

Corporate Involvement in the 2012 Election:

Understanding the Law and Your Options

November 2, 2011

Main Justice Webinar

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MAIN JUSTICE

POLITICS, POLICY AND THE LAW

Mary Jacoby

Mary Jacoby is an award-winning former reporter for the Wall Street Journal, Salon magazine, the St. Petersburg Times of Florida, the Chicago Tribune and Roll Call. From 2005 – 2007 she reported from Brussels for the Wall Street Journal, where she covered European Union antitrust and regulatory issues, breaking numerous stories about investigations involving Intel, Microsoft Corp., MasterCard and other major companies. Her investigations have ranged from the influence of Russian oligarchs in Washington to terrorist financing and white-collar crime.



Larry Levy

Larry Levy practices law in the areas of elections, campaign finance, and ethics, serving candidates, companies, political committees, independent expenditure groups, and individuals interested in participating in the political process. He was chief counsel to the Rudy Giuliani Presidential Committee and has counseled candidates for the U.S. Senate and House of Representatives in a variety of states. He has represented clients before the Federal Election Commission, Department of Justice, Office of Government Ethics, and other regulatory and prosecution agencies.



Josh Zive

Josh Zive is an advocate for clients at the intersection of policy, law and politics. He assists clients in every stage of formal and informal policymaking, including drafting formal comments, working with clients and other professionals to design media and public strategies, and serving as an advocate for clients on Capitol Hill. He works with a wide range of clients on issues involving PACs, ethics and election law, and compliance with lobbying disclosure laws. He served as the BBC's election law expert for international press coverage related to the 2004 Presidential election.



Politically Active Businesses: Where Do We Go From Here?

- New Campaign Finance Landscape for 2012 Election
- New Opportunities for Businesses
- New Political and Legal Risks
- Increased Importance of Strategic Planning and Coordination of Advocacy and Political Fundraising Efforts
- This Discussion will focus on PAC, Super PAC, and Association Issues and the Intersection with Lobbying

Key Terms

- **Electioneering Communication** – a broadcast that refers to a clearly identified federal candidate within 30 to 60 days of an election
- **Independent Expenditure** – paid communication advocating for or against a federal candidate and not coordinated with any party or candidate
- **Express Advocacy** – Unambiguously advocating election or defeat of clearly identified federal candidate (Vote for/against X)

Citizens United: An Overview

Challenged FEC's ban on distribution of *Hillary: The Movie*

- Produced by not-for-profit using corporate funds
- Movie discussed Hillary Clinton as candidate
- Was an INDEPENDENT EXPENDITURE – no coordination or cooperation with a campaign or party
- Advocated for the election or defeat of federal candidate
- Was an ELECTIONEERING COMMUNICATION – mentioned a candidate close to date of election
- Lower court found it was EXPRESS ADVOCACY because it called for viewers to vote for or against a federal candidate



Citizens United: The Aftermath

- Overruled "anti-distortion rationale" – idea that corporate money is so great that it distorts messages and the election
- Upheld rationale that First Amendment protects speech from prior restraint and administrative agency (FEC) control
- Allows corporations and unions to spend treasury money for independent expenditures including:
 - Issue and Express Advocacy
 - Video, TV and Radio Advertisements
 - Voter Guides and Mailings
- INVALIDATED FEDERAL AND STATE LAWS
- NO CHANGE TO CONTRIBUTION OR DISCLOSURE RULES

The Big Picture



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SPEECH

The Rise of the Super PAC

- An independent, expenditure-only committee
- Can raise unlimited amounts of money from:
 - Corporations
 - Unions
 - Individuals
- Will play a major role in 2012 election



Recent FEC Actions

- Actions relating to:
 - PACs
 - Fundraising
 - Disclosures
- LLC contributions
- Interplay between PAC and Super PAC
- Interplay between Candidate and Super PAC

What Is a C-4?

- From 501(c)(4) of Internal Revenue Code
- May participate in political campaigns and elections
- Campaigning must not be organization's primary purpose
- Disclosure rules
 - Contributions subject to gift tax
 - Income spent on political activities is taxable
 - Not required to disclose donors publicly
 - DISCLOSE Act in 2010 – never passed U.S. Senate

LLC

- **Federal** – LLC must be taxed as a partnership to make a contribution, which counts against the personal limit of the members of the LLC
- **NY State** – LLC counts the same as a natural person in terms of donations and limits. Doesn't effect personal donations
- **NY City** – It is illegal to accept a contribution form an LLC

Associations

- Messages to members
- Messages to general public/funding

Activity at the State Level

- Arizona Public Funding Law – STRUCK DOWN
- West Virginia Law – DEFEATED, with possible roadmap for federal cases
- Maine Public Funding – DEFEATED

Lobbying and Effective Advocacy in Washington

- Political Advocacy should be considered and treated as a part of overall policy advocacy
 - Be prepared to defend everything you do as an advocate and as a fundraiser/contributor
 - Expect disclosure rules to become more stringent
- Understand the differences between lobbying disclosure law and campaign finance law
- Make sure to target contributions and advocacy effectively and keep proper records

Challenges Ahead

Independent Expenditures:

- must avoid any coordination which will cause some expected major supporters and fund raisers to avoid the candidate and her committee operatives
- may be used to highlight issues or positions the candidate would prefer to leave alone
- may attack a candidate in a manner that backfires or otherwise undermines a campaign strategy
- C-4 and C-6 groups could do the same as above

Challenges Ahead (cont.)

- Money is channeled to independent groups instead of party committees thereby weakening the party's ability to GOTV, etc.
- Many unions have effective political operations that can transition to use independent funds more easily than corporations
- New Parties - Tea Party, WFP (ACORN)

Q&A

Questions

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