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FEC YEAR IN REVIEW 2013

INTRODUCTION

By many measures, 2013 may be the least productive year in the Federal Election Commission's (FEC) history. The agency produced no significant rulemakings, no policies, no significant advisory opinions, and announced only a single enforcement case with a penalty in excess of $100,000. Only reporting violations and the reimbursement of contributions were consistently able to muster the four votes necessary to find a violation of the law, and even there, the penalties for reporting violations generally fell to less than 5% of the amount in violation. Aside from the arrival of two new Commissioners and Chinese hackers breaching the agency's computer system, most observers would be forgiven for thinking of 2013 as a most forgettable year at the FEC.

But a look-back at what the FEC did not do in 2013 tells a different and more interesting story. Based in part on a reassessment of the criteria for beginning an investigation, and in part on a reinterpretation of substantive law, three FEC Commissioners consistently held that they would no longer support enforcement actions in a number of key areas, including the relationship between candidates and outside spending groups. For example, three Commissioners took the position that to begin an investigation, the complaint must show direct evidence of the violation and that they would not draw inferences from the facts alleged. Three Commissioners also found that outside spending groups may use portions of a candidate's campaign material in creating their own ads, and set a high bar for when an outside spending group had become a "political committee" that had to register and report its donors to the FEC.

The absence of four votes to find a violation of the statute and regulations will have an effect on the election in 2014. Some outside groups, be they advocacy groups, corporations, or Super PACs, will grow comfortable getting closer to the line as they share senior leaders, film footage, and fundraising with the campaigns they support. It will not be a path for the faint of heart, for a 3-3 deadlock on an enforcement matter is weak precedent for those who later face an investigation on somewhat different facts. But we can expect to find that the published statements of these three Commissioners will resurface as an appendix to defense pleadings arguing that due process precludes the agency from enforcing rules that, for at least a period in time, lacked the support of a majority of the Commission.

In the sections below, we detail the FEC's most important actions, as well as relevant court decisions and criminal prosecutions. Those sections are as follows:

1. A Higher Standard for Complaints
2. The Continued Battle over Express Advocacy
3. Political Committees Defined
4. Shared Staff, Republication, and Coordination

5. The Internet, Online Communication, and Social Media
6. Reporting Violations
7. Reimbursed Contributions
8. The Enforcement Manual
9. Wildcards in the Courts

1. A HIGHER STANDARD FOR COMPLAINTS

2013 showed the effects of a new era of heightened pleading at the FEC. To begin an investigation, at least four Commissioners must vote to find there is "reason to believe" the alleged violation occurred. The enforcement decisions in 2013 were dominated by a division among the Commissioners over what level of proof is necessary to meet this standard, leading to a series of 3-3 deadlocked votes. As a result, some complaints that might have resulted in an investigation in the past were dismissed at the outset. The content of a complaint is now especially important because at least three Commissioners have taken the position that the FEC's Office of General Counsel cannot take any investigatory steps, including a review of public sources, before at least four Commissioners vote to authorize an investigation.

In the past, the Commission was guided by a standard that required that a complaint "set[] forth sufficient specific facts, which, if proven true, would constitute a violation of the [Federal Election Campaign Act of 1971, as amended (FECA)]. Complaints not based upon personal knowledge must identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented. . . . Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true." MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 1-2 (citations omitted). The complaint and response were to be evenly weighted, but "a complaint may be dismissed if it consists of factual allegations that are refuted with sufficiently compelling evidence provided in the response to the complaint or available from public sources such as the Commission's reports database." *Id.* (citations omitted). For three Commissioners, the test might be simply phrased: "Are there facts sufficient to conclude a violation *may have* occurred?"[1]

The standard generally used by the remaining three Commissioners seemed to require a higher level of direct evidence of the violation. They refused to draw inferences from the circumstantial evidence presented in a complaint and found general denials of the violation could be sufficient to bring the matter to an end. These Commissioners wrote that "[i]t is not enough for the Commission to believe that there is a reason to investigate whether a violation occurred." MUR 5878 (Pederson 2006), Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Petersen at 6. "Instead, the Commission must identify the sources of information and examine the facts and reliability of the sources to determine whether they reasonably give rise to a belief in the truth of the allegations presented." *Id.* (quotation omitted). In practice, this standard might simply be described as determining whether there were sufficient facts to show that a violation *had* occurred.

