

Federal Campaign Contributions by Text Message

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In Advisory Opinion 2012-17, issued on June 11, 2012, the Federal Election Commission (FEC) approved a proposal to allow campaign contributions to federal political committees by text message. This outcome received support from both the Romney and Obama presidential campaigns; each campaign submitted comments expressing support for permitting campaign contributions by text message. The FEC's decision follows action taken by regulators in California and Maryland permitting text message contributions in those two states. (Additional information about these measures is available in a January 2012 article, "California and Maryland Move Forward with Text Message Contributions," in Wiley Rein's *Election Law News*).

The advisory opinion, requested by three entities that were interested in facilitating contributions by text message, posited two different ways that the transactions could take place. First, a wireless user could text a message to a five or six digit number—called a common short code—registered to a political committee. A company called an "aggregator"—which, in the wireless industry, links application providers to wireless service providers' networks—would then send a text message to this contributor requiring him or her to respond with a text message to (a) confirm his or her intent to complete the transaction and (b) to certify his or her ability to make a contribution under federal campaign finance rules.

Second, a contributor would provide his or her mobile telephone number on a political committee's website. To be able to submit a mobile telephone number, the contributor must certify his or her ability to make a contribution under federal campaign finance rules. At that point, a PIN number would be sent to the contributor's mobile

Authors

Caleb P. Burns
Partner

202.719.7451
cburns@wiley.law

Andrew G. Woodson
Partner

202.719.4638
awoodson@wiley.law

telephone and the contributor would need to enter that number to complete the transaction.

There would be safeguards in these proposed processes to ensure compliance with federal campaign finance laws. In general, no mobile telephone number may be billed more than \$50 in any month for contributions to a single political committee customer. Regarding the use of short codes, each political committee customer would be required to receive contributions through a single common short code. In addition, only users of American-based wireless service providers would be permitted to use a common short code for this purpose.

Regardless of the method used, the aggregator would use a process called “factoring” to transmit contributions to political committees. Essentially, this “factoring” process entails a political committee selling its accounts receivables to the aggregator at a discount to obtain payment more quickly. The aggregator would analyze transactions on a daily basis and, after assessing risk, provide a percentage—or a “factor”—of the accounts receivable to the political committee on a weekly basis. After the aggregator received payment from the wireless service providers, it would reconcile the factored payments to the actual amount the political committee is entitled to receive. This factoring process is done in the ordinary course of business of an aggregator. The FEC treated this factoring process as an extension of credit and, therefore, was not prohibited by the corporate contribution ban.

The FEC also noted that this particular proposal was permissible under federal campaign finance laws but also that other proposals involving contributions by text message also may be permissible.