



# STATE OF CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION

## **DECLARATORY RULING 2013-02:** **Contributions to Political Committees, Independent Expenditures and** **State Contractor Contribution Limitations**

At its regular meeting on October 16, 2013, the Commission voted to issue notice of receipt of a petition for a declaratory ruling (the “petition”) from the law firm Perkins Coie on behalf of some of its clients, and to initiate a declaratory ruling proceeding concerning the application of General Statutes §§ 9-602 and 9-612, as amended by sections 8 and 33 of Public Act No. 13-180, An Act Concerning Disclosure of Independent Expenditures and Changes to the Campaign Finance Laws and Election Laws, (hereinafter referred to as “the 2013 Act”), to certain activities of political committees and persons making independent expenditures on and after June 18, 2013, the effective date of the 2013 Act. At its regular meeting on November 20, 2013, the Commission voted to initiate a declaratory ruling proceeding to respond to the first series of questions raised in this petition, regarding whether certain organizations exempt from taxation under section 527 of the Internal Revenue Code are required to register as political committees. At a special meeting held on December 3, 2013, the Commission issued a *Resolution and Order Setting Forth Specified Proceedings for the Matter of Perkins Coie Petition for Declaratory Ruling*, which directed Commission staff to circulate a proposed Declaratory Ruling addressing the first batch of questions in the petition, to all those who requested notice, and to open a comment period ending at 11:59 p.m. on February 5, 2014. Because the issues presented in the petitioner’s first question of the petition are substantially related to issues raised to Commission staff in the form of requests for general compliance advice by other members of the regulated community concerning state contractors<sup>1</sup>, in order to give clear guidance the Commission will address the state contractor issues in this declaratory ruling as well.

### **Questions Presented: *When is Formation of a Political Committee Required?***

The petition outlines three factual scenarios regarding organizations exempt from taxation under section 527 of the Internal Revenue Code (“527 organizations”) “whose only election-influencing activity in Connecticut is the making of independent expenditures,” and asks the Commission to opine on whether the following section 527 organizations are required to register a political committee in Connecticut and to comply with Connecticut contribution and expenditure provisions, as well as provisions requiring periodic reporting of financial activity:

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<sup>1</sup> The state contractor provisions in Connecticut’s campaign finance law apply to state contractors, prospective state contractors, and principals of state contractors or prospective state contractors. These terms are defined in General Statutes § 9-612 (f) (1). *For purposes of this Declaratory Ruling, unless otherwise stated, when the term “state contractor” is used it refers to state contractors, prospective state contractors, and principals of state contractors or prospective state contractors.*

- 1) A 527 organization that does not accept donations earmarked to make independent expenditures to influence Connecticut elections (“Organization 1”).
- 2) A 527 organization that forms to make independent expenditures to influence Connecticut elections, and that solicits and receives earmarked donations (“Organization 2”).
- 3) A 527 organization that receives and spends funds to do many things in addition to making independent expenditures to influence Connecticut elections, and that does accept donations earmarked to make such independent expenditures in Connecticut (“Organization 3”).

As an initial matter, we generally note that a “527 organization” is a political organization structured under Section 527 of the U.S. Internal Revenue Code. 26 U.S.C. § 527.<sup>2</sup> These organizations are created with the primary purpose of influencing the selection, nomination, election, appointment or defeat of candidates to federal, state or local public office. 26 U.S.C § 527(e)(2). Technically, any organization created under section 527 with a primary purpose of influencing the selection, nomination, election, appointment or defeat of candidates is considered a 527 organization but not every 527 organization falls into the category of the more narrowly defined qualified political committee. Paul S. Ryan, *527s in 2008: The Past, Present, and Future of 527 Organization Political Activity Regulation*, 45 Harv. J. on Legis. 471, 484-85 (2008). For purposes of this opinion, the term “527 organization” refers to any group organized under section 527 of the IRS code, including federal political committees such as “SuperPACs” and federal party committees.<sup>3</sup>

The Commission also notes that Connecticut’s campaign finance law does not define the term “earmarked.” When giving meaning to such campaign finance terms not expressly defined in Connecticut law, the Commission looks to the dictionary and as well as the laws of other jurisdictions for guidance. Webster’s Dictionary defines “earmark” as “to reserve or set aside for specific purpose.” Webster’s II New Riverside University Dictionary (1994). Similarly, federal election law defines an “earmarked” contribution as funds “which the contributor directs (either orally or in writing) to a clearly identified candidate or candidate’s committee through an intermediary conduit. Earmarking may

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<sup>2</sup> As this declaratory ruling will explain, in some instances such 527 organizations are “qualified state or local political organizations” under federal tax law and also fall within Connecticut’s definition of a “political committee.” Accordingly, these organizations must register and disclose all funds received and spent, in accordance with Connecticut law. In other instances, as explained herein, certain 527 organizations do not fall within the parameters of a political committee under Connecticut campaign finance law, and accordingly are not required to register as a political committee; but if such 527 organizations make or obligate to make independent expenditures to influence Connecticut elections, certain disclosure and attribution (disclaimer) obligations are triggered.

