

FROM **Dysfunctional** TO **Destructive**

**THE FEDERAL ELECTION COMMISSION'S DISASTROUS NEW TREND
OPENING THE FLOODGATES TO BIG MONEY IN OUR ELECTIONS**

JANUARY 2025

**Never before in modern
American history have
a handful of wealthy elites
exerted such unabashed
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in government and whom
government serves.**



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Executive Summary

During the 2024 election cycle, wealthy individuals and corporations spent billions of dollars to influence voters and help elect their preferred candidates.

In every election since *Citizens United*, wealthy special interests have spent increasingly more to influence voters, often through dark money channels that keep the sources of that spending concealed, and often in coordination with the candidates and political parties intended to benefit from it.

This has been happening for years, but recent developments made 2024 significant, not only for the massive amounts of money spent, but also for the increasing opportunities created to allow big money spenders to trade money for political power and influence. Perhaps the most visible example was billionaire Elon Musk single-handedly spending over \$260 million to elect a president who had vowed to appoint Musk to an influential government position designed to rein in federal agencies, including some charged with regulating Musk's own companies. As president-elect, Donald Trump made good on his promise within days of winning back the White House. Never before in modern American history have a handful of wealthy elites exerted such unabashed influence over who serves in government and whom government serves.



\$260 million

BILLIONAIRE ELON MUSK SINGLE-HANDEDLY SPENT MORE THAN \$260 MILLION TO ELECT A PRESIDENT.

The 2024 election also came just weeks before the 15th anniversary of *Citizens United v. Federal Election Commission*, a Supreme Court decision, which, more than any other single event, ensured that spending on elections would skyrocket. In every election since that 2010 decision, wealthy special interests have spent increasingly more to influence voters, often through dark money channels that keep the sources of that spending concealed and often in coordination with the candidates and political parties intended to benefit from it.

Executive Summary (continued)

These conditions not only make corruption more likely, but they also drown out voters' voices, fostering political disengagement and apathy. More and more everyday Americans are apt to conclude that without the access and influence of rich, well-connected donors, they cannot meaningfully impact their government and its policies.

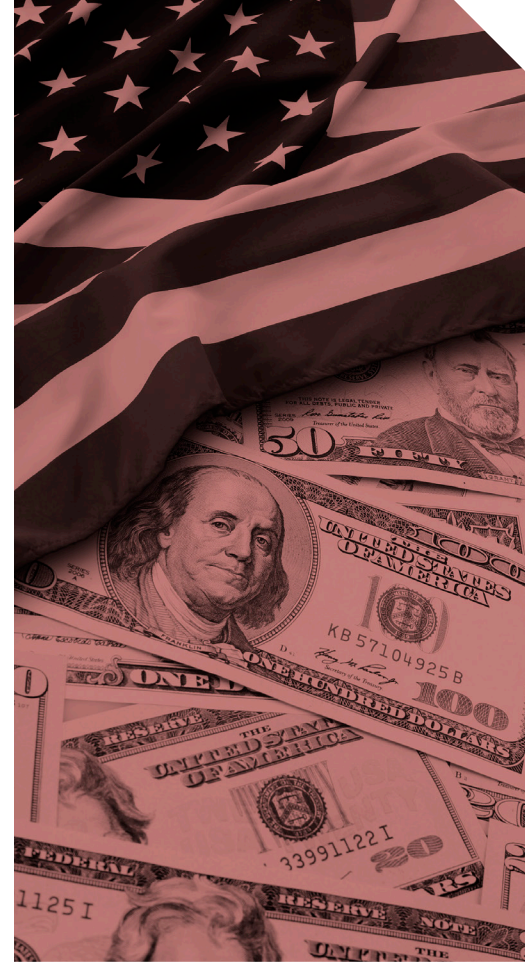
There is a direct line connecting these problems to the actions — and inaction — of the Federal Election Commission (FEC), a small regulatory agency with the vitally important mission of interpreting and enforcing federal campaign finance laws. Indeed, for more than 15 years, the FEC has been characterized by poor — and sometimes nonexistent — oversight and enforcement of those laws, which were enacted to ensure transparency and accountability in our elections, as well as to prevent corruption. For years, routine deadlocks, usually three-to-three votes among the FEC's six commissioners, resulted in the FEC's failure to fulfill its core responsibilities,

including investigating alleged violations, enforcing the law, and enacting sorely needed regulations and policies.

Now, the FEC is failing in a new and even worse way: by proactively dismantling the laws it is supposed to uphold. In more than 30 deregulatory decisions over just the past two years, a majority bloc, made up of four of the FEC's six commissioners, has used the agency's powers not to advance its vital mission but to fundamentally undermine it.

30+ decisions in just 2 years

IN MORE THAN 30 DEREGULATORY DECISIONS OVER JUST THE PAST TWO YEARS, A MAJORITY BLOC, MADE UP OF FOUR OF THE FEC'S SIX COMMISSIONERS, HAS USED THE AGENCY'S POWERS NOT TO ADVANCE ITS VITAL MISSION BUT TO FUNDAMENTALLY UNDERMINE IT.



Executive Summary (continued)

This report, which documents and analyzes the most impactful of these decisions, explains how the FEC is damaging our democracy on three major fronts:



1 COORDINATION BETWEEN SPECIAL INTEREST-FUNDED GROUPS AND CANDIDATES AND POLITICAL PARTIES

Texas Majority PAC

Allows candidates to coordinate with super PACs on paid canvassing programs that advocate for or against candidates.

Maggie for NH

Allows candidates' campaigns to coordinate with super PACs on text messages seeking donations.



2 FACILITATING THE USE OF SOFT MONEY TO INFLUENCE FEDERAL ELECTIONS

Nevadans for Reproductive Freedom

Allows federal candidates to solicit unlimited amounts of soft money (funds that don't comply with federal reporting requirements), which can be spent on registering and turning out their likely voters.

Waters

Allows nonfederal candidates, committees, or organizations to pay for federal election activity with soft money.

Greitens

Allows the use of state campaign funds, including money from corporate donors, to subsidize federal candidates' campaigns.



3 UNDERMINING TRANSPARENCY

SQI Limited, LLC

Allows wealthy special interests like corporations and billionaires to continue using "straw" donors to conceal their election spending from voters.

Allen Blue

Allows ultrawealthy donors to use living trusts to support federal candidates and parties without disclosing their involvement.

Online Disclaimers Rulemaking

Allows campaigns to pay for content promotion and possibly advertising on streaming platforms without "paid for by" disclaimers that provide voters with crucial information about who's paying to influence their vote.

Last Best Place PAC

Allows groups like super PACs to buy ads expressly advocating for or against candidates without filing reports that promptly disclose that spending.

Executive Summary (continued)



THIS REPORT HIGHLIGHTS TWO RECOMMENDATIONS THAT WOULD HELP FIX THE FEC

Recommendation One

Create a nonpartisan federal advisory panel of campaign finance experts to propose potential commissioners to serve on the FEC, avoiding the appointment of commissioners fundamentally hostile to the goals of campaign finance law and the FEC's basic mission and purpose.

Recommendation Two

Provide the FEC's nonpartisan Office of General Counsel more autonomy to investigate apparent violations of law, strengthening the enforcement process so that commissioners hostile to the rule of law would not be able to prematurely and arbitrarily shut down the enforcement process.



Introduction

A BRIEF HISTORY OF THE FEDERAL ELECTION COMMISSION

Laws aimed at preventing corruption, promoting transparency, and preserving accountability in government stretch back well over a century.¹



The Federal Election Commission is an independent regulatory agency tasked with interpreting, administering, and enforcing federal campaign finance laws.

But it wasn't until the 1970s that Congress passed the Federal Election Campaign Act (FECA), a landmark law aimed at regulating the influence of money in our political process.² To give the new law teeth and reestablish public trust in government after the sordid Watergate scandal, Congress created the Federal Election Commission (the FEC or Commission), an independent regulatory agency tasked with interpreting, administering, and enforcing federal campaign finance laws.³

Since it opened its doors on April 14, 1975,⁴ the FEC has been responsible for regulating money in politics at the federal level. It must ensure that voters have timely access to accurate information about the money spent to influence federal elections and enforce restrictions designed to reduce the undue influence of wealth in the electoral process, as well as to prevent real or apparent corruption.

The FEC is composed of six commissioners, no more than three of whom may be affiliated with the same political party; in practice, the Commission has virtually always been composed of three Republicans and three Democrats. Until the resignation of Commissioner Sean Cooksey in mid-January, the six commissioners were Republicans James "Trey" Trainor, Allen Dickerson, and Cooksey, and Democrats Ellen Weintraub, Shana Broussard, and Dara Lindenbaum. Bipartisanship is required for agency action: FECA requires the affirmative votes of at least four commissioners, thus requiring the support of at least one commissioner from another party, to approve decisions in nearly all of the FEC's core areas of responsibility, including issuing federal regulations, advisory opinions, policy statements, and enforcement decisions.⁵



Dysfunction Through Deadlock

2008–2022

For decades, the FEC generally achieved bipartisan consensus on important administrative decisions. But that changed around 2008, after Sen. Mitch McConnell (R-Ky.) became the Republican Party's leader in the Senate: As a staunch opponent of campaign finance laws,

The FEC cultivated a well-earned reputation as a dysfunctional campaign finance regulator and watchdog.

McConnell developed a practice of confirming Republican FEC commissioners who were fundamentally opposed to the campaign finance laws the agency is charged with upholding.⁶ As a result, the FEC began to routinely deadlock — with the agency's six commissioners voting 3–3 along party lines — on many of its most important responsibilities, an impasse that persisted for roughly 15 years through the tenures of numerous commissioners.⁷ Since it seldom did its job effectively, the FEC cultivated a well-earned reputation as a dysfunctional campaign finance regulator and watchdog,⁸ eventually prompting reform organizations like Campaign Legal Center (CLC) to advocate for structural changes at the agency.⁹

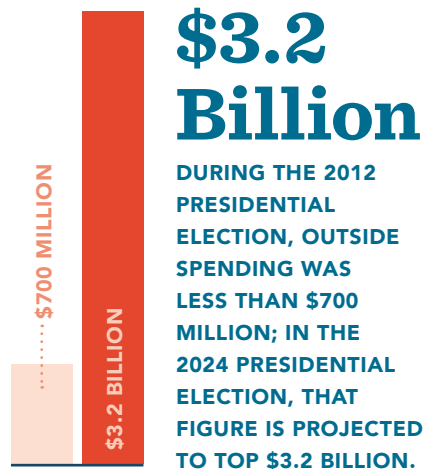
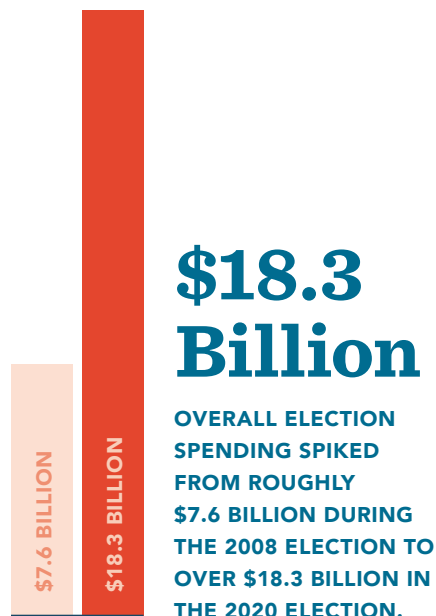


3 to 3

THE FEC BEGAN TO ROUTINELY DEADLOCK — WITH THE AGENCY'S SIX COMMISSIONERS VOTING 3–3 ALONG PARTY LINES — ON MANY OF ITS MOST IMPORTANT RESPONSIBILITIES.

Dysfunction Through Deadlock (continued)

The *Citizens United* Effect



The FEC's dysfunctional era coincided with a dramatic increase in overall election spending — which, in 2024 inflation-adjusted dollars, spiked from roughly \$7.6 billion during the 2008 election to over \$18.3 billion in 2020's election — as well as spending by “independent” outside groups like super PACs that are financed largely by special interests.¹⁰ Spurred by the Supreme Court's 2010 decision in *Citizens United v. FEC*,¹¹ outside election spending has more than quadrupled over the past 12 years: During the 2012 election, the first presidential contest after the *Citizens United* decision, outside spending totaled less than \$700 million, whereas in the 2024 presidential election, it is projected to top \$3.2 billion.¹²

The FEC's paralysis only made matters worse. For years, the agency failed to update its regulations to account for a rapidly evolving technological and campaign finance landscape. As new modes of digital communication (e.g., social media, streaming video apps) became commonplace and election spending skyrocketed, the FEC completed just one substantive rulemaking between 2012 and 2022,¹³ even as rulemaking petitions — submissions urging the agency to enact or amend a regulation and providing supporting evidence and arguments to spur such action — gathered dust.¹⁴ The upshot was that FEC regulations utterly failed to keep pace with major developments in campaign finance practice.¹⁵



Dysfunction Through Deadlock (continued)



On enforcement, the agency's record was no better: The FEC routinely declined to investigate major violations of federal campaign finance laws, and in the rare cases where the agency found a violation, it very rarely assessed a civil penalty that was more than a proverbial slap on the wrist.¹⁶ As a 2017 report authored by then-Commissioner Ann Ravel made clear, the FEC's enforcement deadlocks ensured that "violators of the law are given a free pass."¹⁷

The FEC's dysfunction-through-deadlock era had serious adverse effects on our democracy. Legal loopholes were created and expanded while the agency failed to promulgate new regulations, individuals and groups that engage in the political process were left without clear guidance regarding their legal obligations, and the enforcement of crucial legal limits was all too often missing. Yet in spite of these serious consequences, the agency's failure to fulfill its basic duties due to deadlock

had a relatively limited long-term impact. The failure of the Commission to issue a rule, advisory opinion, or enforcement decision was problematic, but did not control how the commissioners — or courts, prosecutors, or other government agencies that might have deferred to the FEC's interpretations of federal campaign finance law — must decide the same question if it is presented in the future.

