title III, § 324, as added Pub. L. 107-155, title III, § 318, Mar. 27, 2002, 116 Stat. 109
2:451	52:30141	Pub. L. 92-225, title IV, § 401, Feb. 7, 1972, 86 Stat. 19
2:452	52:30142	Pub. L. 92-225, title IV, § 402, Feb. 7, 1972, 86 Stat. 19
2:453	52:30143	Pub. L. 92-225, title IV, § 403, Feb. 7, 1972, 86 Stat. 20
2:454	52:30144	Pub. L. 92-225, title IV, § 404, Feb. 7, 1972, 86 Stat. 20
2:454 note	52:30144 note	Pub. L. 107-155, title IV, § 401, Mar. 27, 2002, 116 Stat. 112
2:455	52:30145	Pub. L. 92-225, title IV, § 406, as added Pub. L. 93-443, title III, § 302, Oct. 15, 1974, 88 Stat. 1289
2:455 note	52:30145 note	Pub. L. 107-155, title III, § 313(b), Mar. 27, 2002, 116 Stat. 106
2:457	52:30146	Pub. L. 109-289, div. B, title II, § 21078, as added Pub. L. 110-5, § 2, Feb. 15, 2007, 121 Stat. 59