<sup>3</sup> The Commission expresses no opinion regarding whether an organization qualifies as a 527 organization under federal law, or the possibility of any Federal or State tax laws or other laws to the matters presented in this declaratory ruling, as those issues are outside its jurisdiction.

take the form of a designation, instruction, or incumbrance and may be direct, express or implied, written or oral.” *Federal Elections Commission Guidebook for Nonconnected Committees* (May 2008) at 113, *citing* 11 C.F.R. 110.6 (b) (2). For purposes of this declaratory ruling, the Commission construes the term “earmarked” to generally mean funds provided for the purpose of promoting or opposing the nomination or election of Connecticut candidates or political parties. Funds are considered earmarked when the person giving or receiving them has manifested an intention that they will be used to promote attack support or oppose Connecticut candidates or parties.

***May state contractors give funds in response to solicitations for monies to promote or attack candidates or political parties in Connecticut elections?***

In addition to the questions raised in the petition about whether or when a political committee is required for certain 527 organizations, the Commission has received many questions concerning the interplay between the limitations on state contractor contributions, political committees and the new independent expenditure reporting and attribution disclosure requirements. Specifically, the Commission has been asked whether principals of state contractors may make donations to groups that may later make independent expenditures in Connecticut elections, and whether they may give funds in response to solicitations indicating that the money will be used for expenditures to promote, support, oppose or attack candidates and political parties in Connecticut elections, or when the solicitations are from groups indicating such monies will be put into a “segregated fund” to be used for independent expenditures in Connecticut elections.

These questions indicate common confusion about the scope and application of the new Act. The Commission therefore has decided to issue this comprehensive ruling to provide guidance regarding the Commission’s interpretation and prospective enforcement of the provisions.

***Background***

There have been massive changes in Connecticut’s campaign financing law since 2005, some due to reform efforts as a response to numerous scandals and some due to federal court decisions that greatly altered the campaign finance landscape. The Connecticut legislature has substantially changed the campaign finance statutes three times over the past eight years, in 2005, 2010, and 2013. In addition, courts throughout the country continue to digest the Supreme Court’s 2010 decision in *Citizens United* in an effort to understand all of its ramifications. In short, it is a chaotic time in this area of the law. A brief overview of these recent changes, as well as Connecticut’s general laws on political committees, is helpful to understand the questions that have arisen under Public Act 13-180.

### **Basic Requirement for Political Committee Registration and Disclosure in Connecticut**

The disclosure of funds raised and spent to influence Connecticut elections is a cornerstone of this state's campaign finance system. Under pre-*Citizens United* law, any person,<sup>4</sup> except for an individual acting alone making expenditures independently of a candidate, party or political committee, was required to form a political committee when

- Soliciting, receiving or making contributions; or
- Making expenditures, directly or indirectly.

Prior to the *Citizens United* decision, this requirement to register a political committee applied to any corporation, labor union, or group of two or more individuals acting together that wanted to raise or spend funds to influence Connecticut elections. Multi-state groups wishing to raise or spend money with respect to Connecticut elections had to register and form a Connecticut political committee, and raise funds in accordance with Connecticut's source and dollar contribution limits. If they wished to spend in other jurisdictions, they may also have been required by those jurisdictions to register committees there, in accordance with other state or federal law. The adjustments made in 2010 and after are discussed in more detail below.

Political committees are required to file a registration form and to file periodic campaign finance disclosure statements, including quarterly statements, as well as certain disclosure statements immediately preceding a primary or election. General Statutes §§ 9-605 & 9-608 (a). A political committee is required to have a chairperson and a treasurer.<sup>5</sup> General Statutes §§ 9-602 (a) & 9-605 (a). The committee must open a bank account with a depository institution that has a physical presence somewhere in Connecticut. General Statutes § 9-602 (a). Generally, a political committee is required to itemize all contributions from individuals exceeding fifty dollars (\$50) in the aggregate in a calendar year, and must itemize all expenditures. General Statutes § 9-608 (c). If a political committee has not received or spent more than one thousand dollars in a calendar year, most of its periodic filing requirements may be met by simply filing a sworn statement that the committee has not received or spent more than one thousand dollars in the calendar year. General Statutes § 9-608 (b). Political committees that raise and spend funds to promote or oppose General Assembly or statewide candidates may conveniently file their campaign finance statements electronically via the Commission's electronic campaign reporting information system. Commission staff are available via telephone to answer questions about the disclosure forms and process.

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<sup>4</sup> General Statutes § 9-601(10) broadly defines "person" as means "an individual, committee, firm, partnership, organization, association, syndicate, company trust, corporation, limited liability company or any other legal entity of any kind but does not mean the state or any political or administrative subdivision of the state."

<sup>5</sup> Although not recommended, the chairperson of a political committee may appoint herself as treasurer.

