PACs, Super PACs, and Federal Elections:

Navigating The Waters of Corporate Political Activity

Written by Steven Krikava

One of the storylines that goes along with media coverage of this year's elections is the role of money in politics. Specifically, where does all that money come from? The most common answer is: ultra-rich individuals and corporations.

Corporations are a convenient scapegoat. They are often impersonal and unsympathetic, and few of them do an effective job of making their political activities truly transparent. It's relatively easy to blame them, when popular media does little to enlighten its audience about corporate political activity beyond reporting the sums being spent on campaigns.

Any review of corporate political activity should start with what is not allowed. The Federal Election Campaign Act "prohibits corporations and labor organizations from using their general treasury funds to make contributions or expenditures in connection with federal elections."

That said, there are basically two avenues for a corporation wishing to get involved in federal election activity. Both approaches involve a "political action committee" or PAC. There are PACs and there are super PACs—and there are significant differences in what they're allowed to do.

The older, more established type of PAC is called a "separate, segregated fund." The PAC receives voluntary contributions, usually from company employees (or, in the case of a union PAC, contributions from union members). The Federal Election Commission (FEC) has strict rules that govern corporate PAC solicitations, which are intended to prevent coercion of employees who decline to contribute or favorable treatment of employees who do contribute. The funds received may then be contributed from the PAC's bank account directly to a candidate's campaign. The FEC limits both the amount that any individual may contribute to the PAC ($5,000 per year) as well as the amount that the PAC may contribute to a candidate ($5,000 per election). During a two-year election cycle, most federal candidates generally campaign for both a primary and a general election, making the effective maximum contribution $10,000.

Companies that choose to establish this type of PAC take on the burden of providing detailed reports to the FEC of the PAC's activities. All funds received by the PAC must be reported, and all contributions greater than $200 in a calendar year must be itemized. All funds disbursed by the PAC also must be itemized and reported, including contributions to candidates as well as expenses incurred by the PAC.

The record-keeping burden for administering a corporate PAC can be significant. This has created a market for service providers who administer a company's PAC for a fee. Alternatively, there are software providers with programs that help companies automate the process of collecting data and generating required FEC reports. The corporate sponsor of the PAC (referred to as the "connected organization"), may use corporate funds to administer the PAC, and these generally do not need to be reported.

Comparatively, super PACs are relatively new. They made their first appearance during the 2010 Congressional elections, gaining a higher profile during the 2012 Presidential campaign.

To the FEC, a super PAC is an "independent expenditure-only committee." As the name implies, it's permitted only to make independent expenditures in conjunction with federal elections. As a practical matter, that » generally means media advertising either advocating or impugning the election of a candidate.

A super PAC may not contribute directly to a candidate's campaign. Further, a super PAC may not coordinate its activities with a candidate nor may the candidate request a super PAC to take action on his/her behalf. But with those limits in place, the super PAC may solicit and receive unlimited contributions from individuals, corporations and non-profit organizations. It also may make unlimited expenditures in support of a candidate for federal office.

Super PACs must register with the FEC as well as file reports on receipts and disbursements. The main advantage of establishing a super PAC is the freedom to solicit and receive unlimited contributions, including corporate funds. The main disadvantage of a super PAC is the requirement to remain "independent" from the candidate's campaign. Any super PAC organization must be prepared to develop and conduct campaign activities in support of a candidate without leveraging the candidate's existing resources or coordinating activities with the candidate.

The role of PACs and super PACs and money in politics continues to be a topic of election reporting and policy debates. For the interested observer, there are worthwhile resources available to provide a deeper understanding of the issues at hand.

- The Center for Responsive Politics is a self-described non-profit, non-partisan, independent research group that tracks money in U.S. elections. Its website, www.opensecrets.org, provides in-depth analysis of all sources of campaign cash, including PACs, super PACs, and individual contributions.

- The Federal Election Commission(www.fec.gov), provides information on receipts and disbursements by candidates and PACs. The website also provides information on new regulations being promulgated and enforcement actions being undertaken by the agency.

- Lastly, companies and other organizations that are interested in PACs and getting involved with federal election activity should get acquainted with the Public Affairs Council, pac.org. The Council is a non-partisan, non-political association that conducts programs and provides practical advice on organizational political activity, including best practices, legal compliance, and maintaining the highest ethical standards.

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