

FEC Dismisses Several Pending LLC Enforcement Matters But Sends Warning about Contributing in “Name of Another”

May 2016

By Michael E. Toner and Andrew G. Woodson

Last month, the Federal Election Commission (FEC) announced it had dismissed five enforcement cases against limited liability companies (LLCs) allegedly used to shield the identity of individuals contributing to Super PACs. While these cases were closed without assessment of any penalty, dueling statements from Democratic and Republican commissioners strongly suggest that those who use LLCs to shield their identities in the future will face legal consequences.

The central allegation in these cases was that the LLCs were not making contributions in their own name, but rather that they were used by individuals connected to the LLCs—including musician/rapper Prakazrel “Pras” Michel—to make the contributions without disclosure of the underlying individual contributor’s name. As a result, the contributions purportedly violated the FEC’s prohibition on making contributions in the “name of another.” This category of offense is one of the more serious violations within the FEC’s jurisdiction.

The FEC’s three Democratic Commissioners left little doubt that, in their view, the respondents in these matters had violated the law. For them, none of these matters was “a difficult case. . . . Where an individual is the source of the funds for a contribution and the LLC merely conveys the funds at the discretion of that person, [the law requires] that the true source - the name of the individual rather than the name of the LLC - be disclosed as the true contributor.”

Authors

Michael E. Toner
Partner
202.719.7545
mtoner@wiley.law
Andrew G. Woodson
Partner
202.719.4638
awoodson@wiley.law

Practice Areas

Election Law & Government Ethics
Federal Election Commission
Representation

The three Republican commissioners, by contrast, voted to dismiss these cases in an exercise of prosecutorial discretion, effectively terminating the proceedings (as four affirmative votes are necessary to proceed with enforcement). In a joint statement issued afterwards explaining their reasoning, the three Republicans acknowledged that LLCs can violate the “name of another” prohibition and be considered “straw donors” in certain circumstances but that, post *Citizens United*, any rule had to be applied prospectively. To this point, the Republicans argued, the regulated community lacked sufficient notice of how the recently-recognized right of corporations to make contributions to Super PACs interacted with the “name of another” prohibition.

Moreover, the Republicans’ legal test for a violation focuses on whether funds “were intentionally funneled through a closely held corporation or corporate LLC for the purpose of making a contribution that evades the [law’s] reporting requirements.” The purpose-based requirement arguably sets the bar high than their Democratic colleagues would prefer in future cases, but these cases still represent an important—and cautionary—tale. In a subsequent interview with *The Washington Post*, Republican Commissioner Lee E. Goodman confirmed that “Now everyone should be on notice[:] If you funnel money through an LLC entity for the purpose of making a political contribution and avoiding disclosure of yourself, that is an abuse of the LLC vehicle.”