As a 2017 report authored by then-Commissioner Ann Ravel made clear, the FEC's enforcement deadlocks ensured that "violators of the law are given a free pass."



From Dysfunctional to Destructive: The FEC's New Direction

2022–PRESENT

Over the past two years, the FEC has moved in an even more troubling direction. Since mid-2022, a new four-commissioner majority, with Democrat Dara Lindenbaum routinely joining Republicans Allen Dickerson, Sean Cooksey, and Trey Trainor, has in many key matters actively embraced an affirmatively deregulatory, anti-enforcement approach to the agency's core responsibilities. While one of these commissioners proudly embraced this "monumental shift in the law at the commission," as he declared to the *New York Times* that "[t]he deregulators are winning,"¹⁸

dissenting statements authored by Commissioners Ellen Weintraub or Shana Broussard have detailed various ways in which these decisions misread the law or unjustifiably depart from important precedents and open more pathways for money to influence elections.¹⁹

These 4–2 decisions vary in their particulars but share a common theme of prioritizing the interests of political parties, super PACs, dark money groups, and wealthy special interests over the American voters whose democratic rights the agency was created to protect.



4 to 2

SINCE MID-2022, A NEW FOUR-COMMISSIONER MAJORITY HAS EMBRACED AN AFFIRMATIVELY DEREGULATORY, ANTI-ENFORCEMENT APPROACH TO THE AGENCY'S CORE RESPONSIBILITIES.

From Dysfunctional to Destructive (continued)

The FEC's lodestar over its 50-year history has been protecting voters from the powerful, deep-pocketed entities that would use money to advance their own parochial interests. Yet the agency's recent spate of decisions, which primarily cater to those very entities, show just how much it has lost its way.

This new pattern of the FEC issuing *precedential and binding* decisions that affirmatively deregulate the billions of dollars flowing into congressional and presidential campaigns is rapidly eroding our already fragile campaign finance system. Put simply, the new trend of four-commissioner decisions that prioritize the interests of political spenders over the rights of American voters is even more alarming and destructive than the FEC's many years of deadlock and dysfunction.

The new trend of 4–2 decisions that prioritize the interests of political spenders is even more destructive than the FEC's many years of deadlock and dysfunction.

This report explains how these 4–2 FEC decisions have done real and lasting damage to the framework of laws that have protected voters and the integrity of our elections for the past 50 years. These decisions have opened the door to coordination between super PACs and candidates, undermined essential transparency rules that enable voters to make informed electoral choices, and make it easier for unregulated soft money to influence federal elections, while evading accountability for agency actions that disregard the law, agency precedent, and established norms and policies.

The report also documents how the FEC's destructive new direction is exactly the opposite of what American voters want. Bipartisan, nationwide surveys conducted in 2019 confirmed voters' overwhelming support for action to curtail the outsized role of money in our elections.²⁰ Likewise, a 2023 Pew Research poll found that among American adults, 8 in 10 believe campaign donors have too much influence and 7 in 10 favor limits on the amount of money organizations can spend on elections.²¹

8 in 10

BELIEVE CAMPAIGN DONORS HAVE TOO MUCH INFLUENCE.



7 in 10

FAVOR LIMITS ON THE AMOUNT OF MONEY ORGANIZATIONS CAN SPEND ON ELECTIONS.



The public's clear support for stronger campaign finance laws provides a glimmer of hope. Money dominating the democratic process is not an inevitability, but the result of a deliberate choice to disregard or dismantle the vital legal bulwarks that have long stood guard against corruption and distrust in the democratic process.

Over the past two years, four FEC commissioners have chosen to tear down these bulwarks, disregarding the risks to our democracy that this choice presents. Only by understanding this deregulatory movement and its deeply problematic effects can voters and their elected representatives work to make a different choice, to reestablish the money-in-politics guardrails and ensure that everyday Americans continue to have a real voice in the democratic process.

Coordination

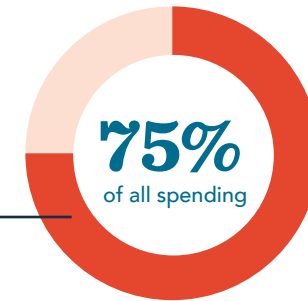
For years, the FEC has routinely failed to enforce the laws that require outside spending groups, including super PACs and dark money groups, to remain independent from candidates and political parties.



Allowing super PACs to directly shoulder even more costs for candidates' campaigns than they do currently will only enhance the already outsized political power of the wealthiest donors and special interests.

Despite the Supreme Court's assurance, in *Citizens United*, that corporate expenditures would have to remain independent, the reality has been the opposite — with super PACs that have accepted unlimited contributions and corporate money nevertheless coordinating their electoral spending with candidates by exploiting legal loopholes and lax enforcement.²² In many instances, the FEC deadlocked and dismissed complaints involving coordination without even conducting an investigation, despite being presented with ample facts indicating that candidates, their campaigns, or their agents were working with outside groups in ways that federal campaign finance laws don't allow.

As documented throughout this report, the FEC has recently shifted from deadlocking and doing too little about coordination to actively deregulating and making our elections more vulnerable. The FEC's years of dysfunction and inaction in enforcing the laws prohibiting coordination were bad enough: They facilitated the rampant growth of outside groups' spending, often in



THE BIGGEST DONORS AND SPECIAL INTERESTS ARE RESPONSIBLE FOR ROUGHLY THREE QUARTERS OF ALL PRESIDENTIAL SUPER PAC SPENDING.

direct cooperation with candidates. That has already promoted the influence and power of special interests in our elections and our government. But allowing super PACs to directly shoulder even more costs for candidates' campaigns than they do already will only enhance the already outsized political power of the biggest donors and special interests, who are responsible for roughly three quarters of all presidential super PAC spending, further diminishing the voice of ordinary Americans in our democratic process.²³



Texas Majority PAC

ADVISORY OPINION 2024-01

OVERALL EFFECT

Four commissioners opened a deeply problematic hole in the wall, supposedly preventing coordination between outside spenders and federal candidates when they allowed a state political committee to coordinate certain electoral activities with federal candidates. Federal candidates and outside groups took immediate advantage of the decision, which permitted an unprecedented surge of coordinated election spending to influence the 2024 election.



ORIGIN AND BACKGROUND

In Advisory Opinion 2024-01, Texas Majority PAC, a state committee not subject to federal contribution limits, asked the FEC to approve a paid canvassing program in which its personnel would “consult with federal candidates, party committees, and their agents,” and for which the literature it planned to distribute would “refer to federal candidates and political parties, and may also include express advocacy or its functional equivalent” — i.e., messages explicitly urging voters to support or oppose federal candidates.²⁴

FEC ACTION

The FEC voted 4-2 that Texas Majority PAC could coordinate with federal candidates on its paid canvassing program, including with regard to the creation of electoral canvassing literature and paying canvassers to distribute this literature and talk to voters at their doors.²⁵

ANALYSIS

The four commissioners behind this decision concluded that all of Texas Majority PAC’s canvassing expenses — including the costs to produce the canvassing literature and hire individuals to distribute it by going door to door trying to influence voters — could

be coordinated directly between an “independent” outside spending group and the federal candidates benefiting from the program. To reach this baffling conclusion, these commissioners relied on convoluted interpretations of the law, including that the electoral communications at issue were not “general public political advertising” and thus could not be considered a “public communication.”²⁶ Most concerning of all, their position flew in the face of a federal court decision, which concluded that coordinated expenditures like those at issue are subject to regulation.²⁷

Texas Majority PAC (continued)

IMPACT

The fallout from the Texas Majority PAC decision has been vast and immediate; it has already dramatically altered how political campaigns and outside groups operate in tandem. Political law practitioners have issued guidance to their politically active clients describing the decision as a blueprint for coordinating across what was previously viewed as a legally required firewall maintaining separation between candidates' campaigns and outside groups.²⁸ Indeed, the decision essentially invites federal candidates to directly offload the substantial costs of their field operations to "independent" groups, which can raise millions of dollars from a small pool of big money donors like corporations and billionaires.

Candidates and their wealthy benefactors immediately responded, pouring millions of dollars into the 2024 election based explicitly on this advisory opinion. Within days, Donald Trump's campaign advisers, specifically relying on the opinion, reached out to major outside groups to meet and

discuss how to collaborate more effectively, including by "shar[ing] any information you legally can about your priorities and plans," with respect to on-the-ground campaign work.²⁹ That fundamentally altered the Trump campaign's strategy, allowing the campaign to reallocate its spending based on outsourcing certain costs to the outside spending groups with which it was coordinating. According to Trump campaign political director James Blair, who "worked as the main bridge" with outside groups, "[t]he FEC ruling cleared the way for us to gain more benefit from soft money enterprises," allowing the campaign "to go wider and deeper on paid voter contact and advertising programs."³⁰

Perhaps the most prominent outside group that explicitly relied on the FEC's deregulatory move to help elect Trump was Elon Musk's America PAC, a super PAC that the billionaire tech mogul established to spend more than \$230 million supporting Trump's candidacy, including through field canvassing programs coordinated with



\$230+ million

**ELON MUSK'S AMERICA PAC SPENT
ROUGHLY \$230 MILLION SUPPORTING
TRUMP'S CANDIDACY.**

Texas Majority PAC (continued)

Trump's campaign.³¹ The FEC's Texas Majority PAC decision clearly shaped how Musk was able to support Trump's campaign.³² Almost overnight, America PAC began spending astounding sums on canvassing operations.³³ Together with the other ways Musk was able to pour his massive personal wealth into influencing the 2024 presidential election,



Musk almost single-handedly financed more than \$260 million in spending to support Trump.³⁴ According to one report, Musk-sponsored "canvassers knocked on close to 11 million doors in presidential battleground states since August, including about 1.8 million in Michigan and 2.3 million in Pennsylvania," with "[a]nother \$30 million ... spent on a large direct-mail program, and about \$22 million on digital advertising."³⁵

America PAC's coordinated election spending raises deep concerns about corruption. After being elected president, Trump quickly fulfilled his promise, which he had publicized during his campaign, to appoint Musk to lead a new Department of Government Efficiency that would work with Trump's administration to "dismantle Government Bureaucracy, slash excess regulations, cut wasteful expenditures, and restructure Federal Agencies."³⁶ Musk's role and overall financial influence with Trump is particularly concerning because several of his companies, particularly Tesla and SpaceX, regularly contract with, and face a raft of legal and regulatory challenges from, the federal government.³⁷

11 million doors

MUSK-SPONSORED CANVASSERS KNOCKED ON CLOSE TO 11 MILLION DOORS IN PRESIDENTIAL BATTLEGROUNDS STATES.

As such, Musk could use his quasi-governmental position and influence to protect his business interests, without regard to whether doing so is in the best interests of the country as a whole. The financial linkage between an extremely wealthy megadonor and a presidential candidate has rarely been so obvious or concerning.

In light of Trump's election, it appears likely that the tactics behind Musk's election-influence operation will be emulated in the future, and in fact, Musk has publicly stated that he intends to continue using America PAC to influence future elections.³⁸ That raises the grim specter of Musk and other ultrawealthy donors continuing to take advantage of the FEC's recent deregulatory interpretations of the law "to put [a] thumb on the scale like never before."³⁹



Maggie for NH

ADVISORY OPINION 2022-20

OVERALL EFFECT

By allowing campaigns and super PACs to coordinate on fundraising solicitations sent to prospective donors via text messages, four commissioners opened a new pathway for special interests to directly underwrite candidates' campaigns and thus gain more power and influence.⁴⁰



ORIGIN AND BACKGROUND

Maggie for NH, a Senate campaign, sought to pay the costs associated with sending prospective donors a mass text message with a link to a “split it” fundraising page — a webpage on which donors are asked to allocate their donation among multiple candidates and committees — featuring Maggie for NH and other campaigns and PACs.

FEC ACTION

The FEC decided, by a 4-2 vote, that coordination on this text message program — literal coordinated communications under any commonsense interpretation — did not meet the test for a coordinated communication because the text messages did not constitute “general public political advertising” or any other form of public communication.⁴¹

ANALYSIS

These four commissioners adopted a flawed view of the law, reasoning that text messages are not political advertising because the recipients supposedly opted in to receive the messages. This cramped view of general public political advertising, however, was narrower than prior FEC interpretations, which only required paying a third party to access an audience, something that Maggie for NH's proposed text message program clearly planned to do by paying a vendor to prepare and disseminate the

Maggie for NH (continued)

“split it” fundraising texts.⁴² Moreover, under FEC regulations, at least one type of public communication — a mass mailing — is any substantially similar mailing sent to 500 or more recipients within 30 days, regardless of whether the recipients have opted in to receive the communication, undermining the commissioners’ reliance on an opt-in feature as the basis for this decision.

IMPACT

As a result of this decision, campaigns and super PACs backed by big money donors can coordinate on their fundraising programs, flouting the laws that generally prohibit such coordination and require super PACs to remain independent. Super PACs could invoke this advisory opinion to substantially underwrite the fundraising costs of candidates

they support. It’s hard to see how super PACs paying a major portion of candidates’ fundraising costs can be squared legally with the Supreme Court’s decisions in *Buckley v. Valeo* and *Citizens United*, which allow for unlimited independent spending in support of candidates and political parties *precisely because of the independent nature* of that spending.



