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November 1, 2013

State Elections Enforcement Commission
Attn: Legal Unit – Compliance
20 Trinity Street – Fifth Floor
Hartford, CT 06106

Re: Supplement to Declaratory Request

To Whom It May Concern:

We write to supplement our Request for a Declaratory Ruling, a copy of which is attached.

I. Second Circuit Ruling in *N.Y. Progress and Protection PAC v. Walsh*

In our Request for a Declaratory Ruling, dated October 9, 2013, we noted that “the Second Circuit has not had the opportunity to join its sister circuits in finding that IE-only entities enjoy a First Amendment right to accept donations without limit.” Just two weeks later, on October 24, the Second Circuit loudly echoed its sister circuits, enjoining the State of New York from enforcing contribution limits against a political committee that proposed to make only independent expenditures and stipulated that it would not make any contributions to, or coordinated expenditures with, candidates or political parties. *N.Y. Progress & Prot. PAC v. Walsh*, No. 13-3889-cv (2d Cir. Oct. 24, 2013) at 14.

In a unanimous panel decision, the court found that the plaintiff had a substantial likelihood of success on the merits of its claim and granted the preliminary injunction, thereby reversing the district court. Relying squarely on the Supreme Court’s holding in *Citizens United v. FEC* that “the government has no anti-corruption interest in limiting independent expenditures,” the court concluded, “[i]t follows that a donor to an independent expenditure committee such as NYPPP is even further removed from political candidates and may not be limited in his ability to contribute to such committees.” *Id.* at 7. For the unanimous court, this was not a difficult decision; noting that “[a]ll federal circuit courts that have addressed this issue have” reached the same conclusion, the court observed, “[f]ew contested legal questions are answered so consistently by so many courts and judges.” *Id.* at 7, 9. As a result of the injunction, the plaintiff may accept contributions without limit to finance its independent expenditure program in the upcoming New

York City mayoral election.

This Second Circuit decision should make our first request a straightforward one for the Commission to resolve. Like the plaintiff in *N.Y. Progress and Protection PAC*, the organizations described in our request would make only independent expenditures and would not make contributions to, or coordinated expenditures with, candidates or political parties. Just as New York has no anti-corruption interest in limiting contributions to such independent expenditure-only entities, neither does Connecticut. As a result, the Commission should issue a declaratory ruling that Organizations 1, 2, and 3 may accept unlimited covered transfers and are not subject to the contribution limits that apply to “political committees.” Any other ruling would directly contravene the controlling precedent in the Second Circuit.

II. Factual Scenarios Relating to Second Request

In our original request, we asked for confirmation that a person does not incur a filing obligation under section 8 of the new law until it incurs a legal obligation to pay for the creation, production, or distribution of an independent expenditure. The Commission’s Legal Program Director, Shannon Kief, asked that we provide specific fact patterns to assist the Commission in crafting a response. We are happy to oblige. For each of the two scenarios below, we ask the Commission to clarify the date on which the organization has “obligate[d] to make” an independent expenditure and provide analysis, so that we can apply the ruling to real-world fact scenarios that may arise.

- ***Scenario A:*** An organization contracts with a media consultant to produce advertisements. The contract calls for the media consultant to receive a commission for each advertising buy placed with a television station and to receive reimbursement for any costs incurred in the production of the advertisement. On March 1, the organization directs the media consultant to purchase stock footage for use in future advertisements, some of which may be independent expenditures and some of which may be communications that do not qualify as independent expenditures. On June 1, the organization reserves airtime with three television stations, for the week of June 16-22. On June 10, the organization creates a television advertisement that qualifies as an independent expenditure; the advertisement includes some of the stock footage that was purchased on March 1. On June 15, the organization ships this advertisement (the one created on June 10) to the stations; the same day, it is entered into the station’s lineup, at which point it may not be substituted. The advertisement first airs on June 16. ***Our view is that the organization has first obligated to make an independent expenditure on June 15; prior to that date, no legal obligation had been incurred to make an independent expenditure because the organization could have chosen to use the stock footage and/or airtime for a communication that did not qualify as an independent expenditure.***

- ***Scenario B:*** An organization creates a newspaper advertisement that qualifies as an independent expenditure on the Wednesday before the election. The organization calls the newspaper on Thursday to reserve space for the Sunday newspaper. Under the newspaper's advertising policy, the advertisement may be cancelled or substituted as late as midnight on Friday; but as of 12:01 AM Saturday, there are no substitutions or refunds allowed. The advertisement appears in the Sunday newspaper. ***Our view is that the organization has first obligated to make an independent expenditure on Saturday; prior to that date, no legal obligation has been incurred to make an independent expenditure because the organization could have chosen to cancel the advertisement or substitute an advertisement that did not qualify as an independent expenditure.***

Thank you for your consideration and please do not hesitate to get in touch should you have additional questions.

Very truly yours,



Marc E. Elias