The Commission often split over whether those standards had been met, as evidenced in the matters below:

[1] "A 'reason to believe' finding is not a finding that a respondent violated the Act, but instead simply means that the Commission believes a violation may have occurred." MUR 6570 (Berman for Congress et al.), Statement of Reasons of Commissioner Steven T. Walther at 9.

- MUR 6540 (Rick Santorum for President): The presence of an individual both in a prominent volunteer role in a candidate's campaign and in making decisions for an advocacy group that sponsored a "Road to Victory Rally '12" event at which the candidate appeared was insufficient to begin an investigation into whether coordination occurred. Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioner Caroline C. Hunter at 16-29. The complainant was unable to provide specific evidence that the senior volunteer coordinated any particular action. *Id.* at 22-29. Nor could the Commission rely on press reports, quoting advocacy group leaders, that conflicted with the general denial of the parties. *Id.* at 5-16.
- MUR 6368 (Friends of Roy Blunt): The FEC's Office of General Counsel and two Commissioners concluded the fact that the founder of a 501(c)(4) group appeared in a candidate's campaign advertisement and campaigned with the candidate did not warrant beginning an investigation into whether he conveyed non-public information from the campaign that tainted the independence of the 501(c)(4) group's subsequent independent expenditure ads. Three Commissioners found the general denial from the campaign and the 501(c)(4) group was an insufficient basis on which to dismiss the complaint without an investigation. These Commissioners insisted that affidavits from the staff that created the 501(c)(4) group's ads, the candidate, and the individual accused of being the conduit were necessary. These Commissioners emphasized that the response did not outright deny the founder's participation in creating the 501(c)(4) group's ads. Statement of Reasons of Chair Ellen L. Weintraub and Commissioners Cynthia L. Bauerly and Steven T. Walther at 3.
- MUR 6570 (Berman for Congress): Three Commissioners found a general denial of coordination through shared consulting services to be insufficient. Statement of Reasons of Commissioner Steven T. Walther at 8; Statement of Reasons of Chair Ellen L. Weintraub and Commissioner Cynthia L. Bauerly at 2. Absent a specific denial by individuals "with personal knowledge of the facts or other credible information" that they did not engage in prohibited conduct, "there was a strong reason to investigate whether the [vendor] provided one or more of the services enumerated in the common vendor regulation." Statement of Walther at 8, 10. Two Commissioners cited *La Botz v. FEC* as authority for the proposition that the Commission should not "rely[] on conclusory denials in lieu of relevant facts," and asserted that when "presented with such conclusory denials in the face of a particular factual allegation, the bar for choosing to take no further action is especially high." Statement of Weintraub and Bauerly at 2 (citing *La Botz v. FEC*, 889 F. Supp. 2d 51 (D.D.C. 2012)).
- MUR 6611 (Friends of Laura Ruderman, et al.): The candidate's mother started a Super PAC devoted solely to her daughter's election and appeared in one of her daughter's campaign ads. The Office of General Counsel and three Commissioners found the specific declarations and affidavits of the candidate and Super PAC team sufficient to close the matter without an investigation. First General Counsel's Report at 6-12. Three other Commissioners concluded that when a person with a "close pre-existing relationship to a candidate finances and actively participates in the activities of a purportedly independent political committee," it "raise[s] particularly troubling questions about independence and coordination" and even specific sworn denials of those involved in creating the ads are insufficient to prevent a limited investigation. Statement of Reasons of Chair Ellen L. Weintraub and Commissioners Cynthia L. Bauerly and Steven T. Walther at 3.
- MUR 6616 (Steelman for U.S. Senate): The Office of General Counsel and three Commissioners concluded there was insufficient basis to investigate whether the campaign chairman directed funds from non-federal campaign accounts to a Super PAC supporting the candidate. The other two Commissioners were opposed, noting that "neither [the campaign chairman] nor [the non-federal committee] specifically deny that [the campaign chairman] exercised direction or control of the funds. Nor is an affidavit provided by anyone with personal knowledge detailing [the campaign chairman's] role with [the non-federal committee]." Statement of Reasons of Chair