Soft Money

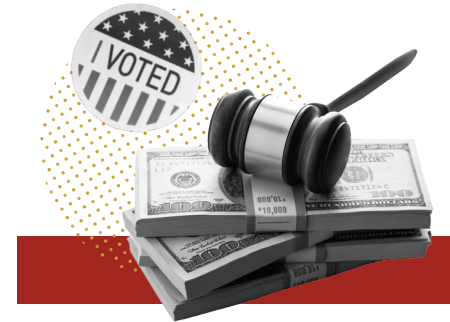
“Soft money” refers to political spending that doesn’t comply with federal campaign finance rules because it is raised from sources prohibited from making federal contributions (like corporations and federal contractors) or in amounts that exceed federal contribution limits.

Soft money is the perfect tool for corporations, wealthy individuals, and special interest groups to exert outsized influence over candidates and officeholders.

In many cases, contributions of soft money are not reported to the FEC. Classic examples of soft money include funds held by state political committees, including the non-federal accounts of state political parties, nonprofit organizations, and LLCs. These entities do not report to the FEC and are unconstrained by federal contribution limits and source prohibitions.

Super PACs are another source of soft money: While they must file disclosure reports with the FEC and abide by some of FECA’s rules, they are not subject to FECA’s contribution amount limits or its prohibition on contributions from corporations and unions. Because super PACs are not subject to all of FECA’s requirements, the money that flows through them is soft money.

Soft money can present two fundamental problems: When it is not reported to the FEC (such as money from nonfederal committees), it undermines transparency, and when it circumvents federal contribution limitations and prohibitions (such as an excessive or corporate contribution given to a super PAC),



it increases the risk of actual and apparent corruption. In short, soft money is the perfect tool for corporations, wealthy individuals, and special interest groups to exert outsized influence over candidates and officeholders.

While soft money has always been a problem, during the 1990s, candidates and political parties substantially expanded its use to influence federal elections.⁴³ During that period, political parties commonly solicited huge contributions from corporations and wealthy individuals while promising special access to candidates in exchange, and candidates often worked with nonprofit groups to buy so-called “issue ads” with soft money.⁴⁴

Soft Money (continued)

Concerned with the volume of soft money entering federal elections and the rising risk that federal candidates and parties were in danger of becoming beholden to their soft-money benefactors,⁴⁵ Congress passed the Bipartisan Campaign Reform Act (BCRA) in 2002 — the most significant federal campaign finance reform bill since the passage of FECA in the 1970s — to get soft money out of federal elections.⁴⁶

BCRA prohibits national political parties and federal candidates and officeholders, as well as entities they establish, finance, maintain, or control (such as a candidate's campaign or leadership PAC), from soliciting, receiving, directing, transferring, or raising soft money in connection with any election — local, state, or federal.⁴⁷ In BCRA, Congress also barred federal candidates from raising and spending soft money in connection with a federal election, including spending on federal election activity (FEA),⁴⁸ which includes voter registration within 120 days of a federal election; voter identification and get-out-the-vote (GOTV) activity in connection with an election that features a federal candidate on the ballot; and public communications that promote, attack, support, or oppose a federal candidate.⁴⁹

BCRA was intended to stop federal candidates from directing wealthy donors to allied entities that spend funds on both state and federal elections and thus influence federal elections while evading federal regulatory oversight.⁵⁰ It succeeded in altering the political landscape and closing the most egregious channels for soft money to flow into federal elections. But like other areas of federal campaign finance law, the FEC initially enforced it before entering a period where the agency routinely deadlocked, which stalled progress but at least avoided actively tearing down the law and its protections for voters.

The FEC's recent shift to an affirmatively deregulatory and anti-enforcement approach to soft money offers wealthy donors and corporations renewed opportunities to funnel huge sums of money into federal elections and exert outsized influence over the candidates soliciting and benefiting from their contributions. These decisions are making our democratic process less representative, less accountable, and less transparent. They threaten to return us to the bad old days of secretive, corrupting soft money.



The FEC's deregulatory decisions are making our democratic process less representative, less accountable, and less transparent.



Nevadans for Reproductive Freedom

ADVISORY OPINION 2024-05

OVERALL EFFECT

Four commissioners effectively greenlit candidates soliciting unlimited amounts of soft money to be spent in connection with registering and turning out their likely voters.⁵¹



ORIGIN AND BACKGROUND

Nevadans for Reproductive Freedom (NRF), a Nevada state ballot measure committee, asked the FEC whether federal candidates and officeholders could solicit funds on its behalf from sources and in amounts prohibited by federal law, i.e., soft money.⁵²

FEC ACTION

Four commissioners concluded that federal candidates and officeholders could solicit soft money contributions for a ballot measure committee engaged in federal election activity (FEA).⁵³

ANALYSIS

BCRA bars federal candidates and officeholders from soliciting soft money “in connection with an election for Federal office, including funds for any Federal election activity” or “in connection with any election other than an election for Federal office.”⁵⁴ Federal election activity includes voter registration and GOTV activities conducted close in time to, or in connection with, an election in which a federal candidate is on the ballot.⁵⁵ BCRA thus plainly prohibits federal candidates and officeholders from soliciting donations for state ballot measure committees that may engage in FEA unless the solicitations are limited to funds that comply with the “limitations, prohibitions, and reporting requirements of [the] Act.”⁵⁶

Nevertheless, the four commissioners voting for this decision concluded that NRF’s solicitations would not be in connection with any election based on an interpretation of BCRA that excludes state ballot measure elections from the scope of relevant state elections.⁵⁷ They also concluded that the solicitations would not be in connection with FEA because the federal candidates and officeholders would not be “solicit[ing] funds earmarked for federal election activity,”⁵⁸ although BCRA does not include or even suggest an earmarking requirement for the bar on federal candidates and officeholders soliciting soft money for FEA to apply.

Nevadans for Reproductive Freedom (continued)

IMPACT

By inventing an earmarking requirement for BCRA's prohibitions to apply, these commissioners improperly narrowed the law and undermined Congress's intent to foreclose the abuse of soft money.⁵⁹ Under this flawed interpretation, candidates and federal officeholders may solicit unlimited amounts of money — from sources prohibited by federal law, and on behalf of entities that do not report to the FEC — that can be used for activities that will ultimately benefit their campaigns.

For example, a congressional candidate who supports legal access to abortion could solicit millions of dollars from corporations on behalf of an organization supporting an abortion-rights ballot measure.⁶⁰ The organization could then spend that money to register and turn out voters that support its mission in an election where the ballot includes both the state ballot initiative and the federal congressional candidate who raised money for the organization, mindful that voters supportive of the state ballot initiative are also likely to vote for the federal candidate. The candidate thus stands to reap a huge electoral benefit from the corporate money they raised on the group's behalf,

despite the fact that FECA prohibits the candidate from soliciting or accepting corporate money for their campaign.

Although the public will not be able to easily detect when a candidate solicits funds for a ballot measure committee because the identity of fundraisers does not need to be reported, candidates across the country are likely to rely on this decision to raise soft money for FEA, and the effects of that soft money will likely have lasting impacts on our elections.

Under this flawed interpretation, candidates and federal officeholders may solicit unlimited amounts of money — from sources prohibited by federal law, and on behalf of entities that do not report to the FEC — that can be used for activities that will ultimately benefit their campaigns.





Waters

ADVISORY OPINION 2024-02

OVERALL EFFECT

In the context of nonfederal entities paying for communications, four commissioners essentially read out of existence BCRA's requirement that funds raised or spent in connection with a federal election or to pay for FEA must comply with federal reporting requirements.

ORIGIN AND BACKGROUND

Representative Maxine Waters's congressional campaign sought to publish brochures featuring Waters's positions on and endorsements of federal candidates, as well as nonfederal candidates and ballot measures.⁶¹ Waters's campaign planned to pay for the brochures, then seek reimbursement from the featured candidates and committees, with each reimbursing an amount proportionate to their allotted space in the brochure.⁶² Waters's campaign stated that it would only solicit and receive "federally permissible funds" from the nonfederal candidates and committees.⁶³

FEC ACTION

The FEC, by a vote of 4-2, approved the request while adopting a cramped interpretation of "federally permissible funds" that does not require compliance with FECA's reporting requirements.⁶⁴

ANALYSIS

Contrary to FECA's clear language and purpose, this decision permits a federal candidate to solicit and receive funds from a nonfederal source to pay for election-influencing communications, even if the origin of those funds is effectively untraceable because the donations have, to that point, never been reported to the FEC.⁶⁵ In other words, under these four commissioners' interpretation of BCRA, groups that don't otherwise report to the FEC, like a state candidate's campaign, a nonfederal independent expenditure committee, or a ballot measure committee, can pay (and federal candidates can ask them to pay) for federal election activity with funds whose source hasn't been disclosed to the FEC.⁶⁶ This creates a transparency vacuum when such nonfederal groups spend money on

communications that influence federal elections, since their spending can't be traced back to its source (the way a federal committee's funds could be).

IMPACT

This decision opens the door to a whole universe of soft money funding for communications and other activity clearly intended to influence federal elections, a possibility not lost on one commissioner voting with the majority, who issued a concurring statement remarking on how remarkable this decision was.⁶⁷ Funding federal election activity with effectively untraceable funds may benefit federal candidates eager to have their campaigns subsidized with soft money, but it harms voters by undermining their fundamental right to know who is spending money to influence their vote.



Greitens for U.S. Senate

MUR 7938

OVERALL EFFECT

Four commissioners refused to enforce the laws barring soft money, allowing a state campaign funded by big corporate donors to subsidize a federal candidate's campaign for the U.S. Senate.



ORIGIN AND BACKGROUND

In late 2021, CLC filed a complaint alleging that Eric Greitens, who was running for the U.S. Senate in Missouri after previously serving as the state's governor,⁶⁸ was spending soft money from his state campaign, which had accepted contributions from corporations and in excess of the federal limits, to benefit his federal Senate campaign.⁶⁹ Specifically, it appeared that Greitens's state campaign paid to update Greitens's gubernatorial campaign website and then transferred the website to the Senate campaign, which kept the website almost exactly the same.⁷⁰ The FEC's nonpartisan Office of General Counsel (OGC) recommended finding reason to believe Greitens and both his federal and state campaigns violated the law.⁷¹

FEC ACTION

The FEC voted 4–2 to dismiss the complaint, accepting at face value Greitens's denial of wrongdoing.⁷²

ANALYSIS

Despite scant evidence to support his assertions, the four commissioners voting to dismiss the matter basically took Greitens at his word when he claimed that he personally owned the website, had previously licensed it to his state campaign, and was now licensing it to his federal campaign.⁷³ Greitens also failed to explain why the state campaign had paid expenses related to the website if he owned it and offered no rationale for why the state campaign's improvements to the website were not in-kind contributions to the federal campaign.⁷⁴

IMPACT

By allowing a state campaign to subsidize a federal campaign supporting the same candidate, the four commissioners provided a workaround to evade BCRA's clear prohibition on soft money being used to influence a federal election. When federal candidates benefit from the sort of big money corporate and special interest donations that Greitens's state campaign accepted, voters are left with less transparency and less of an electoral voice than they would otherwise have.

Transparency

Voters have a fundamental right to know who is spending money to influence their vote, which is why federal laws require that electoral spending be disclosed to the public.

The FEC is making it harder, not easier, for voters to access the information they need to cast a ballot with full knowledge of who has tried to influence their choice.

Wealthy special interests sometimes attempt to evade the disclosure that is legally required of them. The reasons for such secret spending vary, but often include a desire to avoid being publicly associated with particular candidates, controversial positions, or provocative messages, or, more nefariously, to conceal electoral spending that may be illegal. When wealthy donors secretly spend money to influence elections, it undermines voters' democratic rights and exacerbates existing inequality in our political process.⁷⁵

Since *Citizens United* opened the door to corporate contributions and expenditures, wealthy special interests have often used corporate entities like limited liability companies (LLCs) or trusts to conceal the true,



ultimate source of election spending, thereby concealing their identities. As recent FEC decisions illustrate, the agency is making it harder, not easier, for voters to access the information they need to cast a ballot with full knowledge of who has tried to influence their choice.



SQI Limited, LLC

MUR 8058

OVERALL EFFECT

Four commissioners refused even to investigate an apparent straw donor scheme used to conceal who gave \$300,000 to a super PAC, sending the message that there is little downside risk for wealthy special interests actively trying to engage in unlawful, secret election spending.



ORIGIN AND BACKGROUND

In August 2022, CLC filed an FEC complaint alleging that an apparent shell company called SQI Limited, LLC was used in a straw donor scheme, in which a donor advances or reimburses money to another person or a corporate entity — the straw donor — which the straw donor uses to make a political contribution without disclosing the identity of the original donor. Federal laws have long

prohibited these types of schemes, which conceal the identity of the true donor from voters.⁷⁶ SQI Limited had no apparent public footprint yet purported to make a \$300,000 political contribution just three months after its creation. The FEC's nonpartisan Office of General Counsel recommended an investigation, advising that the Commission should find reason to believe SQI had acted as an illegal straw donor.⁷⁷

FEC ACTION

The FEC voted 4–2 to dismiss the complaint, declining to investigate SQI's contribution.⁷⁸

ANALYSIS

CLC alleged in its complaint that the true source of this contribution appeared to be Herzog, a Missouri railway and contracting company.⁷⁹ Herzog asserted that SQI was not a shell company but was engaged in legitimate business operating quarries. But the documents it presented to prove that it was conducting

SQI Limited, LLC (continued)

business were all dated months after CLC's complaint.⁸⁰ Herzog's response also did not clearly state whether Herzog had supplied SQI's initial funding; it stated only that SQI's initial funding came from "affiliated companies in the form of inter-company transfers."⁸¹

Nevertheless, three of the four commissioners who voted to dismiss the matter explained that Herzog had "[demonstrated] that the funds used for the contribution belonged to SQI ... [and] were initially transferred to it for business purposes," wholly failing to account for the fact that all of the documents supposedly establishing SQI's "business purposes" postdated not only the \$300,000 contribution, but also CLC's complaint alleging that the contribution was illegal.⁸²

Straw donor schemes are among the most severe violations of FECA, undermining the basic transparency voters need to make informed electoral decisions.