Contributions *to* political committees, including both monetary and in-kind contributions, are subject to source and dollar limits. General Statutes §§ 9-611(e), 9-612(a) & (b), 9-615, 9-617, 9-618, & 9-619. Contributions *from* political committees to other committees, including coordinated expenditures, are subject to contribution limits. General Statutes §§ 9-600, 9-613, 9-615, 9-618, & 9-619. A political committee could, even before the 2010 Act, make unlimited independent expenditures. The distinction between contributions (including coordinated expenditures) and independent expenditures stems from one of the United States Supreme Court's seminal campaign finance decisions, *Buckley v. Valeo*, 424 U.S. 1 (1976). Whereas independent expenditure limits would impede a person's ability to spend his own money to communicate his message, contribution limits do not impose a direct limit on free speech because the amount of a contribution does not substantially impact the "symbolic act of contributing." *Buckley v. Valeo*, 424 U.S. at 21 ("[T]he transformation of contributions into political debate involves speech by someone other than the contributor"). In contrast, the Court found contributions raise the specter of corruption. *See Buckley*, 424 U.S. at 27 ("Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions."); *see also Buckley v. Valeo*, 519 F.2d 821, 838-40 (D.C. App. 1975) (discussing "the trend revealed by the polls" that demonstrated that in 1974, 69.9 percent of individuals found that "the government is pretty much run by a few big interests looking out for themselves").

### **Campaign Finance Reform Act of 2005 (the "2005 Reform Act") – State Contractor Provisions**

The legislature substantially overhauled Connecticut's campaign finance system in 2005, following numerous scandals that eroded the public's trust in Connecticut's campaign finance and election system. As part of the legislative response, Public Act 05-5, *An Act Concerning Comprehensive Campaign Finance Reform for State-wide Constitutional and General Assembly Offices*, was passed. The 2005 Reform Act instituted the Citizens' Election Program (the "CEP")<sup>6</sup>, instituted a "one person one PAC" rule, and adjusted other contribution limits. General Statutes §§ 9-605 (e) (1), 9-611 (a), 9-612 (a), 9-613 (a), 9-614 (a), 9-615, 9-617, & 9-618 (2007).

A cornerstone of the response to Connecticut's history of actual corruption and its appearance concerning state contractors was the legislature's carefully tailored state contractor provisions, curbing the influence of state contractor funds in the campaign

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<sup>6</sup> A key element of the 2005 Reform Act is the Citizens' Election Program, a public financing program which allows candidates to run campaigns with only small dollar contributions from individuals and a state grant, in exchange for voluntarily abiding by expenditure limits and foregoing contributions from special interests such as state contractors and political committees. *See* General Statutes, chapter 157. This Program prevents corruption and the appearance of corruption by making it possible for candidates who choose to participate to forego asking for contributions, including coordinated expenditures, from special interests on behalf of their campaigns.

finance arena and creating a more transparent campaign finance system free of special interest influence. Basically, pursuant to the 2005 Reform Act, state contractors are prohibited from making contributions to a candidate seeking office in the branch (legislative or executive) for which the contractor holds a contract, as well as to party committees and certain political committees. General Statutes § 9-612 (f) (2). This means, for example, that if a state contractor has a contract with an executive branch agency, the state contractor may not make a contribution to candidates for statewide office. Candidates voluntarily participating in Connecticut's public financing program, the CEP, may not accept contributions from state contractors in either the executive or legislative branch. General Statutes § 9-704 (c) (1).

In addition to the state contractor contribution prohibitions, there are also restrictions on solicitations *by*, and solicitations *of*, state contractors. First, the law restricts from whom a state contractor may solicit a contribution.<sup>7</sup> Second, the law prohibits certain persons from soliciting unlawful contributions from a state contractor.<sup>8</sup> These provisions put a responsibility on incumbents, candidates and their agents to exercise reasonable due diligence to avoid seeking campaign funds from state contractors.

The provisions also require state contractors to "make reasonable efforts to comply" with the limitations and provide a recipient committee a safe harbor of thirty days to effect the return of an improper contribution should a state contractor make a prohibited contribution. General Statutes §§ 9-612 (f) (2) (C) & (5).

Because the state contractor provisions attach to political committees "authorized to make contributions or expenditures to or for the benefit of such candidates [seeking statewide or General Assembly office]," when a business, union or any group of two or more individuals acting together registers a political committee they are asked to declare whether the money collected would be spent to support candidates in the legislative or executive branch. General Statutes §§ 9-605(b) & 9-612 (f) (2) (A) & (B). In addition, a political committee established or controlled by a principal of a state contractor or a state contractor is also subject to these contribution restrictions. *See* General Statutes § 9-612 (f) (1) (F). To the extent that such a state contractor's political committee wanted to make independent expenditures, it is subject to disclaimer and disclosure provisions, so that it is transparent to the public who is providing funds to the committee to make such expenditures.

The core of the state contractor provisions survived a legal challenge. *Green Party of Connecticut v. Garfield*, 616 F.3d 189 (2d Cir. July 13, 2010). In its ruling, the Second

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<sup>7</sup> No state contractor may knowingly solicit contributions from the contractor's employees or one of its subcontractors or the subcontractor's principals to go to candidates in the branch with which the contractor has or is seeking a contract, political committees authorized to give to such candidates, or party committees. General Statutes §§ 9-612 (f) (2) (A) & (B).

<sup>8</sup> Neither an elected statewide official nor a candidate for statewide office nor any agent of any such official or candidate shall knowingly, willfully or intentionally solicit prohibited contributions from a state contractor. General Statutes § 9-612 (f) (3).

