Make Your Laws PAC, Inc.
FEC ID # C00529743
% Nick Staddon, Secretary
122 Pinecrest Rd.
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Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, DC 20463

Re: MYL PAC comment on *McCutcheon* rulemaking (REG 2014-01)

January 14, 2015

Dear Commissioners:

Please accept this comment on behalf of Make Your Laws PAC, Inc. (MYL PAC) in response to the FEC's Advance Notice of Proposed Rulemaking (ANPRM) 2014-01 regarding post-*McCutcheon* rulemaking on earmarking, affiliation, joint fundraising committees, disclosure, and other issues.

Background

MYL PAC is a strictly non-partisan organization. Our goals include ensuring that elections, and corresponding campaign finance, are transparent, independently auditable, and swayed according to the number of citizens supporting an issue rather than the amount of money spent.

MYL PAC fundamentally disagrees with the Supreme Court's ruling in *McCutcheon v. FEC* for a simple reason: together with the Supreme Court's prior decisions, it has the effect of making political power based on wealth rather than popular support. Nevertheless, we recognize that this is now the law of the land, and we respect the rule of law. The FEC has responded to *McCutcheon* in REG 2014-07, by striking 11 CFR 110.5 together with conforming changes.

However, as the FEC has acknowledged, *McCutcheon* indicated that striking this provision is *not* the only action the FEC can or should take. The Supreme Court's decisions overturning limits on various kinds of contributions have consistently upheld and been based upon a presumption of disclosure, preventing circumvention of other limits, and avoiding the appearance of corruption.

The FEC should fill gaps in current regulations that permit *de facto* circumvention and non-disclosure in ways that were not contemplated or intended by the Court or Congress, by revising outdated provisions and strengthening disclosure requirements.

MYL PAC's recommendations

1. Standardize contributor information and update the "cash" limitation.

2 USC 432(c)(1) requires committees to keep account of all of their contributions.

Currently, the FEC's regulations require committees to submit contributor information, as defined in 11 CFR 100.12, if the contribution is greater than $200 (11 CFR 104.3(i)(4)(i)); and to collect a subset of that information (i.e. name and address) for contributions greater than $50 but less than or equal to $200. There is no requirement to collect *any* information for contributions $50 or less — even though limits apply in aggregate, and failure to collect it from repeat donors of $50 or less would make violations likely (and hard to either prove or disprove).

Additionally, committees are forbidden from accepting unidentified contributions of currency $100 or more (2 USC 441g, 11 CFR 110.4(c)(2)).

As the Commission has seen from our own AOR 2014-02 re. Bitcoin and our comments on CAF's preceding AOR 2013-15, as well as from the Commission's September 17, 2014 forum on website improvement, we believe these requirements are inadequate and outdated. They fail to account for non-currency but hard-to-trace mediums of exchange such as Bitcoin, and fail to standardize reporting enough to allow data to be reliably cross-linked and correlated.

Section 432 imposes *minimum* accounting requirements, not maximums. The FEC has the authority to impose more specific disclosure and accounting requirements, and should use that authority to address flaws in existing regulations.

We suggest that the Commission address these issues in four simple ways:

A. *Standardize "name", "address", "occupation", and "employer".*

Currently, the same person could be reported in a large number of different ways, due to variations in how their name is given (nicknames, middle initial vs full middle name, etc), having multiple mailing addresses, multiple employers/occupations and multiple ways to describe the same.

This makes cross-correlating data very difficult, even within FEC reports, let alone with state campaign finance reports, voter registration rolls, lobbyist registrations, etc.

Therefore, we suggest that the FEC define these terms (and require all collection and

reporting thereof) in a uniform way, such that reporting is fully consistent — namely:

"Name": For an individual, the full legal name listed on their most recent voter registration, passport, driver's license, state ID, or birth certificate (in that order).

For other entities, its full legal name as registered with the Secretary of State in its domicile.

"Address": For an individual, the address listed on their most recent voter registration, driver's license, or state ID (in that order)[1]; or if neither registered to vote nor possessing state DL/ID, their primary residence address (i.e. the only address at which they could register to vote).

For other entities, the address of its headquarters, as registered.

"Occupation": One of the Bureau of Labor Statistics' enumerated occupations, according to its most recent Standard Occupational Classification[2] publication — reported by the committee together with the corresponding 6-digit SOC code.

"Employer": The full legal name (per above) of the entity providing the majority of that individual's income for that tax year, e.g. as listed on their most recent W2 or 1099-MISC — except "self" for self-employed and "none" for unemployed, retired, etc.