IMPACT

Straw donor schemes are among the most severe violations of FECA,⁸³ undermining the basic transparency voters need to make informed electoral decisions. Yet the FEC's refusal to investigate them signals that violations will either go undetected or uninvestigated, and thus that there is little risk to keeping election spending secret

by funneling contributions through corporate entities used to conceal the true sources of those funds.⁸⁴ By failing to create accountability for apparent violations of this core aspect of FECA's disclosure framework, the four commissioners behind this dismissal promoted a culture of impunity that harms voters' right to know who is spending to influence their vote.





Allen Blue

ADVISORY OPINION 2022-24

OVERALL EFFECT

Four commissioners essentially created a new secret spending vehicle, living trusts, which wealthy individuals can use to influence elections without voters learning of their involvement.



ORIGIN AND BACKGROUND

Allen Blue sought approval to create a living trust to advance progressive causes through donations to nonprofits, as well as federal candidates and committees.⁸⁵ He indicated that he would not earmark particular funds for specific candidates or PACs but would provide general guidelines to the trustees selected to administer the trust and instruct them that the trust's funds be used to, among other things, "further [his] support for progressive candidates."⁸⁶

FEC ACTION

The FEC decided, by a 4-2 vote, that wealthy donors may avoid being disclosed as the source of political spending if they arrange for their donations to be distributed through a living trust where the trustees will decide who receives the trust's funds.⁸⁷

ANALYSIS

Under FEC regulations, earmarked contributions given through an intermediary, such as a fundraising bundler or a contribution platform like WinRed or ActBlue, must be reported as contributions from the donor, not the intermediary: When one person gives money to another with specific instructions about which candidate or political committee the money is for, the candidate or committee receiving the funds must report the donor giving the money, not the intermediary, as the contributor.⁸⁸

In situations where the intermediary has "direction or control" over the recipient — if they get to decide who gets the money — the law treats *both*

Allen Blue (continued)

the donor and the intermediary as the source of the contribution for the purposes of federal disclosure requirements and contribution limits.⁸⁹ This latter scenario is what Blue's request proposed: The trustees would get to decide how to spend the money Blue put in the trust. Therefore, under FEC rules, both Blue (the donor) and the trust (the intermediary) should be reported as the contributors. That's not only what federal law requires, it's also necessary to prevent living trusts from becoming yet another vehicle for wealthy donors to conceal big election spending. Yet the four commissioners backing this decision decided otherwise, undermining transparency.

As with other dark money schemes, using a trust to bankroll candidates and their allied super PACs hides the true source of the money from the public while still allowing donors to privately curry favor with the candidates benefiting from their financial support.

IMPACT

These commissioners' disregard of the FEC's own regulations to create this new secret spending vehicle deals a major blow to transparency, because living trusts aren't required to publicly report their donors.⁹⁰ A trust can be set up and given an obscure, even meaningless name, loaded up with a wealthy person's money, and then, based on guidelines from the donor, the trustees can make contributions to federal candidates and committees —

all without the original source of the money ever being identified. The resulting concealment of the donor's identity also makes it easier for wealthy donors to evade or circumvent contribution limits.

As with other dark money schemes, using a trust to bankroll candidates and their allied super PACs hides the true source of the money from the public while still allowing donors to privately curry favor with the candidates benefiting from their financial support.

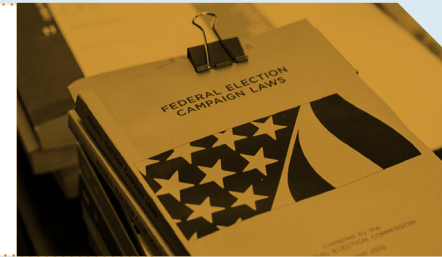




2023 Online Disclaimers Rulemaking

OVERALL EFFECT

Four commissioners narrowed a proposed new rule for online political ad disclaimers, leaving voters in the dark about who paid for influencer promotions or other ads they see on social media or streaming apps.



ORIGIN AND BACKGROUND

In 2022, after it languished at the agency for more than a decade⁹¹ and following many rounds of comments and multiple false starts, the FEC finally released a proposal to update the rules governing disclaimers on paid political ads disseminated online.⁹² The draft regulation would have required disclaimers on all “communications placed or *promoted* for a fee on another person’s website, digital device, application, *service*, or advertising platform.”⁹³ But mere days before the Commission was scheduled to

vote on the draft regulation, it released an alternative draft that omitted the key phrases “promoted for a fee” and “service” without explanation.⁹⁴

FEC ACTION

Without affording an opportunity for any public comment on the 11th-hour, narrower draft rule, the FEC failed (by a vote of 2–4) to approve the original, more comprehensive proposed rule.⁹⁵

ANALYSIS

By omitting the key phrase “promoted for a fee,” the four commissioners who voted against the broader rule essentially supported the anti-transparency position that disclaimers are unnecessary for the paid promotion of campaign content. Examples of such content include when a campaign pays a social media platform to elevate a post; when a content creator is paid to turn an organic post into an ad; when an influencer is paid to reshare content with their followers, conceivably

2023 Online Disclaimers Rulemaking (continued)



elevating its visibility to thousands or even millions of new viewers; or when someone pays an influencer to promote a candidate on the influencer’s own social media accounts. And the FEC later explicitly indicated that disclaimers *aren’t* required for posts that influencers place on their own social media feeds, even if *they’re being paid* by a candidate or political group to *promote* them — which amounts to content promoted for a fee by any reasonable, commonsense understanding.⁹⁶

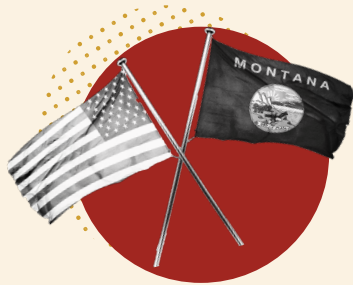
IMPACT

While the new internet disclaimer rule requires “paid for by” statements on most online political ads, it fails to clearly require disclaimers for all paid political advertising on streaming apps and social media platforms, both of which have become major tools for political advertisers to reach voters. This shortcoming means that this long-overdue rule will still leave voters uninformed about misleading or even deceptive influencer messages that might appear organic but are actually paid for by campaigns or super PACs. Likewise, the omission of the word “services” leaves unclear whether a disclaimer would be required for political ads run on streaming platforms such as Hulu or Netflix.⁹⁷

The upshot is that Americans continue to lack comprehensive information about who is paying for political messages seeking to influence their votes online, including messages disseminated through the “creator economy” that, according to a recent *Washington Post*

report, is “a global industry valued at \$250 billion, with tens of millions of workers, hundreds of millions of customers and its own trade association and work credentialing programs.”⁹⁸ Voters will be left to wonder whether the celebrities and online personalities they follow genuinely support a candidate or have been paid for their endorsement. As the younger generations that most heavily use these technologies and engage with influencers become older and participate in the political process, the failure to require disclaimers in this area will likely make this transparency lapse even more pronounced.

Voters will be left to wonder whether the celebrities and online personalities they follow genuinely support a candidate or have been paid for their endorsement.



Last Best Place PAC

MUR 8216

OVERALL EFFECT

Four commissioners refused to enforce a vital disclosure law with respect to ads expressly advocating for or against a federal candidate, allowing advertisers to deprive voters of timely, important information about who is paying for such ads.⁹⁹



ORIGIN AND BACKGROUND

Voters have a right to know who is paying for political ads; that information allows them to assess the motives and credibility of ads' messages.¹⁰⁰ This is why FECA requires all persons who pay more than a threshold amount for an "independent expenditure" (IE)¹⁰¹ — an ad that expressly advocates for or against a candidate and isn't coordinated with a candidate's campaign or a political party — to file a report with the FEC within 48 hours, or within 24 hours if the ad is disseminated in the period just before an election.¹⁰² In addition, anyone running an IE that does not file regular reports with the FEC,

such as a 501(c)(4) nonprofit or an LLC, must file a quarterly statement detailing contributor information.¹⁰³

In February 2024, CLC filed a complaint alleging that Last Best Place PAC, a super PAC, failed to file a required disclosure report in connection with a television ad expressly advocating the defeat of Tim Sheehy, a candidate for the U.S. Senate in Montana, during the 2024 Republican primary election.¹⁰⁴ CLC argued that the ad was express advocacy because it clearly identified Sheehy as a candidate and attacked his character and fitness for office, such that the ad could only reasonably be interpreted as a call to vote

against Sheehy.¹⁰⁵ The FEC's lawyers agreed, recommending that the Commission find reason to believe that the ad was an IE and that the super PAC violated the law by not filing an IE report.¹⁰⁶

FEC ACTION

The FEC, in a 4–2 decision, dismissed the complaint and offered a one-paragraph explanation that the ad did not contain express advocacy because reasonable minds could differ on whether an ad attacking a candidate's character "encourages actions to elect or defeat" that candidate when aired approximately nine months before an election.¹⁰⁷

Last Best Place PAC (continued)

ANALYSIS

The pivotal question was whether the communication in question “expressly advocate[d]” for or against a candidate.¹⁰⁸ Under the FEC’s regulations, express advocacy may take the form of so-called “magic words” like “vote for,” “vote against,” “reelect,” “support,” “cast your ballot for,” or other messages that mean about the same,¹⁰⁹ or language that “[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s).”¹¹⁰ A communication constitutes express advocacy under the latter definition if (1) it has an “electoral portion ... [that] is unmistakable, unambiguous, and suggestive of only one meaning,” and (2) “[r]easonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.”¹¹¹

The four commissioners who concluded that the “Shady Sheehy” ad did not constitute express advocacy under either definition did not even attempt

to identify any “other kind of action”¹¹² besides opposing Sheehy’s election that the ad supposedly encouraged. The four commissioners also made up a new requirement that an ad can only “expressly advocate” if it is aired closer in time to an election; there is no such temporal requirement in the statute or FEC regulations, and their position disregards the electoral impact of political ads that try to tarnish a candidate’s reputation early in a race.

IMPACT

Because Last Best Place PAC did not file the required IE report, Montana voters were deprived of real-time information indicating that the opaque super PAC actually paid Democratic-affiliated vendors for the “Shady Sheehy” ad, a fact that only came to light almost five months after the ad ran.¹¹³ Indeed, the super PAC eventually had to disclose information that made it clear it was actually a shell for Democrats to influence the Republican primary in an effort to handpick the candidate they thought would be easier to defeat in the general election: The vendors the PAC paid were affiliated with the Democratic party, and

almost all of the PAC’s funding came from a prominent Democratic 501(c)(4) dark money group.¹¹⁴ Had voters known that when the ad ran, the ad may have created a very different impression.

Timely disclosure with regard to political ads is crucial to bringing dark money into the light and upholding voters’ right to know who is funding political ads. CLC has filed a lawsuit challenging the FEC’s dismissal as contrary to law,¹¹⁵ asking the courts to correct the FEC’s error in this case and rule that ads containing express advocacy must be reported as FECA requires and as voters deserve.

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Dishonorable Mentions

Miscellaneous 4-2 Decisions

While most of the FEC's recent deregulatory decisions fall into one of the three categories discussed, this section briefly touches on several additional markers of the agency's willingness to disregard the law or its own policies or norms, undermining its mission of protecting voters.

Not all of the FEC's 4-2 decisions fall into a clear category, but they nevertheless have harmed voters and undermined important legal guardrails.





Colorado Republican State Central Committee

ADVISORY OPINION 2023-03

ORIGIN AND BACKGROUND

The Colorado Republican State Central Committee (CRSCC) asked to establish a legal fund to finance litigation challenging the constitutionality of a state ballot initiative.¹¹⁶

FEC ACTION

The FEC unanimously approved CRSCC's request, concluding that the legal fund would not violate FECA because its purpose was not to influence federal elections but to challenge a state law,¹¹⁷ but four commissioners issued an additional statement opining that certain safeguards the requester intended to establish were unnecessary.¹¹⁸

ANALYSIS + IMPACT

The FEC's unanimous approval of the request should have been the agency's last word on this straightforward request, but it wasn't. Four commissioners issued a superfluous statement opining that an additional safeguard CRSCC intended to establish, an independent governing board for the legal fund, was not necessary based on the committee's "representations that the sole purpose of the fund will be to finance a forthcoming lawsuit in which it will seek to challenge the constitutionality of

Colorado's law." In other words, these four commissioners sought to make it explicitly clear that *promising* the legal fund would not be used to influence federal elections was good enough; no verification was needed.

These commissioners' statement denigrating the proposed adoption of a compliance mechanism was unnecessary and inappropriate, and it served to highlight their hostility toward the critical principles that the FEC is charged with protecting.



New Press Office Policy and Audit Procedures

ORIGIN AND BACKGROUND

Four commissioners made two concerning policy changes that curtailed the agency's transparency and accountability to the public.

