



Department of Justice

STATEMENT

OF

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BEFORE THE

SUBCOMMITTEE ON CRIME AND TERRORISM
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

AT A HEARING ENTITLED

“CURRENT ISSUES IN CAMPAIGN FINANCE LAW ENFORCEMENT”

PRESENTED

APRIL 9, 2013

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U.S. Department of Justice**

**Subcommittee on Crime and Terrorism
Committee on the Judiciary
United States Senate**

**“Current Issues in Campaign Finance Law Enforcement”
April 9, 2013**

Chairman Whitehouse, Ranking Member Graham, and distinguished Members of the Subcommittee: Thank you for inviting me to share the views of the Justice Department on challenges to the criminal enforcement of our campaign finance laws posed by the growing activity of Super PACs and certain 501(c) organizations. I am honored to represent the Department at this hearing and to have the opportunity to oversee the important work of the Criminal Division.

Protecting the integrity of our elections is one of the Department’s most important tasks, and enforcement of our campaign finance laws is a top priority. There is no question that private contributions to political campaigns are a fundamental part of the electoral process, and that, under the Constitution, the ability to make political contributions is a protected component of our citizens’ political speech. At the same time, Congress and the federal courts have long recognized the importance of transparency and fairness in campaign finance, to avoid any individual or entity exercising undue influence over our elections or elected officials.

The Department of Justice, through the Criminal Division’s Public Integrity Section and the 93 United States Attorneys’ Offices, is committed to investigating and prosecuting those who willfully violate the disclosure requirements and contribution limits established by our campaign finance laws. We are greatly assisted in this mission by the comprehensive disclosure system administered by the Federal Election Commission (FEC). When the public and law enforcement can see who is making contributions, the Department can better detect, investigate, and prosecute contributions exceeding statutory limits, contributions from banned sources, and bribes.

RECENT CAMPAIGN FINANCE PROSECUTIONS

Since 2010, the Department has successfully prosecuted more than a dozen cases involving campaign finance violations. For example, in February of this year, the Criminal Division’s Public Integrity Section and the U.S. Attorney’s Office for the Eastern District of Virginia secured guilty pleas from Virginia businessman William Danielczyk and one of his employees, Eugene Biagi, in connection with a scheme in which Danielczyk contributed over \$180,000 to a federal candidate in excess of the limits imposed by law. Danielczyk and Biagi used employees and others to make conduit contributions to the campaign, and reimbursed the straw contributors in part using corporate funds. In that case, the district court initially dismissed

two significant charges, relying on the U.S. Supreme Court's 2010 decision in *Citizens United v. FEC* to find unconstitutional the ban on corporate contributions to candidates. The Department appealed that decision and prevailed in the U.S. Court of Appeals for the Fourth Circuit.

Also in February of this year, the Public Integrity Section and the U.S. Attorney's Office for the Northern District of Florida obtained a guilty plea from Florida real estate developer Jay Odom, who admitted to making \$23,000 in conduit contributions to a presidential campaign in 2007. Odom pleaded guilty to causing a false statement to be made by the campaign to the FEC concerning these unlawful contributions.

Last year, the U.S. Attorney's Office for the District of New Jersey secured a guilty plea from Joseph Bigica, who contributed almost \$100,000 to a federal candidate's campaign committee in the form of conduit contributions made through family, friends, and employees. Also last year, the Public Integrity Section and the U.S. Attorney's Office for the Middle District of Florida secured guilty pleas from a real estate developer, Timothy Mobley, and his accountant, Timothy Hohl, for their roles in funneling corporate contributions and contributions in excess of the legal limits to a state political party and to the campaign of a Member of Congress. The unlawful contributions were made through straw contributors whom Mobley and Hohl reimbursed.

In 2010, the Public Integrity Section and the U.S. Attorney's Office for the Eastern District of Virginia secured a guilty plea from lobbyist Paul Magliocchetti in one of the largest conduit contribution schemes in U.S. history. Magliocchetti made hundreds of thousands of dollars of contributions in excess of legal limits and funneled corporate funds to federal candidates for elected office by having his family, friends, and employees make reimbursed conduit contributions. Magliocchetti also pleaded guilty to causing various federal candidate campaign committees to unwittingly make false statements to the FEC in regard to these unlawful contributions.

CURRENT CHALLENGES IN CAMPAIGN FINANCE ENFORCEMENT

Under current law, candidate committees, party committees, and political action committees (PACs) are required to register with the FEC and to disclose contributions and expenditures. Until recently, almost all political spending occurred through these organizations, and we were able to detect and prosecute violations of the campaign finance laws, often by using campaign and committee disclosures available to federal agents and prosecutors through the FEC's comprehensive, searchable website.

Following the Supreme Court's decision in *Citizens United*, the manner in which individuals and entities raise and spend money in our elections changed dramatically, and continues to change. These developments are having a profound effect on our ability effectively to enforce the campaign finance laws. The two most important developments are the rise of Super PACs and the growing political activity of certain types of 501(c) organizations, such as 501(c)(4) entities.

