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06/03/2013 07:22 PM

To SERS@fec.gov, sersnotify,
cc
bcc
Subject New comment on REG 2013-01 submitted by Wilson,
Graham

1 attachment



REG_2013_01_Wilson_Graham_06_03_2013_19_22_26_Perkins Coie Political Law Group, Comments on REG 2013-01.pdf

Please find attached the contents for the new comment submitted on Mon Jun 03 19:22:26 EDT 2013.

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June 3, 2013

Federal Election Commission
Attention: Amy L. Rothstein, Assistant General Counsel
999 E Street, N.W.
Washington, DC 20463

**Re: Comments Regarding Proposed Rulemaking Concerning Technological
Modernization, REG 2013-01**

Dear Ms. Rothstein:

On behalf of the Perkins Coie, LLP Political Law Group, we write in response to the Commission's May 2, 2013 Advance Notice of Proposed Rulemaking regarding Technological Modernization. We commend the Commission's attention to this matter, which significantly affects individual political participation and the ease of compliance with the Federal Election Campaign Act of 1971, as amended (the "Act").

Technological developments in digital communication and electronic forms of payment provide powerful ways of expanding participation in our democratic process and ensuring transparency in the funding of elections. The ease of making online contributions, donating via text message, and using social networking platforms to engage in political support encourages the engagement of grassroots supporters making small donations. Individuals with a computer or smartphone can now freely interact with candidates and engage in political discussions. The accessibility of information and ease of communicating digitally have a democratizing effect on political discourse and on the financing of elections as well. Moreover, technological innovation not only allows political committees to rely on small contributions from a broader base of engaged citizens, but also helps them more easily collect, maintain, and disclose information in compliance with the Act. Political committees can quickly and securely collect donor information, automatically create and store records of electronic transactions, and communicate more easily with the Commission.

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The Commission should "interpret[] the Act and its regulations in a manner consistent with contemporary innovations, including the maintenance of records in non-paper form and the performance of committee transactions, where the use of the technology would not compromise the intent of the Act or regulations." *See* FEC Adv. Op. 1999-9 (June 10, 1999). Recently, the Commission approved several ways for donors to contribute via text message despite technical regulatory hurdles. *See* FEC Adv. Ops. 2012-17 (June 11, 2012), 2012-30 (September 4, 2012). In this and other contexts, the Commission should maintain flexibility wherever possible, clear unnecessary obstacles to innovation from its regulations, and create rules that will still ensure compliance with the Act while allowing for rapid change in the way that political contributions can be made, handled, and reported.

While the Commission should remove references to outmoded technologies (e.g., telegrams, fax machines, and mimeographs) from its regulations, it should take care to avoid new references or examples that will likely become outmoded themselves in just a few years. Accordingly, the Commission should seek to describe the required import of an action or necessary substance of a communication, instead of specifying or limiting the form or the means.

One key area where the Commission should create more flexibility along these lines is with required communications between political committees and their donors and between political committees and the Commission. With regard to a committee's "best efforts" to collect donor information or communications regarding the designation, re-designation, or attribution of a contribution, neither the form of the communication (e.g., a printed letter, an email, or other online method) nor the method of certification (e.g., a printed signature or a check-box certification) should be specified, as long as such communications are made in a manner that is reliable and conforms with general standards used in commercial or industry settings. Similarly, it should be as simple as possible for committees to communicate with the Commission itself, again removing specific regulatory requirements concerning the form of submission or necessity of a printed signature, when other forms of certification are functionally equivalent and increasingly used in the commercial context.

If the Commission succeeds in specifying what is substantively important for campaign finance purposes without needing to dictate the technological details, it is also less likely to run afoul of other industry requirements or practices. For example, under the Payment Card Industry Data Security Standards ("PCI DSS"), it is preferable for entities not to retain certain credit card information, such as the Card Verification Value ("CVV") number from the back of credit and debit cards for privacy reasons. The Commission should be cognizant of these other types of requirements, so as not to place political committees in a situation where the Commission's regulations are in tension with other such requirements. Committees should have the flexibility both to satisfy the Commission's requirements and to meet normal business standards. Another example is the issue of using separate merchant accounts for handling political contributions and whether the Commission's past statements match up with how electronic forms of payment actually work. As long as funds are handled in a manner whereby committees are not receiving

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contributions from prohibited sources, the Commission should not attempt to dictate exactly how a transaction occurs when such methods are constantly evolving.

We again appreciate the Commission's willingness to re-evaluate its regulations in order to account for recent technological innovations. We would encourage the Commission in any future rulemaking to be especially mindful of the democratizing force of innovation.

Very truly yours,

A handwritten signature in black ink, consisting of several overlapping, fluid strokes that are difficult to decipher as a specific name.

Marc E. Elias
Brian G. Svoboda
Graham M. Wilson