B. *Require collection of full 11 CFR 100.12 identification for all contributions.*

This includes collection by the directly receiving entity, e.g. under 11 CFR 102.8; information sent by an intermediary / conduit to earmark recipients, under both 102.8 and 11 CFR 110.6; and all other reports or accounting of any person, e.g. 11 CFR 104.3(h).

We suggest the Commission go one step beyond the current "best efforts" standard. While we agree that "best efforts" is a reasonable standard for the *accuracy* of information collected, we believe that the *information* is mandatory. Contributions lacking adequate identification should be handled in accordance with 11 CFR 103.3(b) (i.e. as possibly illegal contributions that may be accepted provisionally pending further efforts to ensure their legitimacy).

If the remaining information is not obtained, then it should be returned (if reliably possible) or (if not[3]) given to a 501(c)(4) or (c)(3) organization, or the U.S. Treasury.

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[1] Standard US passports do not list addresses in the official portion of the document.

[2] http://www.bls.gov/soc/

[3] We note that currently, it is *not* technically possible to reliably return Bitcoin; such returns would need to be made by other reliable means, e.g. a mailed check. This may change as the Bitcoin protocol is developed further.

C. *Prohibit anonymous contributions and generalize the provision for unidentified contributions.*

The first sentence of 11 CFR 110.4(c)(3), effectively permitting anonymous contributions of $50 or less, should be stricken and replaced with a flat prohibition on anonymous contributions.

The second sentence should be moved to a separate, more general provision, requiring committees receiving *any* contribution which has not been adequately identified to disburse it for non-election purposes (e.g. to a 501(c)(3) or (c)(4) organization, or to the U.S. Treasury).

D. *Limit to $100 any contribution made in a difficult-to-trace medium of exchange.*

11 CFR 110.4(c) should be changed to replace the terms "cash", "currency", etc. with the broader "non-traceable contribution", defined in a new section 110.4(d) as *any* contribution which is made with a medium of exchange that cannot be adequately audited.

Systems that *are* adequately auditable would include, e.g., those regulated by FinCEN's "know your customer" (KYC) requirements (banks, credit cards, money services businesses, etc), or by the SEC, CFTC, state DMVs, or other regulatory agencies that impose similar requirements to track the identity of exchangers and exchanged items in each transaction.

The exchange of Bitcoin is *not* currently adequately auditable. However, this may change; for instance, some Bitcoin exchanges may choose to voluntarily adopt FinCEN KYC requirements for their customers. Exchange between such KYC-compliant accounts *would* meet the standard, and would not be subject to the $100 limit that we propose.

Cash would continue to fall within this provision; we believe simply that it should be extended to cover any non-monetary medium of exchange that, like cash, cannot be readily traced.

The FEC should not *prohibit* inadequately auditable contributions, but simply limit them to $100. This would be in keeping with Congress' intent in passing 2 USC 441g.

2. Prohibit SSFs from accepting contributions outside their permitted solicitation class.

SSFs (and similarly limited entities) have a variety of restrictions on their permitted solicitations, e.g. under 11 CFR 114.5 and 114.6. We do not offer any opinion on what those restrictions should or shouldn't be. However, we would like to point out an easily fixed problem with the current regulations that creates both a loophole in the restrictions, and an impermissible burden on constitutionally protected speech.

To quote the Commission's corporate/labor/trade PAC guidance brochure, "an SSF may accept an unsolicited contribution that is otherwise lawful, but the committee may not inform individuals outside the restricted class that unsolicited contributions are acceptable. 114.5(j). Providing that information amounts to a solicitation. See, e.g., AO 1983–38."

While we agree with the spirit of the AO — a "wink wink nudge nudge" solicitation is still a solicitation, especially if actively distributed — this position is simply not legally tenable.

First, we do not believe that the FEC, or Congress, has the authority to forbid any person from merely *accurately stating the law*. AO 1983-38 implies that an SSF would violate the FECA merely by *passively quoting* the Commission's own materials as above, e.g. on its website's FAQ page. This is a plainly unconstitutional imposition on protected speech.

Second, a non-connected PAC such as MYL PAC may act as a conduit for contributions to *any* committee — including an SSF — without any restriction on its solicitations. This is effectively a loophole, as it permits an intermediary to make solicitations that the recipient cannot.

The solution is simple: forbid entities like SSFs, which are already forbidden from *soliciting* contributions outside their permitted class, from *accepting* any contribution from outside that class — and permit them to accurately state the law. This would both close the loophole, and remove the unconstitutional imposition on the SSFs' speech arising from an untenable, pre-Internet AO.

