

5/21/2024

Proposed Instruction on FECA, *People v. Trump*, Indictment No. 71543-23

People's Disputed Request

Defense Disputed Request

PART 59 MAY 22 2024

Under the Federal Election Campaign Act, it is unlawful for an individual to **willfully** make a contribution to any candidate with respect to any election for federal office, including the office of President of the United States,² which exceeds a certain limit.³ In 2015 and 2016, that limit was \$2,700.⁴ It is also unlawful under the Federal Election Campaign Act for any corporation to **willfully** make a contribution of any amount to a candidate or candidate's campaign in connection with any federal election, or for any person to cause such a corporate contribution.⁵ For purposes of these prohibitions, an expenditure made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate or his agents shall be considered to be a contribution to such candidate.⁶ In 2015 and 2016, there was no limit on a candidate's ability to contribute personal funds to his or her campaign.⁷

The terms CONTRIBUTION and EXPENDITURE include anything of value, including any purchase, payment, loan, or advance, made by any person for the purpose of influencing any election for federal office.⁸ The phrase "the purpose of influencing any election" requires proof that the activity clearly and unambiguously related to President Trump's 2016 campaign.⁹

Under federal law, a third party's payment of a candidate's expenses is deemed to be a contribution to the candidate unless the payment would have been made irrespective of the candidacy.¹⁰ The candidate's status as a candidate for federal office does not have to be the sole or only motivation for the third party's payment, so long as the payment would not have been made but for the candidate's status as a candidate for federal office.¹¹ There are a number of issues arising from a candidate's personal situation that may become campaign issues, but expenses

¹ Def. Requests to Charge at 28 & nn.42-43.

² 52 U.S.C. § 30101(3).

³ 52 U.S.C. § 30116(a)(1)(A).

⁴ 80 Fed. Reg. 5750, 5752 (Feb. 3, 2015).

⁵ 52 U.S.C. § 30118(a); 11 C.F.R. § 109.20; 11 C.F.R. § 300.2(b)(3).

⁶ 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20.

⁷ 11 C.F.R. § 110.10.

⁸ 52 U.S.C. §§ 30101(8)(A)(i), (9)(A)(i); 30118(b)(2).

⁹ Def. Requests to Charge at 24-25 & n.34.

¹⁰ 11 C.F.R. § 113.1(g)(7).

¹¹ Fed. Election Comm'n, Advisory Opinion 2000-08 (Harvey) at 2-3, available at <https://saos.fec.gov/aodocs/2000-08.pdf>.

arising from such controversies are not necessarily campaign expenses.¹² The political impact of legal issues on a campaign will not, by itself, justify the treatment of any legal expenses as campaign related.¹³ Legal expenses are not campaign related merely because the underlying legal activities have some impact on the campaign.¹⁴ If the payment would have been made even in the absence of the candidacy, the payment should not be treated as a contribution.¹⁵

FECA's definitions of "contribution" and "expenditure" do not include any cost incurred in covering or carrying a news story, commentary, or editorial by a magazine, periodical publication, or similar press entity, so long as such activity is a normal, legitimate press function.¹⁶ This is called the press exemption. "Legitimate press function" is a broad concept. For example, the term legitimate press function includes solicitation letters seeking new subscribers to a publication.¹⁷

¹² Statement of Reasons at 2 n.2, Comm'rs McDonald, Mason, Sandstrom, Smith & Thomas, MUR 4944 (Hillary Rodham Clinton) (Aug. 28, 2001) ("[T]here are a number of issues arising from a candidate's personal situation (divorce, whether children attend public or private schools, business disputes, criminal actions against family members) that may become campaign issues, but the [FEC] will not necessarily therefore deem expenses arising from such controversies to be campaign expenses."), attached as Exhibit 3 to Def. Requests to Charge.

¹³ FEC Advisory Opinion 1995-23 (Shays), 1995 WL 437686, at *1 (July 20, 1995) (quoted verbatim above); *see also* Def. Requests to Charge at 26 & n.37.

¹⁴ Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862-01, 7868, 1995 WL 49139 (Feb. 9, 1995) ("[L]egal expenses will not be treated as though they are campaign or officeholder related merely because the underlying legal proceedings have some impact on the campaign or the officeholder's status. Thus, legal expenses associated with a divorce or charges of driving under the influence of alcohol will be treated as personal, rather than campaign or officeholder related.").

¹⁵ Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862-01, 1995 WL 49139 (Feb. 9, 1995) (quoted verbatim above); *see also* Def. Requests to Charge at 26 & n.38.

¹⁶ 11 C.F.R. § 100.73; *Fed. Election Comm'n v. Phillips Pub., Inc.*, 517 F. Supp. 1308, 1313 (D.D.C. 1981); *Reader's Digest Ass'n, Inc. v. FEC*, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981).

¹⁷ Statement of Reasons of Commissioners David M. Mason and Bradley A. Smith, MUR 5540 (quoted verbatim above) (citing *Fed. Election Comm'n v. Phillips Pub., Inc.*, 517 F. Supp. 1308, 1313 (D.D.C. 1981)).