Circuit noted that the 2005 Reform Act was passed in response to numerous corruption scandals in Connecticut, most notably those involving a former governor who ultimately pled guilty in 2005 to accepting over \$100,000 worth of gifts and services from state contractors in exchange for assisting them in securing lucrative state contracts, which “helped earn the state the nickname ‘Corrupticut.’” *Id.* at 193 (quoting the district court in *Green Party of Connecticut v. Garfield*, 648 F. Supp. 2d 298, 307 (D. Conn. 2009)). The court ultimately concluded that the ban on state contractor contributions furthered sufficiently important government interests as the record reflected that “the General Assembly had good reason to be concerned about both the ‘actuality’ and the ‘appearance’ of corruption involving contractors” given that the state’s recent corruption scandals “reached the highest state offices, leading to the resignation and eventual criminal conviction and imprisonment of the state’s governor,” and ultimately caused “an appearance of impropriety with respect to all contractor contributions” due to the widespread media coverage. *Green Party*, 616 F.3d at 200.

### *Citizens United*

In January, 2010, the Supreme Court’s decision in *Citizens United v. FEC*, 558 U.S. 310 (2010), fundamentally changed the campaign finance landscape. First, the Supreme Court struck down a federal law prohibiting corporations and labor unions from making independent expenditures directly from existing treasury funds. The decision did not address how the money for the expenditures in question could be raised.

The *Citizens United* Court went on to hold, however, that such entities could be required to claim their speech through attribution and disclaimer requirements, and to disclose the amounts and sources of campaign spending through financial reporting requirements. In the only part of the *Citizens United* ruling supported by eight of the nine Supreme Court justices, Justice Kennedy explained that disclosure “provide[s] the electorate with information,” and ensures “that voters are fully informed about the person or group who is speaking” and that people are “able to evaluate the arguments to which they are being subjected.” *Citizens United v. FEC*, 558 U.S. 310, 367-68 (2010) (internal citations omitted.).

*Citizens United* does not answer the question whether such an entity *may solicit or receive funds (in essence, contributions)* for the purpose of influencing elections, and be permitted to skirt the requirement to form a political committee. Nor does *Citizens United* address whether a person may provide funds to another person to fund the recipient person’s election-related speech outside of a political committee.

### **Public Act 10-187 (Effective June 8, 2010)**

In the aftermath of *Citizens United*, the legislature swiftly amended Connecticut’s law to bring it into line with the *Citizens United* ruling and ensure disclosure of the new types of

independent expenditures now permitted. Public Act 10-187 provided that an entity<sup>9</sup> acting alone could make independent expenditures directly from its existing treasury funds and no longer had to register a political committee in order to make such expenditures. General Statutes §§ 9-612 (e), 9-613 (g) & 614 (d), as amended Public Act 10-187 (the “2010 Act”), sections 6, 7, & 8. Such entity was no longer required to register a political committee and file periodic disclosures if it wanted to make independent expenditures from its existing treasury funds. However, the entity was required to file an incident-specific disclosure if it made or obligated to make an independent expenditure or expenditures exceeding one thousand dollars in the aggregate. General Statutes § 9-612 (e), as amended Public Act 10-187, section 6.

The 2010 Act contained provisions requiring an entity making independent expenditures to “claim its speech” through attributions and disclaimers, and, in some instances (if the entity was organized under sections 527 or 501(c) (as a tax-exempt organization) of the Internal Revenue Code, disclose the top five donors to the entity making the independent expenditure. General Statutes § 9-612 (e), as amended Public Act 10-187, sections 6 & 10.

In making these changes, the legislature explained its intent to create a comprehensive disclosure system where such entities, with their new-found ability to make expenditures directly from their treasuries, could not mask the true source of funds by establishing “shell or “shadow organizations” to shuttle funds around. 53 H.R. Proc., Pt. 11, 2010 Sess., P. 3449 (comments of Rep. Spallone).

**Post *Citizens United* era court cases on political committee registration, disclosure, and disclaimer requirements**

In the post *Citizens United* era, federal courts throughout the nation have upheld disclaimer and disclosure requirements and political committee registration requirements. The Commission notes that in one of the most widely-cited *Citizens United* era cases by proponents of deregulation, a federal appellate court upheld political committee registration and disclosure requirements. *SpeechNow.org v. Federal Elections Commission*, 599 F.3d 686, 689, 696-698 (D.C. Cir. 2010); see also *Vermont Right to Life Comm. Inc. v. Sorrell*, 875 F.Supp. 2d 376, 392-97 (D. Vt. 2012) (rejecting major purpose test and upholding Vermont’s political registration requirement based on threshold of \$500 raised or spent in a calendar year); *Nat’l Organization for Marriage v. McKee*, 723 F. Supp. 2d 245 (D. Me. 2010) (upholding Maine’s non-major purpose requirement that an organization must register a political committee if it raises or spends above a \$5,000 per calendar year threshold trigger, and upholding disclosure and disclaimer requirements), *aff’d Nat’l Organization for Marriage v. McKee*, 649 F.3d 34 (1<sup>st</sup> Cir. 2011) (“We therefore reject [plaintiff’s] argument that the non-major-purpose