Ellen L. Weintraub and Commissioner Steven T. Walther at 3. They stated: "[T]he bar for choosing to take no further action is especially high" when the only evidence against a reason to believe finding is a conclusory denial to specific factual allegations. *Id.*

2. THE CONTINUED BATTLE OVER EXPRESS ADVOCACY

The Commissioners also continued to split over the definition of "express advocacy." Determining whether speech amounts to express advocacy helps to determine whether a group must register as a political committee with the FEC; whether a communication is regulated as a "coordinated communication" or an "independent expenditure"; and the conditions under which a candidate may participate in a corporation's event, among others. The 3-3 split among the Commissioners over what standard to apply left the Commission unable to reach a decision on cases that turn on that definition.

Three Commissioners found fault with the regulatory definitions of express advocacy at 11 C.F.R. §§ 100.22(a) and 100.22(b). 100.22(a) defines express advocacy as communications that contain the *Buckley* "magic words," phrases like "vote for the president," "re-elect your Congressman," "Smith for Congress," "reject the incumbent," or campaign slogans and individual words that, in context, have no reasonable meaning other than urging the election or defeat of a candidate. 100.22(b) extends the definition to other communications that could only be understood to advocate the election or defeat of a candidate.

The three Commissioners supporting a narrower definition of express advocacy concluded that 100.22(b) was unenforceable in the First and Fourth Circuits, and in practice, have not found a violation of that section in the past two years. *See, e.g.*, MUR 6543 (Unknown Robo-Call NC), Statement of Reasons of Vice Chairman Donald F. McGahn; MUR 6346 (Cornerstone Action and Friends of Kelly Ayotte), Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Petersen. The provision had been declared unconstitutional in decisions in those circuits, though subsequent cases and Commission actions have cast doubt on those decisions. Despite this, the Commissioners made clear that they would not enforce 100.22(b) in either circuit at this time.

The same three Commissioners indicated that they would only find express advocacy under 100.22(a) where the speech at issue used one of the *Buckley* "magic words" or contained campaign slogans or similar words that could only be reasonably read to urge the election or defeat of a specific candidate. MUR 6543 (Unknown Robo Call NC), Statement of McGahn at 9; MUR 6346 (Cornerstone Action and Friends of Kelly Ayotte), Statement of McGahn, Hunter, and Petersen at 9. As a result, there are only the four votes necessary for the FEC to enforce its regulations when the communication contains speech equivalent to the "magic words" from *Buckley* or campaign slogans. For example, the Commission could not agree whether there was express advocacy in a robo-call that said the caller was "calling to share some thoughts about voting on May 8th of this year"; made negative comments about a candidate in that election; and asked "what are we doing sending [the candidate] back to Washington?" MUR 6543 (Unknown Robo-Call NC) at 2.

Overall, this *de facto* narrowing of the Commission's definition of express advocacy could have a major effect, especially on disclosure and the regulation of outside spending groups. Fewer groups will have to register as political committees and disclose their donors or how they spent their funds to the FEC. Fewer communications will be "coordinated," allowing for closer cooperation between campaigns and outside groups. Fewer communications will meet the definition of an "independent expenditure," with the heightened disclosure that such a finding requires. Candidates may also have greater flexibility around attending and speaking at corporate events.

3. POLITICAL COMMITTEES DEFINED

The FEC has long debated when a group has met both the statutory definition for being a "political committee" (it received contributions or made expenditures of more than $1,000 in a year) and the constitutional requirement in *Buckley v. Valeo* (that its major purpose is to elect or defeat a clearly identified candidate for federal office). The consequence is significant, for a political committee must register and report its activities to the FEC and otherwise comply with the restrictions on "political committees" in federal law.

Three Commissioners provided a clear and narrow test to determine if a group has become a political committee. MUR 6081 (American Issues Project), Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Petersen; MUR 6396 (Crossroads GPS), Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen. In contrast, the three remaining Commissioners advocate for a broader definition. MUR 6396 (Crossroads GPS), Statement of Reasons of Vice Chair Ann M. Ravel and Commissioners Steven L. Walther and Ellen L. Weintraub. As a consequence, an enforcement action will only gain the fourth vote necessary to proceed if it meets the narrower test.

