

Political Contributions by Text Message? Not Yet

January 2011

On November 18, 2010, the Federal Election Commission (FEC) issued an advisory opinion requested by Wiley Rein partners Jan Baran and Caleb Burns on behalf of CTIA-The Wireless Association. The advisory opinion explained that the current procedures used by wireless service providers and others to process \$10 transactions by text message must be modified if used to make political contributions. The required modifications include:

- Ensuring that contributions to candidates are received by the candidates' campaigns within 10 days and contributions to other political committees are received within 30 days;
- Processing all contributions through accounts that segregate the contributions from other funds; and
- Requiring wireless service providers to develop a process to detect from each wireless subscriber's bill whether the subscriber (a) has made more than \$50 in contributions to one recipient and (b) is a corporation or has a foreign address.

The components of this third requirement were developed to account for the fact that \$10 text message contributions would be below the \$50 statutory anonymous contribution limit and, therefore, would not require investigation into whether contributions are from impermissible sources, *e.g.*, corporations or foreign nationals.

This requirement, as well as the second requirement that contributions be physically separated from other funds, caused considerable disagreement among the FEC commissioners. Neither requirement is mandated by the campaign finance laws. Rather, the FEC has itself imposed requirements like these in other advisory opinions. Three of

Authors

Caleb P. Burns
Partner
202.719.7451
cburns@wiley.law

the commissioners voted to end this practice, but that vote resulted in a 3-3 deadlock. Only by including these two requirements could the commissioners reach a consensus and issue the advisory opinion.

Nonetheless, it remains to be seen whether wireless service providers and others involved in processing transactions by text message will make these modifications. That business decision will ultimately determine the fate of political contributions by text message.