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<sup>9</sup> At this time, the definition of “entity” included corporations, cooperative and professional associations, limited liability companies and partnerships, and labor unions, whether organized in this or any other state. See General Statutes § 9-601 (19), as amended by Public Act 10-187 section 1. It included tax-exempt corporations under Section 501 (c) of the Internal Revenue Code. *Id.*

PAC definition is unconstitutionally overbroad. Because we find a substantial relation between Maine's disclosure-oriented regulation of non-major-purpose PACs and its interest in the dissemination of information regarding the financing of political speech, we conclude that the law does not, on its face, offend the First Amendment"), *cert. denied* 132 S. Ct. 1635 (2012). In *National Organization for Marriage*, the First Circuit Court of Appeals noted that Maine's political committee provisions are "pure disclosure laws" and that "Maine imposes no limitation on the amount of money PACs may raise, nor does it cap the sum a PAC may spend independently of a candidate or candidate committee." *Nat'l Organization for Marriage*, 649 F.3d. at 41-42; *see also Worley v. Florida Secretary of State*, 717 F.3d 1238 (11<sup>th</sup> Cir. 2013) (finding that Florida's organizational, registration (based on a threshold of \$500 raised or spent in a calendar year), disclosure, and disclaimer requirements "do not generally impose an undue burden"). The Eleventh Circuit Court of Appeals recognized that, practically speaking, the political committee organizational requirements "require little more if anything than a prudent person or group would do in these circumstances anyway." *Worley*, 717 F.3d at 1250. Moreover, "requiring registration by groups . . . who start with as little as \$500 also advances the government's informational interests. . . . we recognize that the government's informational interest may not be greatly advanced by disclosing a single, small contribution. However, disclosure of a plethora of small contributions could certainly inform voters about the breadth of support for a group or a cause." *Id.* at 1251.

These courts have overwhelmingly agreed that registration, disclosure, and disclaimer requirements provide further transparency in the campaign finance process, and that the claimed burdens are minimal and do not chill speech.

As far back as *Buckley*, the United States Supreme Court has championed strong campaign finance disclosure regimes:

[D]isclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return.

*Buckley*, 427 U.S. at 67. The *Buckley* court rejected any argument that disclosure of independent expenditures was less important, because, notwithstanding the contention that independent expenditures do not result in corruption or its appearance, there is a governmental interest in "increas[ing] the fund of information concerning those who support the candidates":

The corruption potential of these [independent] expenditures may be significantly different, but the informational interest can be as strong as it is in coordinated spending, for disclosure helps voters to define more of the candidates' constituencies.

*Id.* at 81.

The *Buckley* court also noted that disclosure provisions serve an enforcement purpose. *Id.* at 77. The court made it clear that requiring disclosure of who provides funds to a person making an independent expenditure helps to ensure that purported independent expenditures truly are independent, and helps to enforce the laws on independent expenditures.<sup>10</sup> Without such disclosure, it would be easy to circumvent contribution limits to candidates and other committees and to disguise coordinated expenditures as independent.

In *Citizens United*, the Supreme Court re-invigorated *Buckley*'s longstanding principles supporting strong disclosure and disclaimer provisions. *Citizens United*, 558 U.S. at 366-371. "Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected. . . . , the public has an interest in knowing who is speaking about a candidate shortly before an election. . . . This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." *Citizens United*, 558 U.S. at 368-9, 371 (internal quotation and citation omitted). Requiring disclosure of the sources of funds received by a person who makes or obligates to make independent expenditures directly serves the interest of transparency and informing the electorate about who is speaking, because otherwise a person could hide behind a vague generic name ("Save Democracy") and no one would know who is behind the communication.

#### **Post *Citizens United* era: court cases on contribution limits**

Also, in the wake of *Citizens United*, numerous federal courts in other circuits have held that contribution limits to political committees that only make independent expenditures (Super PACs) are unconstitutional. See e.g. *Texans for Free Enterprise v. Texas Ethics Comm'n*, 723 F.3d 535, 537-38 (5<sup>th</sup> Cir. 2013); *Wisconsin Right to Life State Political Action Comm. v. Barland*, 664 F.3d 139, 143 (7<sup>th</sup> Cir. 2011); *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684, 696 (9<sup>th</sup> Cir. 2010); *SpeechNow.org v. FEC*, 599 F.3d 686, 695 (D.C. Cir. 2010) (en banc). The reasoning in these cases stems from the Supreme Court's longstanding distinction between contributions and expenditures as set forth in *Buckley*. The *Buckley* court instructed that "of almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions." *Buckley*, 427 U.S. at 27. The overwhelming rationale in these cases is that independent expenditures do not corrupt because by their very definition independent expenditures are not coordinated with candidates or their agents and thus do not present any evidence of *quid pro quo* corruption. See e.g. *Citizens United*, 558 U.S. at 360; see also *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684, 698 (10<sup>th</sup> Cir. 2010).

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<sup>10</sup> If an expenditure is not independent, it is a coordinated expenditure (which is a contribution). General Statutes § 9-601a (a) (4).