The narrower major purpose test begins by examining whether the organization has identified influencing federal elections as its central organizational purpose in its organizing documents or other material put forth in the group's name, including fundraising documents and press releases. "[T]hese statements must be given significant weight and a stray quote or a paraphrase, in the face of all other evidence, will not transform a group into a political committee." MUR 6396 (Crossroads GPS), Statement of Goodman, Hunter, and Petersen at 11. The Commissioners reiterated that "stray quotes in newspaper articles cannot undermine the stated purpose of a group." *Id.* at 12.

Even if the group does not qualify as a political committee under this first approach, the FEC can examine the group's spending to determine if, as a practical matter, its major purpose was influencing a federal election. In so doing, the Commission must conclude that more than 50% of the group's resources were used for express advocacy, *id.* at 14-15, 24, a term that is limited to communications that use *Buckley*'s "magic words" or similar campaign slogans. Thus, under this narrower test, an issue ad that attacks a candidate's character or fitness for office will not count as spending to influence a federal election, even if run shortly before Election Day and reported as an "electioneering communication."

Additionally, the narrower test concludes that whether a group's spending makes it a political committee cannot be determined by looking at only a single calendar year of activity. Instead, determining whether a group has spent over 50% of its funds on express advocacy must include in the calculation spending in at least one year in which federal elections are not generally held. These Commissioners also seemed comfortable with a test that includes at least two years and potentially up to eight years of activity in assessing if the 50% threshold had been exceeded.

The three Commissioners who support a broader standard would include expenditures that promote, attack, support or oppose a federal candidate in calculating a group's major purpose, even if viewers are not explicitly asked to vote for or against the candidate. MUR 6396 (Crossroads GPS), Statement of Ravel, Walther, and Weintraub at 4. They also found that spending in a single year could qualify an organization as a political committee; that the calculation did not have to be based on the group's self-selected fiscal year; and recalled that the major purpose test has never required campaign spending to exceed 50% of overall spending. *Id.*

4. SHARED STAFF, REPUBLICATION, AND COORDINATION

The FEC found no case in 2013 in which its coordination rules had been violated. Many cases alleging coordination were disposed of with a 3-3 vote based on the standards needed to justify the agency beginning an investigation. The interconnection between outside groups and campaigns through staff, family members, vendors, and video give a sense of the types of contact the FEC has so far left undisturbed.

- MUR 6368 (Friends of Roy Blunt), Statement of Weintraub, Bauerly, and Walther: The Commission could not reach a decision and dismissed this MUR. The founder of a 501(c)(4) group appeared in a candidate's campaign advertisement and campaigned with the candidate, but the complainant had no direct evidence that he obtained non-public information from the campaign that tainted the independence of the 501(c)(4) group's subsequent expenditures.
- MUR 6540 (Rick Santorum for President), Statement of Reasons of Chair Ellen L. Weintraub and Commissioner Steven T. Walther; Statement of McGahn and Hunter: The FEC could not agree on whether an individual volunteering for a federal campaign and directing an outside group's spending provided sufficient facts to begin an investigation.
- MUR 6570 (Berman for Congress): Common vendor did not warrant investigation when all parties denied improper coordination. Three Commissioners opposed dismissal. Statement of Weintraub and Bauerly; Statement of Walther.
- MUR 6617 (Christie Vilsack for Iowa, et al.) and 6667 (House Majority PAC & Friends of Cheri Bustos), Statement of Reasons of Commissioners Caroline C. Hunter and Matthew S. Petersen: Two Commissioners (of only four Commissioners at the time) found no violation of the bar on "republication" of candidate material when an outside group incorporated footage of the candidate from the campaign's ad into the group's commercial, so long as the outside group's resultant ad contains its "own message." In both cases, the candidate's footage made up eleven seconds of the independent expenditure group's thirty-three second ad. The other Commissioners continue to view more than *de minimis* use of candidate campaign material to be a violation.
- MUR 6664 (Wall for Congress): The Commission found that the bare allegation that a person worked first for a union or its related political organization and then for a campaign was insufficient to begin an investigation into whether coordination occurred.
- MUR 6668 (Jay Chen for Congress): The Commission found that familial relations alone are insufficient to begin an investigation into coordination when the brother of a candidate organized a Super PAC's mailers in support of the candidate. The presence of a printer as common vendor, where the printer merely printed addresses onto the mailers and applied its bulk-mail postmark, did not change this outcome.