SSFs could *passively* inform anyone who asks (e.g. by means of a website FAQ or in response to a query) that they can only accept contributions from class members, and direct interested parties as to how they could become members if they wish. Non-members could either join the restricted class, or direct their contributions to some non-connected political committee with similar objectives. Simultaneously, forbidding the SSF from accepting contributions from non-class members would preempt many issues about improper solicitation of non-class members, like the problem that AO 1983-38 sought to address.

3. Eliminate the 501(c)(4) money laundering[4] loophole.

Current law permits a political committee to receive contributions from corporations, such as a 501(c)(4) organization[5], which themselves have no reporting obligations. Under current IRS regulations, 501(c)(4) organization must have non-election issue advocacy as their "major" purpose. Conversely, it may spend 49% of its funds on election-related purposes, such as contributions to a SuperPAC.

Any person who desires to do so may secretly contribute two million and one dollars to a (c)(4), which then spends one million and one dollars on issue advocacy, and one million dollars as a contribution to a SuperPAC. Though the SuperPAC may dutifully report its $1m receipt, the trail ends there. The (c)(4) is not required to publicly report its contributors' identities at all.

Bluntly put, this is legal money laundering for political contributions.

This plainly subverts the purpose of the Act and the assumptions of public disclosure relied upon by the Supreme Court in reaching its recent set of FECA decisions.

Because the FEC has no current requirement whatsoever for *ultimate* source attribution — only for *proximate* attribution — election contributions are being routinely made from "dark money" sources. In the 2012 federal election cycle, this totaled roughly $257 million.[6]

Furthermore, foreign nationals may contribute with complete secrecy to a 501(c)(4) organization. Their contributions may be intermingled in a single account together with US nationals' contributions, out of which 49% may be used for election purposes. Indirect political contributions by foreign nationals are unlawful under 2 USC 441e, but both possible and undetectable under our current regulations.

We agree that a 501(c)(4) organization *can* spend anonymous funds for *non-election* purposes; indeed, this is essential to protecting individuals' ability to advocate on sensitive or unpopular issues. However, no such justification exists for contributions to political committees, and the FEC must step in to prohibit such organizations from laundering political contributions.

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[4] We use the term "money laundering" because, as the term is commonly understood, it is completely accurate. To be clear, we do not claim that the activities we describe are necessarily "money laundering" in its strict legal sense, e.g. per 18 USC 1956.

[5] Among other similar sources. We speak in terms of 501(c)(4) organizations simply because they are the most used, not to imply exclusivity.

[6] Source: Center for Responsive Politics, https://www.opensecrets.org/outsidespending/nonprof_summ.php

We do not dispute that under current law — though we may not like it — corporations, including 501(c)(4) organizations, are clearly permitted to make political contributions and independent expenditures, i.e. to purchase political speech. However, this does not imply a right to purchase *anonymous* speech; the Supreme Court's decisions rest on assumptions of public disclosure.

To cure this ever-widening loophole, we suggest that the Commission establish a blanket rule: *any* entity (other than an individual) contributing to *any* political committee, whether directly or indirectly, must do so from a *Carey* / SSF type financial account.[7]

Every such account must:

A. impose all applicable contribution limits, if funds from that account (or its recipients) are ever disbursed to a contribution account, candidate committee, party, or other restricted recipient[8];
B. require full 11 CFR 100.12 identification for all contributions to the account;
C. require that contributions to the account be made from either an individual or another such account;
D. prohibit any contributions to the account by foreign nationals;
E. report the ultimate sources of contributions to earmark recipients; and
F. publicly report its contributions and expenditures to the FEC.

The regulation must effectively result in full *ultimate source* disclosure for *all* election-related contributions and expenditures, fully traceable through *all* intermediary entities, regardless of the amounts or entities involved — not merely the one-hop disclosure that current regulations provide.

4. Reform aggregate contribution limits to trace implicit earmarks using actual spending.

As the FEC noted in its ANPRM, contributors might circumvent limitations by making contributions both directly and through intermediaries, resulting in an aggregate that exceeds contribution limits.

The ANPRM suggested that one way to address this issue may be to expand the presumption of contribution when made through a "single-candidate committee" by establishing a minimum number of candidates a PAC must support, or a maximum percentage of funds spent in support of a particular candidate. We believe that these proposals are both unwieldy and likely to be struck

[7] A 501(c)(4) should be permitted to establish such an account, much like *Carey* — putting funds that may (but need not) be used for political purposes into a *Carey*/SSF account, separated from ordinary funds that may *not* be used for any political purpose but also have none of the associated FEC reporting, foreign national, etc requirements.