No court in the Second Circuit has directly answered this question. The Commission notes, however, that this question may be resolved by the Second Circuit Court of Appeals in the *Vermont Right to Life Comm. Inc. v. Sorrell*, 875 F.Supp. 2d 376 (D. Vt. 2012) case. The Second Circuit Court of Appeals has not yet issued a ruling on the merits of whether contribution limits may be constitutionally applied to independent expenditure only political committees or groups. In the case cited by petitioners in their supplemental information letter, the Second Circuit preliminarily enjoined application of a New York contribution limit to an independent expenditure only political committee. See *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 485 (2d Cir. 2013). However, in issuing its ruling, the court did not analyze the law or the facts and did not acknowledge the pending *Vermont Right to Life* case, instead conclusorily string citing cases from other circuits as governing. Moreover, the court pronounced that "we express no opinion on the ultimate outcome." *Id.* at 487. Until the Second Circuit squarely addresses the merits of this argument, there is no controlling court case in this jurisdiction determining whether contribution limits may be applied to independent expenditure only committees. Also, there are substantial differences between Connecticut's law and the New York statute at issue in *Walsh*. Connecticut law does not currently distinguish between political committees that make contributions (including coordinated expenditures) or independent expenditures, verses political committees that make *only* independent expenditures. In addition, even if Connecticut law did provide for independent expenditure only committees, it is not clear how the state contractor provisions would apply to such committees, as the state contractor prohibitions expressly apply to contributions from state contractors to "a political committee authorized to make ...expenditures ... for the benefit of such candidates." General Statutes § 9-612 (f) (2) (A) & (B).

### **Public Act 13-180**

Connecticut's independent expenditure disclosure laws were again altered by Public Act 13-180. The 2013 Act broadened the definition of who may make independent expenditures to include all "persons," declaring that "[a]ny person, as defined in section 9-601 of the general statutes, as amended by this act, may, *unless otherwise restricted or prohibited by law, including, but not limited to, any provision of chapter 155 or 157 of the general statutes*, make unlimited independent expenditures, as defined in section 9-601c of the general statutes, as amended by this act, and accept unlimited covered transfers." General Statutes § 9-601d (a).

Separate segregated funds<sup>11</sup> were introduced by the 2013 Act and may now be set up for the making of independent expenditures and acceptance of covered transfers. General Statutes § 9-601d (a) & (g) (1). Specifically, the new law provides:

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<sup>11</sup> A "separate segregated fund" is generally used in federal law as synonymous with the term political action committee or "PAC" and refers to organizations that corporations or trade unions establish for the purpose of making contributions or expenditures that the federal law would otherwise prohibit. *Stop This Insanity, Inc. v. FEC*, 902 F.Supp.2d 23, 26 (D.D.C 2012); *FEC v. Akins*, 524 U.S. 11, 15 (1998). The Commission believes, in the context of the Connecticut law, that this term refers to a separate bank account

(g) (1) A person may, *unless otherwise restricted or prohibited by law, including, but not limited to, any provision of chapter 155 or 157 of the general statutes*, establish a dedicated independent expenditure account, for the purpose of engaging in independent expenditures, that is segregated from all other accounts controlled by such person. Such dedicated independent expenditure account may receive covered transfers directly from persons other than the person establishing the dedicated account and may not receive transfers from another account controlled by the person establishing the dedicated account, except as provided in subdivision (2) of this subsection. If an independent expenditure is made from such segregated account, any report required pursuant to this section or disclaimer required pursuant to section 9-621 of the general statutes, as amended by this act, may include only those persons who made covered transfers directly to the dedicated independent expenditure account.

The 2013 Act also changed the section of the law pertaining to when a political committee must be formed, stating that the need to form is not triggered by expenditures that are independent of a candidate, party committee or political committee. Specifically the underlined language was added as follows:

Except with respect to an individual acting alone, or with respect to a group of two or more individuals acting together that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate, no contributions may be made, solicited or received and *no expenditures, other than independent expenditures, may be made, directly or indirectly*, in aid of or in opposition to the candidacy for nomination or election of any individual or any party or referendum question, unless (1) the candidate or chairman of the committee has filed a designation of a campaign treasurer and a depository institution situated in this state as the depository for the committee's funds, or (2) the candidate has filed a certification in accordance with the provisions of section 9-604. In the case of a political committee, the filing of the statement of organization by the chairman of such committee, in accordance with the provisions of section 9-605, as amended by this act, shall constitute compliance with the provisions of this subsection.

General Statutes § 602 (a) as amended by Public Act 13-180 § 33.

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kept by an entity when that entity acts independently of Connecticut candidate, party and/or political committees and carries with it only those requirements otherwise proscribed by law including but not limited to the provisions of chapter 155 and 157.

*Analysis*

In essence, petitioners are asking whether the 2013 Act eliminated the requirement for persons to form a political committee when soliciting or receiving money and making independent expenditures. They point to the language in section 8 of the 2013 Act (now codified as General Statutes § 9-601d), which provides, in relevant part, that:

*Any person, as defined in section 9-601 of the general statutes, may, unless otherwise restricted or prohibited by law, including, but not limited to, any provision of chapter 155 or 157 of the general statutes, make unlimited independent expenditures, as defined in section 9-601c of the general statutes, as amended by this act, and accept unlimited covered transfers, as defined in section 9-601.*

General Statutes § 9-601d (a) (emphasis added).