5. THE INTERNET, ONLINE COMMUNICATION, AND SOCIAL MEDIA

One area of rare agreement among the Commissioners was application of the coordination rules to online communications. The Commission affirmed that internet communications that are not placed for a fee on another's website cannot create a "coordinated communication" between two committees as defined in 11 C.F.R. § 109.21. In MUR 6522 (Lisa Wilson-Foley for Congress), the complaint alleged that a candidate made coordinated communications with three of her own businesses, in part through online advertising via YouTube videos, Facebook posts on the business' page promoting the business, and the candidate and campaign's appearance on the business' websites. The Commission voted to dismiss the complaint because none of the internet advertising was placed online for a fee on the website of another - the Facebook and YouTube posts were free, as was the placement on the candidate's own website.

The Commission's decision affirms that online communications placed for free on another's website do not meet the content test and therefore do not violate the FEC's coordination regulations. While the outer borders of this exception have not been tested, groups with a tolerance for risk may seek to expand on it in 2014.

6. REPORTING VIOLATIONS

Punishment of reporting violations is one area of agreement among the Commissioners, even as overall enforcements hovered near twenty-year lows in 2013. 2013's enforcements, whether via conciliation agreements, Administrative Fines (AF), or Alternative Dispute Resolutions (ADR), originated largely with the Commission's Reports Analysis Division (RAD). For example, outside complaints generated less than a third of all conciliation agreements this year. Thus, while there is reportedly a backlog of enforcement cases at the Commission, it seems that only RAD- and *sua sponte*-generated matters are guaranteed to move forward.

Some patterns and best practices do emerge from the 2013 enforcement cases. However, many factors affect the Commission's decisions - the nature and amount of the violation, the financial status of the offender, how the Commission discovered the violation, any history of prior violations, and other known and unknown factors shape each case. It is not always possible to predict what the outcome of a violation will be, but we can make some generalizations.

In 2013, most reporting violations involving less than $100,000 were resolved through either ADR or the AF program. The Commission continued to impose significantly reduced penalties for respondents that it found were defunct, had no or limited cash-on-hand, had limited means of raising funds, and intended to terminate, though it often reserved the right to impose greater fines if those facts turned out to be incorrect. For reporting violations in 2013, the penalties assessed through the AF and ADR programs were not substantially different per dollar of violation than those resolved in conciliation agreements (though some ADR respondents avoided monetary liability altogether). The statistics also reveal that there are some simple steps that potential respondents can take that usually will limit their exposure. Making a formal *sua sponte* submission normally resulted in a lowered penalty. Immediately amending erroneous reports, undertaking remedial efforts before the Commission acted, and reaching a conciliation agreement before the Commission holds a probable cause hearing also reduced penalties.

Administrative Fine Program Extended and Expanded: Congress extended the Administrative Fines program until 2018 and authorized the FEC to adopt regulations that expand it to include reporting violations by party and convention committees, groups that make independent expenditures or electioneering communications, and those who file contribution bundling disclosures. Act of Dec. 26, 2013, Pub. L. No. 113-72, 127 Stat. 1210. The Commission has announced it plans to begin a rulemaking on the issue this year.

Dollars and Cents:

- About 160 matters ended in Administrative Fines in 2013. The largest fine was $31,010 for a campaign that failed to file 48-hour reports of pre-general contributions totaling $309,000. AF 2616 (Pittenger for Congress LLC).
- About 30 cases ended in ADRs in 2013. The largest settlement was $6,500 for a campaign that failed to file any reports from January 2011 until June 2012, failing to report $161,152 in receipts and $147,317 in disbursements. ADR 635 (Friends of Anna Little). ADR penalties overall for reporting violations ranged from $0.00 to $0.08 per dollar of violation.

- The largest conciliation agreement penalty for 2013 was $80,000, MUR 6112 and AF 2639 (John McCain 2008), though a $375,000 penalty assessed in 2012 was announced in early 2013. MURs 6078, 6090, 6108, 6139, 6142, and 6214 and AF 2412 (Obama for America). Penalties in conciliation agreements that only included reporting and filing violations ranged from less than one cent to about seven cents on the dollar.