[8] This would not apply for accounts whose funds will only be used for independent expenditures. "Restricted recipient" includes e.g. the contribution account of a hybrid SuperPAC, but not its independent expenditure account.

down as unlawful restrictions on PACs' rights to freely affiliate.

Instead, we suggest a simpler, more pragmatic approach: unless there is a binding earmark directing otherwise, attribute contributions to a PAC identically to how the PAC itself spends its funds. If the PAC spends 100% of its funds supporting a particular candidate, then 100% of contributors' contributions to that PAC would count against their aggregate contribution limit to the candidate. If the amount spent is 5%, then it's 5%. This avoids restricting PACs' activities, while attributing the full amount to the contributor.

Existing AOs, e.g. AO 2006-30 ActBlue, provide guidance if the amount to be attributed is yet unknown: the full amount of all possible contributions should be attributed until specifics are known. If contributors wish to avoid this conservative approach (which would initially overestimate whether they've reached a contribution limit), they can contribute with earmarks, or the committee can make a binding promise limiting how the funds will be spent.

This approach would also address the issues raised in the ANPRM's "Affiliation" section — again, without risking regulations that may be overturned as burdening committees' ability to affiliate or that are simply impractical to enforce, e.g. by being too fact-specific and circumventable.

5. ***Require all large contributions and expenditures to be reported immediately.***

The FEC currently requires 1-2 day reporting for electioneering communications (over $10,000) and for independent expenditures. However, this might not disclose the *source* until after an election is over, and omits various other kinds of contributions and expenditures that would be of similarly heightened public interest.

We suggest that a 1-2 day reporting rule be applied to uniformly *all* contributions and expenditures over $10,000, regardless of the time or purpose.

6. ***Require committees to report the value of their non-monetary assets.***

Currently, committees only need to report their "cash on hand". This can significantly understate a committee's true resources, e.g. stocks, bonds, equipment, Bitcoin, etc.

Therefore, we suggest that committees be required to report the current value of "assets on hand" whenever "cash on hand" would normally be reported, with IRS-standard depreciation.

7. Require committees to report the number of unitemized contributions and expenditures.

Currently, committees do not need to itemize contributions or expenditures valued $200 or less, only the sum value thereof. However, unitemized contributions can make up a large proportion of a committee's activity — e.g. 33% of President Obama's 2012 campaign[9] — and lumping them all together needlessly obscures important information.

Reporting the *number* of such contributions (and number of *contributors*), segregated by type of contribution (e.g. cash, non-cash currency, Bitcoin, food, etc.), would provide significantly more insight into this activity without imposing significant burden on the committee.

Similarly, the number of contributions and contributors of unitemized contributions could be broken down by total amount range (e.g. $0-10, $10.01-30, 30.01-50, etc.), thereby offering insight into the *distribution* of unitemized contribution amounts.

8. Define the term "direct costs of fundraising".[10]

11 CFR 106.6(d)(1) refers to a definition of "direct costs of fundraising" in "11 CFR 106.6(a)(2)". However, 106.6(a)(2) doesn't exist, and 106.6(a) doesn't even mention fundraising.

The FEC should define the term “direct costs of fundraising” and make conforming technical corrections, with an eye to related provisions at 11 CFR 106.6(b)(1)(ii), 106.5(a)(2)(ii), 106.5(f)(1), and 104.10(b)(2). We note that these related provisions also do not define the term.

We suggest that 11 CFR Part 100, Subpart D — defining expenditures in general — would be a more appropriate place to define the term, and that all other regulations should be conformed to refer to a single definition.

[9] https://www.opensecrets.org/pres12/candidate.php?id=N00009638

[10] This is a primarily technical correction. MYL PAC did point it out during the Commission's last technical and conforming amendments rulemaking, but it was not included. It is mentioned here simply for completeness, as an easily corrected technical problem with the current regulations.

Conclusion

Thank you in advance for your consideration and attention to this issue. We hope to help, as a non-partisan member of the regulated community, in improving the transparency and accountability enabled by the Commission's regulations.

This ANPRM attempts to fix exploitable vulnerabilities in the FEC's regulatory code, and enable better analysis of its reporting data.

I believe that I can offer the Commission a unique perspective on these issues. I wrote AOR 2014-02 (MYL PAC re Bitcoin, unanimously approved by the Commission), and have recently studied the Commission's (and other agencies') regulations regarding (Super)PAC, 501(c)4, and 501(c)3 organizations. My professional background is as a white-hat computer security researcher, statistical analyst, and developer. This combines well with my current role in running a regulated entity whose goals include addressing these vulnerabilities in pragmatic ways, within the current legal system.

Accordingly, I request the Commission's permission to appear and testify at any hearing on this matter.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,
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