The term “covered transfer” is a new concept in Connecticut law introduced by the 2013 Act, and means:

any donation, transfer, or payment of funds by a person to another person if the person receiving the donation, transfer or payment makes independent expenditures or transfers funds to another person who makes independent expenditures.

General Statutes § 9-601 (29) as amended by Public Act 13-180. The Commission will address the application of each of these sections to the three fact patterns provided by the requester.

- 1) A section 527 organization which does not accept donations earmarked to make independent expenditures to influence Connecticut elections (“Organization 1”).*

The Petitioners have asked whether a group organized to participate in political activities generally, but not specifically in Connecticut, must register a political committee when it is *not* soliciting or receiving donations made for the purpose of promoting, attacking, supporting or opposing the success or defeat of Connecticut candidates or parties. As noted, Section 8 provides that “[a]ny person... may, *unless otherwise restricted or prohibited by law*, including, but not limited to, any provision of chapter 155 or 157 of the general statutes, make unlimited independent expenditures... and accept unlimited covered transfers.” (emphasis added).

In applying General Statutes § 9-601d to the facts, we must determine whether anything in this scenario is “otherwise restricted by or prohibited by law.” In so doing, the Commission looks to the requirements to register and file as a political committee as they were adjusted in section 33 of Public Act 13-180 when the underlined language was added to the statute providing “no contributions may be made, solicited or received *and*

*no expenditures, other than independent expenditures,* may be made, directly or indirectly . . .” unless a political committee is formed. General Statutes § 9-602 as amended by Public Act 13-180, section 33 (emphasis added). The plain language instructs that the law was changed to provide that there is no need to form a committee if the only expenditures a group will make are wholly independent of Connecticut candidates, party or political committees. Because this Organization 1 will not accept any donations to promote, attack, support or oppose the success or defeat of Connecticut candidates or parties, the analysis of section 33 ends there. The limiting phrase in Section 8, “unless otherwise restricted or prohibited by law” is not triggered.

Organization 1 falls squarely within section 8 and *Citizens United’s* direction that an entity may make unlimited independent expenditures directly from its treasury.

Because Organization 1 is not soliciting or receiving monies to support or oppose Connecticut elections, the giving of monies to the organization will not trigger the state contractor limitations. Connecticut campaign finance law does not restrict state contractors from giving to charities, lobbying groups or committees organized to spend on federal or other state’s candidates. If such a group later makes an independent expenditure to support or oppose a Connecticut candidate or party, then the state contractor’s donation may become a covered transfer subject to disclosure depending on the timing of the expenditure.

**2) *A section 527 Organization which forms to make independent expenditures to influence Connecticut elections, and which solicits and receives earmarked donations (“Organization 2”).***

The Commission is next asked to consider whether a 527 Organization formed to make independent expenditures to promote, attack, support or oppose Connecticut candidates and parties, and which solicits and receives donations specifically for that purpose, must form a Connecticut political committee. Organization 2 differs significantly from Organization 1 because it solicits and receives donations earmarked for Connecticut elections. Requesters take the position that this scenario also does not require the formation of a political committee because section 8 (a) allows persons making independent expenditures to accept unlimited covered transfers. Section 8 (g) further allows separate segregated funds to be formed so that only those covered transfers earmarked for independent expenditures are disclosed.

Again, however, we must consider the phrase “unless otherwise prohibited or restricted by law” in both sections 8 (a) and (f). Such “earmarked donations” fall within the definition of “contribution,” which Connecticut law defines as: “anything of value, made to promote the success or defeat of any candidate seeking the nomination for election, or election or for the purpose of aiding or promoting the success or defeat of any

referendum question or the success or defeat of any political party . . . .” General Statutes § 9-601a(a), as amended by Public Act 13-180, § 2.<sup>12</sup>

The limiting language in section 8, “*unless otherwise restricted or prohibited by law,*” is thus triggered here by the requirement in section 33 that persons receiving or soliciting contributions must register a political committee. The legislature did not repeal the definition of contribution and did not eliminate the requirement that persons soliciting or receiving contributions form a political committee.

To answer the petitioners’ questions, the Commission must resolve the tension between sections 8 and 33 of the 2013 Act. When interpreting a statute, the Commission applies basic tenets of statutory interpretation under Connecticut law. General Statutes § 1-2z provides that:

The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extra-textual evidence of the meaning of the statute shall not be considered.

A statute is deemed to have a “plain meaning” when “the meaning that is so strongly indicated or suggested by the language as applied to [the] facts [at hand], without consideration, however, of its purpose or the other, extratextual sources of meaning . . . that, when the language is read as so applied, it appears to be the meaning and appears to preclude any other likely meaning.” *Genesky v. Town of East Lyme*, 275 Conn. 246, 277 (2005) (emphasis in original). When a statute is ambiguous, courts consider the following factors for “interpretive guidance[:]. . . [(1)] the legislative history and circumstances surrounding its enactment, [(2)] to the legislative policy it was designed to implement, and [(3)] to its relationship to existing legislation and common law principles governing the same general subject matter. . . . A statute is ambiguous if, when read in context, it is susceptible to more than one reasonable interpretation.” *State v. Acordia, Inc.*, 310 Conn. 1, 18-19 (internal citation omitted.).

