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FEC Commissioners Announce Compromise on Regulations for Corporate Political Expenditures

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On September 11, 2014, the chair and co-chair of the Federal Elections Commission announced that they have reached a compromise, which they will announce in the near future, to promote new regulations to conform FEC regulations and practice to the Supreme Court's decisions in *Citizens United v. FEC*, 558 U.S. 310 (2010) and *McCutcheon v. FEC*, 572 U.S. _____ (2014). In *Citizens United*, which ultimately led to the use of Super PACs and related organizations, the Supreme Court struck down state and federal laws that prohibit or limit corporations from making independent political expenditures to support or oppose individual candidates for election to public office. In *McCutcheon*, the Court struck down aggregate limits on the total amount that any one individual could make in political contributions in a single election cycle. Current FEC regulations are not consistent with the Supreme Court's rulings in these cases, but there has been significant disagreement among Democrats and Republicans about how to conform FEC regulations to the Court's decisions. We anticipate the compromise proposal, when it is announced, could include changes for disclosure requirements and address other issues. Regardless of the terms of the compromise, it is likely to clarify the FEC's understanding of the scope of the Supreme Court's decisions and establish new practical rules which individuals, corporations, and others active in elections will need to understand.

FEC Chair Lee E. Goodman and Vice-Chair Ann M. Ravel made the announcement in Washington at an event sponsored by the Practicing Law Institute. They did not provide specifics about the substance of the compromise, but promised to disclose complete details at least a week before the FEC's meeting on October 9, 2014 and to seek a vote of the proposed regulations at that meeting. The FEC commissioners may be inclined to adopt the proposal because the chair and vice chair are from

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opposing political parties (Mr. Goodman is a Republican and Ms. Ravel is a Democrat) and their joint recommendation is likely to carry considerable weight with their fellow commissioners.

Mr. Goodman and Ms. Ravel explained that they will unveil a proposed permanent regulation to conform FEC regulations to the Court's decision in *Citizens United*, a final interim regulation to conform FEC regulations to the Court's decision in *McCutcheon*, and a request that public comment be taken on certain issues raised in *McCutcheon* case. If the FEC adopts the compromise proposal, the public comment period will be followed by a public hearing on how the FEC should respond to the issues the Court raised.

While we have yet to see the substantive rules that will be placed before the FEC for its consideration, this announcement may hold significant implications for any corporation or individual that participates actively in federal elections. If adopted, proposed regulations could provide the rules-of-the-road for corporations that contribute to Super PACs, politically active trade associations, or 501(c)(4) organizations that are politically active. Given the influence that federal regulations have on state regulators addressing the same issues, whatever the FEC ultimately adopts is likely to find its way into the regulations or positions taken by many state regulators as well.

Any corporation (including a nonprofit), organization, or individual that is politically active is well-advised to stay tuned to find out more about the substance of the FEC proposal when it is revealed at the end of September or early October.

In the meantime, for our previous alert on current guidance for tax-exempt organizations planning political activities, please [click here](#).

If you have questions regarding the rules on lobbying and political activity for your tax-exempt organization, please contact your regular Butzel Long attorney, a member of the Butzel Long Nonprofit Organizations practice group, or the author of this alert.

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