7. REIMBURSED CONTRIBUTIONS

Both the Commission and the Department of Justice continued to consider the making of reimbursements for contributions a serious violation of the campaign finance laws, and devoted substantial resources to resolving them. At the Commission, reimbursed contributions resulted in the highest ratio of penalty to amount in violation - sometimes many times the amount of the violation. However, the penalties assessed this year on reimbursed contributions do not tell us much, because most the entities involved were bankrupt or close to it by the time the Commission assessed a penalty.

One reimbursement case, MUR 6623 (William A. Bennett), showed a possible division between the Commissioners on when a violation was "knowing and willful," which increases the civil penalties and brings the possibility of criminal prosecution. Three Commissioners found it appropriate to infer a knowing and willful violation from the respondent's promise to reimburse donors; his statement to one donor that he had reached his personal contribution limit; and his status as an "experienced donor." MUR 6623 (William A. Bennett), Statement of Reasons of Chair Ellen L. Weintraub and Commissioners Cynthia L. Bauerly and Steven T. Walther.

8. THE ENFORCEMENT MANUAL

The FEC continues to evaluate its enforcement process even as the Commissioners themselves had very public disagreements over that process. In early January 2013, the Commission issued a request for comment on its enforcement process, including its overall performance; the process before the "reason to believe" finding; and the civil penalty process. Request for Comment on Enforcement Process, 78 Fed. Reg. 4081 (Jan. 18, 2013). The Commission received thirteen comments in reply to its request. Of these, six were from nonprofits, political parties, and law firms that routinely interact with the Commission; one was a petition accompanied by over 33,000 signatures expressing the signatories' disappointment with the Commission's enforcement; and the remainder were from concerned citizens.

The Commission has also circulated various drafts of an enforcement manual, though attempts to adopt a final version of the manual have so far failed. *See, e.g.*, FEC, Open Meeting Agenda Sept. 12, 2013 at V. OGC Enforcement Manual (holding over consideration of manual from August meeting); FEC, Open Meeting Agenda Aug. 22, 2013 at VIII. OGC Enforcement Manual (holding over consideration of manual from July meeting). While the arrival of two new Commissioners may break that deadlock, only time will tell if the manual will ever be adopted.

9. WILDCARDS IN THE COURTS

Courts are expected to act on a series of pending campaign finance cases in 2014. There is potential for some of these decisions to render major changes to campaign finance law in the areas below.

- **Aggregate Limits and the Rise of Joint Fundraising Committees:** The Supreme Court will hand down a decision on the constitutionality of the aggregate contribution limits in *McCutcheon v. FEC* sometime in 2014. The aggregate limits cap the amount that individual donors can

contribute in total to all federal candidates, PACs, and parties during a two-year election cycle. It is likely that the Court will strike the limits, allowing individuals to contribute an unlimited aggregate amount to federal hard money groups. This is likely to lead to an increase in Joint Fundraising Committees, which can solicit contributions from large donors and redistribute those funds among candidates, PACs, and parties according to a predetermined formula. There is speculation that the Court will use this case as a vehicle to strike down other contribution limits, including the limit on individual contributions to a single candidate. We do not believe this is likely. However, in *United States v. Whittemore*, the court has allowed the defendant to remain free after his reimbursed contribution conviction in the unlikely event that this broader invalidation occurs. *See United States v. Whittemore*, No. 3:12-CR-00058-LRH (D. Nev.).

- **Electioneering Communications:** It is likely that at some point in 2014, the United States District Court for the District of Columbia will issue an opinion in *Van Hollen v. FEC*. Depending on the outcome, this case has the potential to impose new disclosure requirements on some groups and consequently shift spending in the mid-term election. The losing party will almost certainly appeal, but this case could, at least temporarily, throw the disclosure rules for electioneering communications into disarray as the court decides the state of the law while the appeal is pending.
- **Review of the "Political Committee" Deadlock:** Two groups have announced that they intend to sue the Commission, arguing the agency's deadlock over whether to investigate whether a group had become a "political committee" was "arbitrary, capricious, an abuse of discretion and otherwise contrary to the law." *Public Citizen v. FEC*, 1:14-cv-00148 (D.D.C. Jan. 31, 2014). The plaintiffs face an uphill battle, but the case will be closely watched.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our election and political law practice group:

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