Super PACs came into being following *Citizens United*, in which the Supreme Court held that corporations have a First Amendment right to spend money to seek to influence elections, invalidating a statute that prohibited independent expenditures by labor organizations and banks. In light of *Citizens United*, corporate and other entities, like individuals, can make independent expenditures – that is, expenditures expressly advocating the election or defeat of a clearly identified candidate – so long as the expenditures are not coordinated with candidate committees or organizations that contribute directly to candidates. In other words, as long as a corporation or other entity spends money for political speech that is truly independent of the candidate or campaign that it supports, it may spend as much money as it wishes.

Soon after the *Citizens United* decision, the U.S. Court of Appeals for the D.C. Circuit held in *SpeechNow.org v. FEC* that it is unconstitutional to limit the amount of money that is given to independent expenditure-only PACs, now commonly known as Super PACs. Through advisory opinions issued after *SpeechNow*, the FEC clarified that Super PACs can accept unlimited contributions from individuals, corporations, unions, or other entities.

Similarly, as a result of *Citizens United* and related decisions, organizations described in certain provisions of Section 501(c) of the Internal Revenue Code – 501(c)(4) social welfare organizations, 501(c)(5) labor organizations, and 501(c)(6) trade associations – that spend money on campaign activity can now likewise accept unlimited contributions from individuals and entities alike under the campaign finance laws. These types of 501(c) organizations are permitted to make independent expenditures to seek to influence elections, and can meet the requirements imposed by Section 501(c) provided they otherwise satisfy the requirements for tax-exempt status, which, in the case of 501(c)(4) social welfare organizations, requires only that the organization’s primary activity be the promotion of social welfare rather than political activity. Unlike PACs, Super PACs and other political organizations, these classes of 501(c) organizations are not required to publicly disclose their donors to the FEC under the campaign finance laws, even though those donors’ contributions may be used as expenditures to seek to influence elections. Instead, their donors are disclosed only to the Internal Revenue Service (IRS), only as part of their tax returns, and are specifically protected from public disclosure under the tax laws. Disclosure to the IRS occurs well after the spending occurs, and only through tax returns that are not available to the Department absent a referral from the IRS or a court order based on independent information. Thus, it is possible for such a 501(c) organization – one that is created during an election year and spends millions of dollars engaging in campaign activities – to ultimately disclose its donors and activities to the IRS for the first time only a year or more after the election.

The increasing use of Super PACs and the types of 501(c) organizations described above impacts transparency and changes the kinds of criminal cases the Department can bring under our campaign finance laws. We anticipate seeing fewer cases of conduit contributions directly to campaign committees or parties, because individuals or corporations who wish to influence elections or officials will no longer need to attempt to do so through conduit contribution schemes that can be criminally prosecuted. Instead, they are likely to simply make unlimited contributions to Super PACs or 501(c)s.

As to Super PACs, there are significant challenges in seeking to establish, in a criminal case, improper coordination between a Super PAC and a campaign or official. The FEC, through its advisory opinions, regulations, and matters under review, has been unable to reach agreement or declined to take administrative action in each of the following instances of possible coordination: a candidate's mother running a Super PAC expressly supporting the candidacy; sharing of office facilities by political committees and firms providing services to candidates; candidates themselves soliciting contributions to the supposedly independent committees; former campaign employees working for independent committees; sharing common vendors; and the solicitation of contributions to federal candidates by email and on the website of an independent committee. As a result, it will be rare that the evidence could give rise to proof beyond a reasonable doubt of a criminal intent to illegally coordinate through contribution to, or expenditures by, a Super PAC.

The kinds of 501(c)s described above raise other challenges to effective prosecution. An individual or entity seeking to skirt existing legal limitations under the campaign finance laws through contributions to a 501(c) may do so free from public disclosure of donors to the FEC, with a lack of any required disclosure to the IRS coincident with the contribution, and with restrictions on prosecutors' access to any eventual IRS disclosures. Thus, for example, a donor seeking to bribe a corrupt official could potentially use a 501(c) organization to hide his or her identity, and we would be unlikely to receive the warning signals we would need to investigate further. Additionally, the increasing use of 501(c)s, and the lack of disclosure of 501(c) contributor information, may make it more difficult to detect the use of foreign funds to influence elections. While proven instances of foreign financial influence are rare, detecting such improper contributions, should they occur, will be very difficult indeed given the lack of 501(c) disclosure requirements.

CONCLUSION

Vigorous enforcement of our campaign finance laws is essential to preserving both the integrity of our elections and the public's confidence in those elections. The Justice Department's prosecutors and federal law enforcement agents work hard to uncover, investigate, and prosecute campaign finance offenses. The recent changes in our campaign finance laws have made it more difficult for us to combat the ability of individuals and entities to buy influence over elections and conceal their conduct. But notwithstanding the added challenges, our commitment to enforcing the nation's campaign finance law remains as strong as ever.