FEC ACTION

In April 2023, the FEC voted 4–2 to prohibit the agency's press office from continuing its long-standing practice of confirming or denying the agency's receipt of a complaint in response to press inquiries.¹¹⁹ In May 2023, the FEC updated its audit procedures through an abbreviated process that failed to provide for meaningful public comment, with two commissioners seeking to delay a vote until after a public comment period but four commissioners voting to approve the new audit procedures without such an opportunity.¹²⁰

ANALYSIS + IMPACT

While federal law prohibits the FEC from publicly divulging substantive information about an open enforcement matter,¹²¹ it does not prohibit the agency from acknowledging whether a complaint has been filed, and the FEC Press Office had for years provided such acknowledgement when asked. The FEC's new Press Office policy appears to serve no one's interests and could even harm the interests of those who are falsely accused of having an FEC complaint lodged against them, since the FEC's staff cannot verify whether or not there is an open FEC enforcement matter against anyone.¹²²

The FEC's new audit processes, along with documents explaining the proposed changes, were published just days before the Commission approved them, effectively precluding any meaningful

opportunity for the public, including committees that might be directly impacted by these policy changes, to weigh in on what the Commission was contemplating. Two commissioners argued that the FEC should postpone the vote on this proposal in order to allow for an appropriate public comment period, but the other four commissioners voted to approve the new procedures immediately.¹²³

When altering standards for the public to comply with a regulator's expectations, federal agencies ought to take the public's response into consideration, which requires offering a *meaningful* opportunity to review or comment on proposed changes.¹²⁴ Yet four commissioners disregarded this basic tenet of the public's right to have a responsive government that is accountable for its decisions and actions.



LOU PAC

MUR 7961

ORIGIN AND BACKGROUND

Donors make political contributions to influence elections and support the candidates they prefer, not to pay for politicians' personal expenses. That's one reason federal campaign finance laws prohibit the personal use of campaign funds, which involves using political contributions to pay for expenses that would exist irrespective of the recipient's campaign for office or official duties as a federal officeholder, e.g., a home mortgage, vacation, or personal entertainment.¹²⁵ Candidates and elected officials cannot spend campaign funds on these items because self-enrichment through campaign funds undermines public trust and politicians' accountability to their voting constituents.

A 2022 complaint alleged that Lou Barletta, a candidate for U.S. Senate, used political contributions for personal use when his leadership PAC made rent

payments to his wife for a property they jointly owned. Nearly every member of Congress has a leadership PAC,¹²⁶ and in addition to serving their original intended purpose, supporting the campaigns of candidates affiliated with the same political party as the PAC's sponsor, these committees have also become a common means to finance the personal expenses of members on their donors' dime, such as high-end restaurants, resorts, and members-only clubs.¹²⁷

FEC staff recommended dismissing the Barletta complaint because the payments appeared to be of fair market value and therefore would not qualify as personal use.

FEC ACTION

The FEC dismissed the allegations by a 4–2 vote, but under the more problematic rationale that the personal use rules don't even apply to leadership PACs.¹²⁸

ANALYSIS + IMPACT

For years, when anyone alleged that a leadership PAC was being used to unlawfully pay for personal expenses, the FEC would deadlock, not definitively answering the question either way. Now, however, instead of deadlocking, four commissioners have affirmatively declared that the personal use prohibition doesn't apply to leadership PACs, embracing a specious interpretation of FECA to approve the deliberate misuse of donors' money.

By stating that leadership PACs aren't even covered by the personal use prohibition, which means they can be used to pay for personal expenses, ostensibly without limit, this decision sends the wrong signal to every candidate and federal officeholder: The FEC has gone from failing to stop graft to giving it a green light. As a result, leadership PACs will continue to be used as a means to finance luxury lifestyles for politicians, now with the agency's blessing.

**For the FEC to work,
commissioners must see
their purpose as protecting
voters, not the political
parties or megadonors
trying to advance their
own interests.**



Conclusion and Recommendations

For 50 years, the FEC has been charged with preserving the rights of everyday Americans from the corrosive influence of big money.

For the past 16 years, the FEC has largely failed in fulfilling its duty, but it can be fixed. It must return to fulfilling its crucial role: preserving the rights of everyday Americans from the corrosive influence of big money.

Unfortunately, for the past 16 years, the FEC has largely failed in fulfilling that crucial responsibility, initially because of routine deadlocks that crippled its ability to act and more recently through deregulatory decisions that are destroying vital legal measures designed to ensure transparency and accountability, and prevent the wealthy and powerful from drowning out the voices of everyday Americans.

Yet what has been broken can be mended. The FEC can be fixed so that it can return to fulfilling its crucial role; in fact, such reforms have already been proposed.¹²⁹ For starters, the selection process for FEC commissioners needs to be changed. The root of many problems at the agency is a selection process, driven by opponents of campaign finance laws like Sen. Mitch McConnell,



that prioritizes the appointment of commissioners who are ideologically hostile to campaign finance laws, as well as the basic purpose of the agency. For the FEC to work, commissioners must see their purpose as protecting voters, not the political parties or megadonors trying to advance their own interests. A far better approach would be to create a nonpartisan advisory panel of campaign

Conclusion and Recommendations (continued)



finance experts to propose potential commissioners, which would promote the selection of individuals who pledge to advance the agency's purpose and uphold the rule of law. The recently announced resignation of Commissioner Sean Cooksey will create an opportunity to appoint a new FEC commissioner, and reforming the selection process would help ensure that new commissioners actually believe in and support the campaign finance laws the FEC was created to implement and enforce.

In addition, the FEC's nonpartisan lawyers should be given more autonomy to investigate apparent violations of law, strengthening the enforcement process so that commissioners hostile to the law would not be able to prematurely and arbitrarily shut down the process.¹³⁰

Big money and secret spending in our elections are deeply unpopular, yet year after year, they continue unchecked. For that to change, voters must first be better informed about what is happening at the FEC. This small agency casts a big shadow: Its rampant undermining of campaign finance laws demonstrably

impacted the 2024 elections, and without a serious effort to fix the FEC, future elections will follow suit. Billions of dollars from wealthy special interests will continue to pour in, often without much-needed disclosure, to help elect candidates who are more likely to be beholden to these deep-pocketed donors bankrolling their path to elected office.

The FEC's choice to undermine the laws that were designed to prevent that from happening should deeply concern anyone who cares about the health of our democracy. By better understanding that choice, the risks it presents, and what can be done about it, everyday Americans can start doing the work necessary to get the FEC back on track.

Big money and secret spending in our elections are deeply unpopular, yet year after year, they continue unchecked.

**By better understanding
what is happening at the
FEC and why it matters,
everyday Americans
can start doing the work
necessary to get the FEC
back on track.**



About the Authors



Erin Chlopak
SENIOR DIRECTOR, CAMPAIGN FINANCE

Erin leads CLC's work to promote and defend strong campaign finance laws and ensure that existing laws are enforced. Before joining CLC, Erin spent nearly a decade working on a wide range of campaign finance issues in the FEC's Office of General Counsel, serving as head of the FEC's Policy Division and as assistant general counsel in the FEC's Litigation Division. Erin's expert analysis on campaign finance issues has been featured in national media outlets including The Washington Post, National Public Radio, CNN, and BBC.



Saurav Ghosh
DIRECTOR, FEDERAL CAMPAIGN FINANCE REFORM

Saurav leads CLC's efforts to uncover violations of federal campaign finance laws, file complaints seeking administrative enforcement, and pursue reforms to make the laws stronger. Before joining CLC, Saurav served in the Enforcement Division of the FEC's Office of General Counsel. He regularly provides expert commentary on money-in-politics issues at legal conferences and law schools, and in national news outlets, including The New York Times, The Guardian, CNN, and C-SPAN.



Shanna Ports
SENIOR LEGAL COUNSEL, CAMPAIGN FINANCE

Shanna seeks to enhance transparency and accountability in our political system using a variety of legal strategies, including through administrative complaints, litigation, and reform advocacy. Prior to joining CLC, Shanna worked in the Enforcement Division of the FEC's Office of General Counsel. She also spent several years in private practice advising clients on how to comply with federal election laws.

About the Authors (continued)



Roger Wieand

SENIOR RESEARCHER, CAMPAIGN FINANCE AND ETHICS

Roger analyzes federal campaign finance and ethics matters with a focus on legal violations and public policy. He authors reports and articles on these subjects, including a recent analysis comparing ethics enforcement in the House and Senate and a first-of-its-kind report on the donor-to-ambassador pipeline. Before joining CLC, Roger served as a public policy research and advocacy consultant for nonprofits.



Sophia Gonsalves-Brown

SENIOR RESEARCHER/INVESTIGATOR, CAMPAIGN FINANCE AND ETHICS

Sophia analyzes campaign finance and financial disclosure reports and writes about trends and issues on campaign finance and ethics, including a series on the abuse of “testing the waters” rules and a recent piece on ethical conflicts among potential Trump administration nominees. Prior to joining CLC, Sophia was a senior legal assistant at a plaintiff-side employment law firm in Washington, D.C. As an undergraduate, she completed a summer internship at Every Voice and served as chapter president of Democracy Matters.



Shilpa Jindia

LEGAL FELLOW

From 2023 to 2024, Shilpa worked as a legal fellow on voting rights litigation and campaign finance. Prior to joining CLC, Shilpa interned with the Department of Justice’s Environmental and Natural Resources Division, Everytown for Gun Safety, Brown, Goldstein & Levy, The Legal Aid Society’s Juvenile Rights Project, and Manhattan Legal Center’s Family Law and Domestic Violence Unit. Before law school, Shilpa worked in journalism.

Appendix

FOUR-COMMISSIONER DEREGULATORY FEC DECISIONS 2022–2024

	MATTER	ISSUE	COMMISSIONERS	BRIEF SUMMARY
1	AO 2022–14 (Google)	Prohibited Contributions	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners allowed Google to selectively exempt political emails from the Gmail spam filter, potentially paving the way for corporations to benefit particular political parties or campaigns under the guise of commercial activity.
2	AO 2022–20 (Maggie for NH)	Coordination	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners allowed candidates to coordinate with super PACs on fundraising solicitations sent to prospective donors who had opted into receiving text messages.
3	AO 2022–24 (Blue)	Transparency	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners created a new secret spending vehicle, living trusts, allowing wealthy individuals to influence elections without voters learning of their involvement and potentially letting those who administer living trusts unlawfully double their contribution limit.
4	AO 2023–03 (Colorado Republican State Central Committee)	Commission Procedure	Lindenbaum, Cooksey, Dickerson, Trainor	After the Commission unanimously approved the advisory opinion request, four commissioners released a concurring statement denigrating one of the compliance measures the requester had proposed, breaking with the Commission’s legal duty to approve or disapprove the specific plan presented by a requester.
5	AO 2024–02 (Waters)	Soft Money	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners essentially read out of existence a statutory requirement that nonfederal entities paying for communications in connection with a federal election or federal election activity must comply with federal reporting requirements, allowing federal candidates to accept money from nonfederal committees that was never reported to the FEC.
6	AO 2024–01 (Texas Majority PAC)	Coordination	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners allowed a state political committee to coordinate paid canvassing operations, including printed canvassing materials, with federal campaigns. This decision opened the floodgates for super PACs and federal campaigns to coordinate on canvasses, demonstrably impacting the 2024 election and altering the landscape of campaigns for years to come.
7	AO 2024–05 (Nevadans for Reproductive Freedom)	Soft Money	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners greenlit candidates soliciting unlimited amounts of soft money for state ballot measure committees, which the ballot measure committees can use to register and turn out voters supporting the candidates, potentially making candidates beholden to the ballot measure donors.
8	MUR 7146R (Correct the Record)	Coordination	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners voted against finding reason to believe a super PAC and campaign coordinated their activities, even after a federal court determined that the Commission’s previous dismissal of the same claims was contrary to law and ordered the Commission to correct its judgment.

Appendix (continued)

	MATTER	ISSUE	COMMISSIONERS	BRIEF SUMMARY
9	MUR 7464 (LZP, LLC)	Transparency	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners voted to find no probable cause to believe that a PAC knowingly accepted contributions in the name of another, in opposition to the recommendation of the FEC's nonpartisan attorneys.
10	MUR 7495 (Common Defense / Beyond the Choir Action Fund)	Transparency	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners failed to find reason to believe that a super PAC did not properly report its spending and lacked appropriate disclaimers on its advertisements.
11	MURs 7585/7588 (Lori Trahan for Congress Committee)	Prohibited Contributions	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners voted to find no violation despite ample evidence indicating that Rep. Trahan had accepted excessive contributions from her husband while claiming on her FEC reports that the money came from her personal funds. The FEC's nonpartisan attorneys had recommended investigating the allegations.
12	MURs 7722/7733 (Mike Bloomberg 2020, Inc.)	Prohibited Contributions	Lindenbaum, Cooksey, Dickerson, Trainor	Rejecting the analysis and recommendations of the FEC's nonpartisan attorneys, four commissioners dismissed a complaint that an \$18 million contribution from Michael Bloomberg's presidential campaign to the Democratic National Committee was an excessive contribution from Bloomberg himself.
13	MUR 7774 (Antone for Congress)	Transparency	Lindenbaum, Cooksey, Dickerson, Trainor	After the Commission initially found reason to believe that a campaign had misreported the recipient of over \$3 million in disbursements, four commissioners reversed course and dismissed the matter as an exercise of their prosecutorial discretion.
14	MUR 7874 (Patriots of America PAC)	Transparency	Lindenbaum, Cooksey, Dickerson, Trainor	After receiving a free NASCAR sponsorship worth \$25,000 to place a Trump 2020 decal on a race car, a super PAC allegedly undervalued the sponsorship at \$9,500 to avoid triggering independent-expenditure reporting requirements that kick in at \$10,000. Rejecting the FEC's nonpartisan attorneys' recommendation to investigate, four commissioners voted to find no violation.
15	MUR 7908 (Marjorie Taylor Green)	Coordination	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners released a statement of reasons to express their view, which had no bearing on the outcome of the matter, that an attorney cannot be a conduit for unlawful coordination by reviewing ads for both a campaign and related independent spender.
16	MURs 7931/8059 (Biden for President)	Other	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners rejected the analysis and recommendations of the FEC's nonpartisan attorney staff regarding a presidential campaign's expenses while testing the waters.
17	MUR 7938 (Greitens for U.S. Senate)	Soft Money	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners voted to dismiss a complaint alleging Senate candidate Eric Greitens spent soft money from his state campaign to benefit his federal campaign, overriding the recommendations of the FEC's nonpartisan attorneys.

