

FEC Settlement Paves the Way for Hybrid PACs

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Litigation between the Federal Election Commission (FEC) and the National Defense PAC (NDPAC) recently took an important turn. Under the settlement agreement, NDPAC is allowed to simultaneously operate as both a PAC and a Super PAC. Press accounts indicate that the FEC may issue more general guidance in the future based on the principles contained in the settlement agreement.

By way of background, NDPAC submitted an advisory opinion request to the FEC in 2010 asking whether it could make contributions to federal candidates from federally permissible funds while also using a segregated bank account to make independent expenditures from funds raised outside of contribution limits and source restrictions without forming a Super PAC. (For more information on Super PACs, see "What Is a Super PAC?" on page 7). The FEC was unable to reach an agreement and issue an advisory opinion in response to the request.

In response, NDPAC filed suit in federal court arguing that it should be allowed to conduct both activities through a single entity to avoid the unnecessary administrative burden. On June 14, 2011, the U.S. District Court for the District of Columbia sided with NDPAC and issued a preliminary injunction. The order in *Carey v. FEC* prevented the FEC from enforcing contribution limits and source prohibitions with respect to contributions received by NDPAC for the purpose of making independent expenditures. In granting the preliminary injunction, the court indicated that the FEC did not prove that requiring the establishment of separate entities would further a compelling interest in preventing corruption.

On August 19, 2011, the FEC and NDPAC reached a settlement that allows NDPAC to operate as both a regular PAC and a Super PAC, provided that the activities are conducted using separate bank accounts. The agreement also requires that each account pay a percentage of administrative expenses based on the percentage of NDPAC's activity conducted using that account.

As a technical matter, the terms of the settlement apply only to NDPAC. The Vice Chairwoman of the FEC noted, however, that the FEC may soon issue some general guidance on this topic.