Appendix (continued)

	MATTER	ISSUE	COMMISSIONERS	BRIEF SUMMARY
18	MUR 7943 (Val Demings for U.S. Senate)	Prohibited Contributions	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners dismissed a complaint that a state PAC made an illegal in-kind contribution to a U.S. Senate campaign.
19	MUR 7957 (Marie Newman)	Other	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners dismissed a complaint that campaign funds were converted to personal funds by being used to pay for a legal settlement.
20	MUR 7961 (LOU PAC)	Other	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners stated that laws prohibiting the personal use of campaign funds don't apply to leadership PACs, a determination that wasn't necessary to resolve the matter. This decision will allow candidates to use leadership PACs to spend donors' funds on personal expenses without any accountability.
21	MUR 7964 (White Coast Waste PAC)	Transparency	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners dismissed a complaint alleging that a political committee that appeared to be connected with a nonprofit corporation falsely claimed to be an unaffiliated PAC that could solicit funds from the general public.
22	MURs 8016/8018 (Jarome Bell for Congress)	Transparency	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners voted to dismiss a complaint in which a respondent appeared to have distributed mailers lacking any disclaimer, despite the FEC's nonpartisan attorneys' recommendation to investigate.
23	MURs 8017/8023 (Unknown Respondent)	Transparency	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners voted to dismiss a complaint alleging that a series of mailers lacked disclaimers, leaving the public in the dark about the source of the mailers, and that the anonymous funder did not report the spending to the FEC.
24	MUR 8021 (Ohio Ordnance Works, Inc.)	Prohibited Contributions	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners voted against keeping as a respondent a super PAC that solicited and accepted a contribution from a federal government contractor.
25	MUR 8055 (Laxalt for Senate)	Prohibited Contributions	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners voted against finding reason to believe a candidate accepted an in-kind contribution when a state political committee paid for an event at which he expressly advocated for his election.
26	MUR 8058 (SQI Limited, LLC)	Transparency	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners dismissed and declined to investigate a complaint over an apparent straw donor scheme to cover up the true source of \$300,000 in contributions.
27	MUR 8073 (Vista Pacifica)	Prohibited Contributions	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners refused to investigate whether a super PAC solicited an illegal contribution from a federal contractor.

Appendix (continued)

	MATTER	ISSUE	COMMISSIONERS	BRIEF SUMMARY
28	<u>MUR 8087</u> (<u>Joe Kent for Congress</u>)	Prohibited Contributions	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners refused to investigate whether a congressional candidate received excessive and potentially prohibited corporate contributions from his employer.
29	<u>MUR 8134</u> (<u>Lauren Boebert for Congress</u>)	Transparency	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners refused to enforce a key transparency law requiring a leadership PAC to disclose its spending on express advocacy in support of a congressional candidate.
30	<u>MURs 8215/8216</u> (<u>Last Best Place PAC</u>)	Transparency	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners refused to enforce a key transparency law requiring a super PAC to promptly disclose its spending on communications expressly advocating against a U.S. Senate candidate.
31	<u>Online Disclaimers Rulemaking (REG 2013-01)</u>	Transparency	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners voted against a comprehensive proposed rule that would have required “paid for by” disclaimers for promoted content (e.g., influencer posts) and for political ads on streaming services. The narrower disclaimer rule the FEC adopted will leave voters in the dark about who paid for these types of online political ad content.
32	<u>Audit of Citizens for Waters</u>	Soft Money	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners voted against approving the Audit Division’s recommendation to find that a campaign had unlawfully accepted soft money from nonfederal committees in connection with reimbursements for mailers.
33	<u>Press Office Policy</u>	Transparency	Lindenbaum, Cooksey, Dickerson, Trainor	Four commissioners adopted a new policy barring the FEC Press Office from confirming or denying whether a complaint has been filed.
34	<u>Audit Procedures</u>	Commission Procedure	Lindenbaum, Cooksey, Dickerson, Trainor	The Commission adopted new standards for audit procedures published days before the meeting, after four commissioners voted against opening a comment period that would have allowed the public to weigh in on the proposal.

For post-2024 FEC decisions, please visit campaignlegal.org to view CLC’s online tracker.

Endnotes

- 1 When post-Civil War industrialization began generating immense wealth for individuals whose names — Rockefeller, Guggenheim, Carnegie — remain indelibly linked with opulence and power, the federal government began to regulate how money may be used to influence our political process: The 1907 Tillman Act banned corporate contributions to federal candidates and parties, and the 1910 Publicity Act required the reporting of sources of campaign funds for the first time. Trevor Potter, Campaign Legal Center, Address at the American University College of Law, Administrative Law Review Symposium (Mar. 23, 2017), <https://administrativelawreview.org/wp-content/uploads/sites/2/2019/09/69-2-Symposium.pdf>. The 1947 Taft-Hartley Act banned unions alongside corporations from making contributions to federal candidates and campaigns. Campaign Legal Center, A Timeline: How Corporations and Labor Unions Came to Bankroll Our Nominating Conventions (Jul. 14, 2016) <https://campaignlegal.org/update/timeline-how-corporations-and-labor-unions-came-bankroll-our-nominating-conventions>.
- 2 See 52 U.S.C. § 30101, et seq.
- 3 See Daniel Weiner and Owen Bacscai, *50 Years After Watergate, Unregulated Money Continues to Corrode Our Politics*, Brennan Center (Aug. 12, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/50-years-after-watergate-unregulated-money-continues-corrode-our-politics> (“By the time Nixon resigned, Americans were outraged to learn that the Watergate break-in and cover-up and other ‘dirty tricks’ had been financed from a secret slush fund made up of donations from corporations and wealthy individuals. In response, Congress passed historic reforms designed to increase transparency and curb the influence of big money in politics.”).
- 4 *Federal Election Commission 40th Anniversary Timeline*, FEC, https://transition.fec.gov/pages/40th_anniversary/40th_anniversary.shtml (Oct. 29, 2024).
- 5 See Trevor Potter, *A Dereliction of Duty: How the FEC Commissioners’ Deadlocks Result in a Failed Agency and What Can Be Done*, 27 Geo. Mason L. Rev. 483, 484–85 (2020). The FEC, like all federal agencies, engages in rulemakings, which are governed by procedures set forth in federal law, to establish regulations. See generally, *A Guide to the Rulemaking Process*, https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf. The FEC also issues advisory opinions, a mechanism through which any person may seek the FEC’s guidance regarding the legality of a proposed activity or transaction under FECA and FEC regulations; see 52 U.S.C. § 30108, as well as policy statements that govern FEC practices and procedures, e.g., Commission Directives and Policy, <https://www.fec.gov/about/leadership-and-structure/>. When the FEC receives a complaint alleging that someone has violated FECA or an internal referral of an apparent FECA violation uncovered through an audit or routine review of a political committee’s disclosure reports, the FEC will open a Matter Under Review (MUR). See 52 U.S.C. § 30109.
- 6 While FEC commissioners must be nominated by the president and confirmed by the Senate, a customary practice has developed through which the Democratic and Republican leaders in the Senate name their desired FEC nominees, and when possible (based on the prevailing availability of seats on the FEC), prospective commissioners are nominated and confirmed in bipartisan pairs. See Josh Israel and Aaron Mehta, *Withdrawn FEC Nominee Laments ‘Broken’ Confirmation Process*, Center for Public Integrity (Oct. 7, 2010), <https://publicintegrity.org/politics/withdrawn-fec-nominee-laments-broken-confirmation-process/>.
- 7 See Craig Holman and Abigail Winchester, *Roiled in Partisan Deadlock, Federal Election Commission Is Failing*, Public Citizen (Mar. 4, 2020), <https://www.citizen.org/article/roiled-in-partisan-deadlock-federal-election-commission-is-failing/> (documenting the dramatic increase in FEC “split” votes across the agency’s core functions).
- 8 See Adav Noti, et al., *Why the FEC Is Ineffective*, Campaign Legal Center (Aug. 8, 2022), <https://campaignlegal.org/update/why-fec-ineffective>; Daniel Weiner, *Fixing the FEC: An Agenda for Reform*, Brennan Center (Apr. 30, 2019), <https://www.brennancenter.org/our-work/policy-solutions/fixing-fec-agenda-reform>.
- 9 Campaign Legal Center, *Three Big Ways the For the People Act Would Fix the FEC* (Feb. 23, 2021), <https://campaignlegal.org/update/three-big-ways-people-act-would-fix-fec>.
- 10 Sarah Bryner and Brendan Glavin, *Total 2024 Election Spending Projected to Exceed Previous Record*, OpenSecrets (Oct. 8, 2024), <https://www.opensecrets.org/news/2024/10/total-2024-election-spending-projected-to-exceed-previous-record/>.
- 11 While a fulsome discussion of the decision is beyond the scope of this report, it’s important to know that *Citizens United* struck down century-old legal prohibitions on corporate election spending and paved the way for super PACs, a new type of political committee that can raise and spend unlimited amounts of money, including money from corporations and ultrawealthy individuals, on election influence. While the Supreme Court’s decision was predicated on this spending being independent from candidates and political parties, and openly disclosed to the public, both have proven illusory: Since *Citizens United*, a large proportion of outside election spending has been routed through dark money groups and is therefore never publicly disclosed, and outside spending groups have devised numerous strategies to openly coordinate with candidates and political parties. See, e.g., Anna Massoglia, *State of Money in Politics: Billion-Dollar ‘Dark Money’ Spending Is Just the Tip of the Iceberg*, OpenSecrets (Feb. 21, 2019), <https://www.opensecrets.org/news/2019/02/somp3-billion-dollar-dark-money-tip-of-the-iceberg/>; Campaign Legal Center, *The Illusion of Independence: How Unregulated Coordination Is Undermining Our Democracy, and What Can Be Done to Stop It* (Nov. 30, 2023), <https://campaignlegal.org/document/illusion-independence-how-unregulated-coordination-undermining-our-democracy-and-what-can>.
- 12 *Total Outside Spending by Election Cycle, Excluding Party Committees*, OpenSecrets, https://www.opensecrets.org/outside-spending/by_cycle (Oct. 22, 2024).
- 13 See Reporting Multistate Independent Expenditures and Electioneering Communications, 83 Fed. Reg. 66,590 (Dec. 27, 2018) (revising regulations regarding the “reporting of independent expenditures and electioneering communications that relate to presidential primary elections and that are publicly distributed in multiple states but that do not refer to any particular state’s primary election”); see also Potter, *supra* note 5. The FEC’s only other regulatory developments during this 10-year period involved technical corrections and updates, the periodic adjustment of civil penalty amounts indexed to inflation, and the removal of aggregate biennial contribution limits deemed unconstitutional by the Supreme Court in *McCutcheon v. FEC*, 572 U.S. 185 (2014).
- 14 See Campaign Legal Center, *CLC Rulemaking Comments Urge FEC to Act on Dangerously Outdated Disclaimer Laws* (Jul. 9, 2021), <https://campaignlegal.org/update/clc-rulemaking-comments-urge-fec-act-dangerously-outdated-disclaimer-laws> (highlighting a rulemaking petition that “has been languishing for almost a decade, during which time the FEC’s regulation of political advertising — especially digital ads — has become dangerously outdated”).
- 15 In a nearly comical illustration of the FEC’s ineptitude during this period, over a decade passed before the agency, in 2022, recognized the existence of super PACs, which by that point had already raised and spent billions of dollars influencing voters, on its standardized form for newly registered political committees. See FEC, *Commission Approves Updated Statement of Organization (FEC Form 1) to Include New Registration Options*, FEC (Mar. 22, 2022), <https://www.fec.gov/updates/commission-approves-updated-statement-of-organization-fec-form-1-to-include-new-registration-options/>. As another example, to this day, political party committees have never received the FEC’s guidance on complying with crucial disclosure requirements for special purpose accounts that Congress created in 2014, despite CLC filing first a rulemaking petition and then a lawsuit against the FEC for failing to provide such guidance, resulting in these committees arbitrarily reporting the millions of dollars they raise every election cycle through these accounts. Brendan Quinn, *National Political Party Committees Should be Transparent, but the FEC Won’t Act*, Campaign Legal Center (Oct. 23, 2023), <https://campaignlegal.org/update/national-political-party-committees-should-be-transparent-fec-wont-act>.
- 16 See FEC, *Selected Cases in Which the Civil Penalties Are \$50,000 or Greater Made Public Between 1980 and Present*, FEC, https://fec.gov/resources/cms-content/documents/Civil_Penalties_50k.pdf (updated June 2024).
- 17 Office of Comm’r Ann M. Ravel, FEC, *Dysfunction and Deadlock: The Enforcement Crisis at the Federal Election Commission Reveals the Unlikelihood of Draining the Swamp* (Feb. 2017), https://www.fec.gov/resources/about-fec/commissioners/ravel/statements/ravelreport_feb2017.pdf.

Endnotes (continued)

- 18 See Shane Goldmacher, *A Democrat, Siding With the G.O.P., Is Removing Limits on Political Cash at ‘Breathhtaking’ Speed*, N.Y. Times (Jun. 10, 2024), <https://www.nytimes.com/2024/06/10/us/politics/fec-deadlock-deregulation.html>.
- 19 See Statement of Comm’rs Shana M. Broussard and Ellen L. Weintraub at 2, Advisory Op. 2022–20 (Maggie for NH), *infra* note 42; Statement of Vice Chair Ellen L. Weintraub and Comm’r Shana M. Broussard, Advisory Op. 2024–02 (Waters), *infra* note 72; Statement of Comm’rs Ellen L. Weintraub and Shana M. Broussard Regarding the Commission’s Adoption of Final Rules in REG 2013–01 (Technological Modernization), *infra* note 107.
- 20 *Bipartisan Poll Finds Voters Want Stronger Enforcement of Campaign Finance Laws, Increased Transparency in Elections*, Campaign Legal Center (Nov. 18, 2019), <https://campaignlegal.org/update/bipartisan-poll-finds-voters-want-stronger-enforcement-campaign-finance-laws-increased> (indicating that 61% of voters believe that major changes need to be made to the country’s campaign finance system, 71% want the FEC to take a more active role enforcing campaign finance laws, and 83% support the public disclosure of contributions to organizations involved in elections).
- 21 Andy Cerda and Andrew Daniller, *7 Facts About Americans’ Views of Money in Politics*, Pew Research Center (Oct. 23, 2023), <https://www.pewresearch.org/short-reads/2023/10/23/7-facts-about-americans-views-of-money-in-politics/>.
- 22 Campaign Legal Center, *The Illusion of Independence*, *supra* note 11.
- 23 See, e.g., Ian Vandewalker, *Megadonors Playing Larger Role in Presidential Race, FEC Data Shows*, Brennan Center (Nov. 1, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/megadonors-playing-larger-role-presidential-race-fec-data-shows> (“This election, the biggest super PACs supporting the major party nominees for president have together taken in \$865 million from donors who each gave \$5 million or more. That’s more than double the amount by this point in 2020, which was \$406 million. This biggest-spending category of donors has provided more than 75 percent of the funding to presidential super PACs in the 2024 election, up from 63 percent in 2020.”).
- 24 Advisory Op. 2024–01 (Texas Majority PAC), <https://www.fec.gov/files/legal/aos/2024-01/2024-01.pdf>.
- 25 *Id.* at 3.
- 26 *Id.* at 5–7.
- 27 *CLC v. FEC* (Correct the Record), 646 F. Supp. 3d 57, 64 (D.D.C. 2022).
- 28 See Justin Rusk and Meredith K. McCoy, *FEC Allows Nonfederal Committee to Coordinate Paid Canvassing Efforts With Federal Candidates*, Venable LLP (Mar. 27, 2024), <https://www.politicallawbriefing.com/2024/03/fec-allows-nonfederal-committee-to-coordinate-paid-canvassing-efforts-with-federal-candidates/> (“[W]ith this advisory opinion, the Commission is allowing some flame to jump the anti-coordination firewall, potentially lighting the way for candidates to shift more costs to outside groups, all while aligning on message and strategy.”).
- 29 Michael Scherer, et al., *Trump Team Throws Out GOP Plan and Builds a ‘Leaner’ 2024 Operation*, Wash. Post (May 10, 2024), <https://www.washingtonpost.com/politics/2024/05/10/trump-gop-field-operation/>.
- 30 Dan Merica, *Elon Musk’s PAC Spent an Estimated \$200 Million to Help Elect Trump, AP Source Says*, A.P. (Nov. 11, 2024), <https://apnews.com/article/elon-musk-america-pac-trump-d248547966bf9c6d4af6f5d332bc4be66>.
- 31 Theodore Schleifer, et al., *Musk Is Going All In to Elect Trump*, N.Y. Times (Oct. 11, 2024), <https://www.nytimes.com/2024/10/11/us/politics/elon-musk-donald-trump-pennsylvania.html> (“Above all, [Musk] is personally steering the actions of a super PAC that he has funded with tens of millions of dollars to turn out the vote for Mr. Trump, not just in Pennsylvania but across the country.”).
- 32 Theodore Schleifer, *Musk-Backed Super PAC Shakes Up Pro-Trump Field Program*, N.Y. Times (Jul. 31, 2024), <https://www.nytimes.com/2024/07/31/us/politics/trump-musk-super-pac.html>.
- 33 Dana Hull and Bill Allison, *Elon Musk’s Pro-Trump Super PAC Hires Help in GOP-Friendly North Carolina*, Bloomberg (Aug. 19, 2024), <https://www.bloomberg.com/news/articles/2024-08-19/elon-musk-s-pro-trump-super-pac-hires-canvassers-in-north-carolina>.
- 34 Theodore Schleifer and Susan Craig, *Trump’s Victory Is a Major Win for Elon Musk and Big-Money Politics*, N.Y. Times (Nov. 6, 2024), <https://www.nytimes.com/2024/11/06/us/elections/trump-musk-america-pac.html>.
- 35 *Id.*
- 36 Daniel Trotta and Eric Beech, *Trump Names Elon Musk to Lead Government Efficiency Drive*, Reuters (Nov. 13, 2024), <https://www.reuters.com/world/us/trump-says-elon-musk-vivek-ramaswamy-will-lead-department-government-efficiency-2024-11-13/>.
- 37 Eric Lipton, et al., *U.S. Agencies Fund, and Fight With, Elon Musk. A Trump Presidency Could Give Him Power Over Them.*, N.Y. Times (Oct. 20, 2024), <https://www.nytimes.com/2024/10/20/us/politics/elon-musk-federal-agencies-contracts.html> (detailing Musk’s multipronged business arrangements and entanglements with the federal government).
- 38 Sarah Fortinsky, *Musk Says PAC Will ‘Keep Grinding’ Through Midterms*, The Hill (Nov. 12, 2024), <https://thehill.com/homenews/campaign/4986895-elon-musk-pac-midterm-elections/>.
- 39 Schleifer and Craig, *supra* note 11.
- 40 Advisory Op. 2022–20 (Maggie for NH), <https://www.fec.gov/files/legal/aos/2022-20/2022-20.pdf>.
- 41 *Id.* at 4–5.
- 42 Statement of Comm’rs Shana M. Broussard and Ellen L. Weintraub at 2, Advisory Op. 2022–20 (Maggie for NH) (Nov. 4, 2022), https://www.fec.gov/files/legal/aos/2022-20/202220S_1.pdf.
- 43 See *McConnell v. FEC*, 540 U.S. 93, 123 (2003). In *McConnell*, the Supreme Court upheld the constitutionality of most portions of BCRA, including the ban on candidates and political parties using soft money to influence federal elections. See *id.* at 93–110. In doing so, the Court provided a detailed account of the legislative intent behind BCRA and the record of corruption that spurred Congress to act. See *id.* at 122–32.
- 44 See *id.* at 123–30.
- 45 See *id.* at 132.
- 46 *Id.*
- 47 *Id.* § 30125.
- 48 *Id.* § 30125(e)(1)(A).
- 49 *Id.* § 30101(20) (defining FEA).
- 50 BCRA also brought more electoral spending to light, extending disclosure and disclaimer requirements to broadcast advertisements that clearly identify federal candidates in the short windows before primary and general elections. BCRA’s transparency requirements for these electioneering communications were designed to provide voters with information they need to evaluate the motivation of candidates and hold officeholders accountable for legislating in favor of the donors and entities supporting their reelection efforts. See *id.* §§ 30104(f), 30120.
- 51 See Advisory Op. 2024–05 (Nevadans for Reproductive Freedom), <https://www.fec.gov/files/legal/aos/2024-05/2024-05.pdf>.
- 52 *Id.* at 1–2. NRF also had a 501(c)(4) arm that asked the FEC the same question, but that discussion is outside the scope of this report. See *id.*
- 53 Commissioner Broussard abstained and released a separate statement explaining her view that, because NRF was a 501(c)(4) organization that merely registered an account as a state ballot measure committee, it should be viewed as a 501(c)(4) organization. See Statement of Comm’r Shana M. Broussard at 4, Advisory Op. 2024–05 (Nevadans for Reproductive Freedom), https://www.fec.gov/files/legal/aos/2024-05/202405S_1.pdf. There is a specific allowance in BCRA for candidates to solicit soft money for particular types of 501(c)(4) organizations, and she concluded that NRF qualified for the allowance. See *id.* at 4–6; see also 52 U.S.C. § 30125(e)(4)(A).
- 54 52 U.S.C. § 30125(e)(1).
- 55 *Id.* § 30101(20)(A)(i)–(ii).
- 56 CLC Comment on Advisory Op. 2024–05 at 4 (quoting 52 U.S.C. § 30125(e)(1)(A)).
- 57 Advisory Op. 2024–05 at 4–5. While this was not the most controversial part of the opinion, excluding ballot measures from the definition of “election” is not necessarily a natural reading of BCRA or its legislative history. One commissioner has continuously argued that ballot measures are covered non-federal elections. See Statement of Reasons of Comm’r Ellen L. Weintraub, MUR 7523 (Stop 1-186) (Oct. 29, 2021), https://www.fec.gov/files/legal/murs/7523/7523_27.pdf.

Endnotes (continued)

- 58 Advisory Op. 2024–05 at 3 (emphasis added).
- 59 As Commissioner Broussard noted, because NRF indicated in one of its supplemental submission letters that it “was not planning to use any funds solicited by federal candidates or officeholders for any activity that would qualify as federal election activity,” the question of “[w] hether a federal candidate can solicit funds on behalf of” a group “that may use the funds in the future for activity that falls within the definition of federal election activity ... but is geared toward a ballot initiative” posed a hypothetical situation and was thus beyond the scope of what the FEC could answer in an advisory opinion. Statement of Comm’r Shana M. Broussard at 5–6, Advisory Op. 2024–05; see 11 C.F.R. § 112.1(b) (stating that requests “posing a hypothetical situation ... do not qualify as advisory opinion requests”). Nevertheless, this hypothetical is exactly what four commissioners approved.
- 60 Advisory Op. Request 2024–05 at 1–2.
- 61 Advisory Op. 2024–02 (Waters) at 2, <https://www.fec.gov/files/legal/aos/2024-02/2024-02.pdf>.
- 62 *Id.*
- 63 *Id.*
- 64 *Id.* at 2 n.2 (quoting advisory opinion request). The Commission also declined to recognize that the proposed mailers, which featured Waters’s endorsement of federal candidates, see *id.* at 2, satisfied the statutory definition of FEA, which includes a public communication that promotes, attacks, supports, or opposes a candidate for federal office. See 52 U.S.C. § 30101(20)(A)(iii); Advisory Op. 2024–02 at 3.
- 65 The nonfederal funds in question would only have to be reported to the FEC as a receipt by the federal candidate or committee receiving them — in this case, Waters’s campaign committee.
- 66 Advisory Op. 2024–02 at 4.
- 67 Concurring Statement of Chairman Sean J. Cooksey, Advisory Op. 2024–02 (Feb. 16, 2024), https://www.fec.gov/files/legal/aos/2024-02/202402S_1.pdf (“The significance of this legal conclusion should not be overlooked. It clarifies that non-federal committees may contribute or transfer funds to federal candidates without taking on any additional federal reporting obligations.”).
- 68 Compl., MUR 7938 (Greitens for U.S. Senate) (Oct. 28, 2021), https://www.fec.gov/files/legal/murs/7938/7938_01.pdf.
- 69 *Id.* at 3.
- 70 *Id.* at 9–10.
- 71 See *id.* at 21–29.
- 72 See Statement of Reasons of Chair Dara Lindenbaum, Vice Chairman Sean Cooksey & Comm’rs Allen Dickerson & Trey Trainor, MUR 7938 (Greitens for U.S. Senate) (Aug. 18, 2023), https://www.fec.gov/files/legal/murs/7938/7938_16.pdf.
- 73 First Gen. Counsel’s Report at 11, MUR 7938 (Greitens for U.S. Senate), https://www.fec.gov/files/legal/murs/7938/7938_11.pdf.
- 74 See *id.* at 11–12.
- 75 Campaign Legal Center, *5 Ways Secret Money Makes Its Way Into Our Elections* (Oct. 11, 2022), <https://campaignlegal.org/update/5-ways-secret-money-makes-its-way-our-elections>. Unlimited secret spending allows megadonors even greater access to candidates. For example, Elon Musk provided significant funding to Building America’s Future, a 501(c)(4) organization that funded Future Coalition PAC, a super PAC that spent in opposition to Vice President Harris and in support of former President Trump. See Josh Fiallo, *Elon Musk-Funded PAC Chases Jewish and Muslim Votes With Wildly Conflicting Messaging*, Daily Beast (Oct. 19, 2024), <https://www.thedailybeast.com/elon-musk-funded-pac-chases-jewish-and-muslim-votes-with-conflicting-messaging/>; Alexander Ulmer & Rachel Levy, *Exclusive: Musk Funded Right-Wing Political Non-Profit Years Before He Endorsed Trump*, Sources Say, Reuters (Oct. 2, 2024), <https://www.reuters.com/world/us/musk-funded-right-wing-political-non-profit-years-before-he-endorsed-trump-2024-10-02/>. In return for his generous support — support few others in the world are wealthy enough to provide — Trump has offered Musk a government position. See Trotta and Beech, *supra* note 36.
- 76 See 52 U.S.C. § 30122.
- 77 First Gen. Counsel’s Report at 3, MUR 8058 (SQI Limited, LLC), https://www.fec.gov/files/legal/murs/8058/8058_15.pdf.
- 78 Certification, MUR 8058 (SQI Limited, LLC) (Mar. 4, 2024), https://www.fec.gov/files/legal/murs/8058/8058_16.pdf.
- 79 Complaint, MUR 8058 (SQI Limited, LLC), https://www.fec.gov/files/legal/murs/8058/8058_01.pdf.
- 80 See Response from SQI Limited, LLC, Herzog Contracting Corp., Herzog Transit Services, Inc., and Herzog Technologies, Inc., MUR 8058 (SQI Limited, LLC), Exhibits E–H, https://www.fec.gov/files/legal/murs/8058/8058_14.pdf.
- 81 *Id.* at 3.
- 82 Statement of Reasons of Chairman Sean J. Cooksey and Comm’rs Allen J. Dickerson and Dara Lindenbaum, MUR 8058 (SQI Limited, LLC) (Apr. 2, 2024), https://www.fec.gov/files/legal/murs/8058/8058_20.pdf.
- 83 See 52 U.S.C. § 30109(d)(1)(D) (prescribing additional monetary penalties and potential prison time for knowing and willful violations of section 30122, the provision in FECA that prohibits straw donor schemes).
- 84 See Advisory Op. 2022–24 (Allen Blue), <https://www.fec.gov/files/legal/aos/2022-24/2022-24.pdf>. A living trust (sometimes called an “inter vivos” trust) is a trust formed during someone’s lifetime, as opposed to a testamentary trust, which is formed after someone’s death to administer their will or estate.
- 85 See *id.* at 2.
- 86 *Id.*
- 87 *Id.* at 5.
- 88 11 C.F.R. § 110.6(c)(2).
- 89 *Id.* § 110.6(d)(2).
- 90 States’ financial secrecy laws compound the problem by shielding information about trusts from public disclosure, which means even someone trying to research a trust contribution likely will not be able to get information about a trust’s donor or trustees. See Brendan Fischer, Comment on Advisory Op. Request 2022–24 (Allen Blue) at 3 (Nov. 30, 2022), https://www.fec.gov/files/legal/aos/2022-24/202224C_3.pdf.
- 91 The FEC began considering an updated disclaimer rule for online political ads in 2011. See Internet Communications Disclaimers, Advanced Notice of Proposed Rulemaking, 76 Fed. Reg. 63,567 (Oct. 13, 2011), <https://sers.fec.gov/fosers/showpdf.htm?docid=353587>.
- 92 See REG 2011–02: Draft Final Rule and Explanation and Justification for Internet Communications Disclaimers, Agenda Doc. No. 22–52–A (Nov. 10, 2022), <https://www.fec.gov/resources/cms-content/documents/mtgdoc-22-52-A.pdf>.
- 93 *Id.* at 45.
- 94 REG 2011–02: Draft Final Rule and Justification for Internet Communication Disclaimers, Agenda Doc. No. 22–52–B (Nov. 28, 2022), <https://www.fec.gov/resources/cms-content/documents/mtgdoc-22-52-B.pdf>.
- 95 Certification, Reg. 2013–02 (Dec. 1, 2022), <https://sers.fec.gov/fosers/showpdf.htm?docid=420946>.
- 96 Draft Final Rules and E&J for REG 2013–01 (Technological Modernization) at 70, Agenda Doc. No. 23-29-A (Dec. 7, 2023), <https://www.fec.gov/resources/cms-content/documents/mtgdoc-23-29-A.pdf> (“A public communication is promoted for a fee where a payment is made to a website, digital device, application, or advertising platform in order to increase the circulation, prominence, or availability of the communication.”).
- 97 Rich Johnson, *Streaming TV Grabs a Bigger Share of Political Ad Spending*, NewsNation (Aug. 25, 2024), <https://www.newsnationnow.com/politics/streaming-tv-political-ad-spending/>. (“While broadcast and cable will command most of the political ad spending in the 2024 election cycle, candidates and causes will spend more than triple on streaming channels than they did two years ago: \$164 million this year vs. \$44.74 million in 2022, according to the advertising data firm AdImpact.”).
- 98 Statement of Comm’rs Ellen L. Weintraub and Shana M. Broussard Regarding the Commission’s Adoption of Final Rules in REG 2013–01 (Technological Modernization) at 2 (Dec. 14, 2023), <https://www.fec.gov/resources/cms-content/documents/Reg-2013-01-TechMod-Final-Statement-ELW-and-SMB.pdf> (quoting Drew Harwell and Taylor Lorenz, *Millions Work as Content Creators. In Official Records They Barely Exist*, Wash. Post (Oct. 26, 2023), <https://www.washingtonpost.com/technology/2023/10/26/creatoreconomy-influencers-youtubers-social-media/>).

Endnotes (continued)

- 99 Statement of Reasons of Chairman Sean J. Cooksey & Comm'rs Allen J. Dickerson, Dara Lindenbaum & James E. "Trey" Trainor, III at 4, MURs 8215 & 8216 (Last Best Place PAC) (Aug. 6, 2024), https://www.fec.gov/files/legal/murs/8216/8216_10.pdf.
- 100 For example, as the Supreme Court has acknowledged, someone watching an ad about health care paid for by a PAC or organization calling itself Citizens for Better Medicare would almost certainly have a radically different assessment of the ad's claims if the viewer knew that Citizens for Better Medicare was primarily funded by a group of drug manufacturers. See *McConnell*, 540 U.S. at 128.
- 101 Independent expenditures have been the main vehicle through which outside groups like super PACs have spent money influencing elections: These groups collectively spend *billions* of dollars on ads that urge voters to vote for or against particular candidates. See *Outside Spending by Cycle, Excluding Party Committees*, OpenSecrets, <https://www.opensecrets.org/outside-spending> (indicating outside groups spent, on independent expenditures, a total of \$2.02 billion in 2022, \$2.88 billion in 2020, and \$1.07 billion in 2018); Sarah Bryner and Brendan Glavin, *Total 2024 Election Spending Projected to Exceed Previous Record*, OpenSecrets (Oct. 8, 2024), <https://www.opensecrets.org/news/2024/10/total-2024-election-spending-projected-to-exceed-previous-record/> (indicating that outside spending in the 2024 election, most of it on independent expenditures, had topped \$2.6 billion as of October 7, 2024).
- 102 An IE report must be filed within 48 hours of when a person spends \$10,000 or more on an IE more than 20 days before an election; the report is due within 24 hours of when a person spends \$1,000 or more on an IE 20 or fewer days before an election. 52 U.S.C. § 30104(g)(1)–(2); see 52 U.S.C. § 30101(17) (defining "independent expenditure"); 11 C.F.R. § 100.22 (defining "expressly advocating").
- 103 52 U.S.C. § 30104(c)(1). While there is ongoing controversy over who constitutes a contributor to these dark money groups, these FEC statements offer the only insight the public has about how these groups finance their election-influencing activities. See *Citizens for Responsibility & Ethics in Wash. v. FEC*, 971 F.3d 340 (D.C. Cir. 2020) (striking down the FEC regulation explaining what contributors must be disclosed); Reporting Independent Expenditures, Interim Final Rule, 87 Fed. Reg. 35863 (June 14, 2022), <https://www.fec.gov/fosers/showpdf.htm?docid=419100> (removing the regulation from the Code of Federal Regulations without issuing a replacement because the commissioners could not "reach consensus on revising the regulatory description of the reporting requirements").
- 104 Complaint, MUR 8216 (Last Best Place PAC) (Feb. 14, 2024), https://www.fec.gov/files/legal/murs/8216/8216_01.pdf.
- 105 Compl. ¶¶ 23–26, MUR 8216 (Last Best Place PAC).
- 106 First Gen. Counsel's Report at 12–24, MUR 8216 (Last Best Place PAC), https://www.fec.gov/files/legal/murs/8216/8216_06.pdf.
- 107 *Id.* at 6.
- 108 52 U.S.C. § 30101(17)(A).
- 109 See 11 C.F.R. § 100.22(a).
- 110 *Id.* § 100.22(a)-(b).
- 111 *Id.* § 100.22(b).
- 112 See *id.*
- 113 Compl. ¶ 9, MUR 8216 (Last Best Place PAC).
- 114 *Id.* ¶¶ 8–9.
- 115 Compl., *CLC v. FEC*, Case No. 1:24-cv-2585 (D.D.C. Sep. 9, 2024), https://campaignlegal.org/sites/default/files/2024-09/1%20LBP%20PAC%20Complaint_9.9.24.pdf; see Maha Quadri, *CLC Sues After FEC Fails to Require Transparency From Democratic Super PAC*, Campaign Legal Center (Sep. 10, 2024), <https://campaignlegal.org/update/clc-sues-after-fec-fails-require-transparency-democratic-super-pac>.
- 116 CRSCC sought to challenge Proposition 108, a Colorado state ballot initiative that passed in 2016, allowing the state's unaffiliated voters — including the state's 1.8 million voters who were not a member of either the Democratic or Republican party — to vote in non-presidential primary elections for major parties.
- 117 Advisory Op. 2023–03 (Colorado Republican State Central Comm.) at 4–6, <https://www.fec.gov/files/legal/aos/2023-03/2023-03.pdf>.
- 118 Concurring Statement of Chair Dara Lindenbaum, Vice Chairman Sean J. Cooksey, and Comm'rs Allen J. Dickerson and James E. "Trey" Trainor, III at 1, Advisory Op. 2023–03 (Colorado Republican State Central Comm.), https://www.fec.gov/files/legal/aos/2023-03/202303S_1.pdf.
- 119 Minutes of an Open Meeting of the FEC (Apr. 19, 2023) at 6, https://www.fec.gov/resources/cms-content/documents/April_19_2023_Open_Meeting.pdf; see also Memorandum from Comm'r Allen Dickerson to the Comm'n (Apr. 18, 2023), <https://www.fec.gov/resources/cms-content/documents/mtgdoc-23-06-A1.pdf>.
- 120 Audit Process for Committees That Do Not Receive Public Funds, 88 Fed. Reg. 30,742 (May 12, 2023), https://www.fec.gov/resources/cms-content/documents/fedreg_notice_2023_06.pdf; FEC Open Meeting (May 4, 2023), <https://www.fec.gov/updates/may-04-2023-open-meeting/>.
- 121 See 52 U.S.C. § 30109(a)(12)(A); see also 11 C.F.R. § 111.21.
- 122 FEC Open Meeting (Apr. 19, 2023), <https://www.fec.gov/updates/april-19-2023-open-meeting/>.
- 123 FEC Open Meeting (May 4, 2023), <https://www.fec.gov/updates/may-04-2023-open-meeting/>.
- 124 For new agency regulations, providing an opportunity for public comment is generally required under the Administrative Procedure Act (APA), see 5 U.S.C. § 500, et seq.
- 125 52 U.S.C. § 30114; 11 C.F.R. § 113.1(g).
- 126 The Commission first authorized the creation of leadership PACs in 1978, allowing members of Congress to establish and use a separate committee to support other candidates' campaigns, usually other members of their party, to support their bids for leadership positions. See Advisory Op. 1978–12 (Waxman), <https://www.fec.gov/files/legal/aos/1978-12/1978-12.pdf>.
- 127 A 2021 report by CLC and Issue One found that the leadership PACs of 120 members of Congress had spent less than 50% of their funds on election influence, and some spent far less. Rep. George Holding (R-NC), for instance, spent just 2% of his leadership PAC's funds on aiding other candidates, political parties, and political groups. The rest went toward airfare, restaurants, chauffeured cars, access to elite clubs, and other personal expenses. Campaign Legal Center and Issue One, *All Expenses Paid: Another Look at Congressional Leadership PACs' Outlandish Spending* (Jan. 2021), <https://campaignlegal.org/sites/default/files/2021-10/All%20Expenses%20Paid%20-%20Another%20Look%2010-01-21.pdf>. Another member used his leadership PAC to purchase tickets to Disney World. See Campaign Legal Center and Issue One, *All Expenses Paid: How Leadership PACs Became Politicians' Preferred Ticket to Luxury Living* (Jul. 2018), <https://campaignlegal.org/document/all-expenses-paid-how-leadership-pacs-became-politicians-preferred-ticket-luxury-living>.
- 128 First Gen. Counsel's Report at 10, MUR 7961 (LOU PAC, et al.), https://www.fec.gov/files/legal/murs/7961/7961_12.pdf (stating that "the Commission need not reach the issues of whether the personal use regulation applies ... because the available information does not indicate that LOU PAC paid too much or too little rent").
- 129 See Letter to Congressional Leadership from former FEC Commissioners Trevor Potter and Ann Ravel (Feb. 23, 2021), <https://campaignlegal.org/sites/default/files/2021-02/2-23-21%20Potter%2C%20Ravel%20Letter%20to%20FEC.pdf>.
- 130 In addition, Congress could change the number of commissioners from six to five, or mandate that no more than two commissioners (rather than three) be members of the same political party. This would avoid deadlocks along partisan lines while still ensuring that no political party could use the agency as a partisan weapon.



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