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<sup>12</sup> Specifically, Connecticut law defines “contribution as:

- (1) Any gift, subscription, loan, advance, payment or deposit of money or anything of value, made to promote the success or defeat of any candidate seeking the nomination for election, or election or for the purpose of aiding or promoting the success or defeat of any referendum question or the success or defeat of any political party;
- (2) A written contract, promise or agreement to make a contribution for any such purpose;
- (3) The payment by any person, other than a candidate or treasurer, of compensation for the personal services of any other person which are rendered without charge to a committee or candidate for any such purpose;
- (4) An expenditure that is not an independent expenditure; or
- (5) Funds received by a committee which are transferred from another committee or other source for any such purpose.

General Statutes § 9-601a(a), as amended by Public Act 13-180, § 2.

Moreover, “it is an elementary rule of statutory construction that we must read the legislative scheme as a whole in order to give effect to and harmonize all of the parts.... When statutes relate to the same subject matter, they must be read together and specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling.” *Langello v. West Haven Bd. of Educ.*, 142 Conn. App. 248, 258 (2013) (citation omitted; internal quotation marks omitted). “When more than one construction of a statute is possible, [the courts] adopt the one that renders the enactment effective and workable and reject any that might lead to unreasonable or bizarre results.” *S. New England Tel. Co. v. Cashman*, 283 Conn. 644, 653 (2007) (citations omitted; internal quotation marks omitted).

Accordingly, in answering the petitioner’s questions about the requirement to form a political committee, the Commission must look to the interplay between section 8 and section 33 of the 2013 Act. Each read alone seems to indicate a different answer to the above question. The plain language of Section 8 (a) & (g) expressly instructs that Section 8 must not be read as an absolute directive, in a vacuum away from the rest of the statute. Both subsections 8 (a) and (g) of the 2013 Act contain the limiting phrase “*unless otherwise restricted or prohibited by law*, including but not limited to any provision of chapter 155 or 157 of the general statutes,” modifying the permission to (1) accept unlimited covered transfers, and (2) place the covered transfers into a separate segregated fund. This limiting phrase expressly instructs that the requirements in section 33 of the 2013 Act regarding the formation of a political committee *if receiving contributions* take precedence over section 8’s general provisions regarding independent expenditures. As noted above, “specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling.” *Langello*, 142 Conn. App. at 258.

The Commission finds that the plain and unambiguous meaning of the 2013 Act provides that a person making independent expenditures from its existing treasury is not required to form a political committee, but a person soliciting or receiving donations to promote, attack, support or oppose Connecticut candidates or parties is required to register a political committee in Connecticut.

Assuming *arguendo* that the statute is ambiguous, the Commission would reach the same result after considering the three factors outlined above: (1) the legislative history and circumstances surrounding 2013 Act’s enactment, (2) the legislative policy it was designed to implement, and (3) its relationship to existing legislation and common law principles governing the same general subject matter.

First, the legislative history and circumstances surrounding the 2013 Act unequivocally instruct that the 2013 Act was intended to increase disclosure and to close off loopholes where independent spenders could mask the source of their funds. Responding to a question during the Senate session, Senator Anthony Musto stated that:

Political committees are still governed by other parts of statutes that are not being changed. This -- the fact that some independent expenditure accounts can be

segregated has the purpose of allowing certain people to contribute to different organizations that they may have been contributing to before, like Chambers of commerce, Rotary clubs, things like that, as long as those aren't being used for political activities.

Again, we're not trying to burden people who are just going about their business. What we're trying to do is make sure that people who are trying to hide their speech are -- do have to disclose.....

56 S. Proc., Pt. 15, 2013 Sess., P. 4734 (cmts of Sen. Musto).<sup>13</sup>

While introducing the bill to the House, Representative Ed Jutila proclaimed that:

[disclosure and disclaimer] are the two tools that the Court gave us to work with after *Citizens United* .... [H]idden money especially when it comes from sources outside of our state, has no place in our electoral process. This bill will help to shine a light on that money so that we know who is behind it and where it's coming from.

56 H.R. Proc., Pt. 25, 2013 Sess., P. 8404 (comments of Rep. Jutila).

Accordingly, the legislative history instructs that the 2013 Act was intended to increase disclosure of independent expenditures, and was not intended to change the laws on political committees.

The circumstances surrounding the 2013 Act, as illustrated by the Governor's statement issued upon signing the bill into law, reinforce this interpretation:

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<sup>13</sup> The comments of Senator Gayle Slossberg echo this unequivocal legislative intent to increase disclosure:

You know, in the -- in the post -- post *Citizens United* world the landscape has changed dramatically and the most important thing that we can do and, in fact, in that decision the Supreme Court made very clear that we should be making sure that people disclose, that entities disclose their political speech.

Because the citizens who are listening and the voters who are out there need to know and be able to judge the credibility based on who is speaking. And if we do not have adequate disclosure laws, then the citizenry of our State doesn't know who is speaking to them and cannot judge that credibility.

Disclosure is paramount. And we must continue to be working as rigorously and vigorously as we can to require people to stand up and own their speech.

56 S. Proc., Pt. 15, 2013 Sess., P. 4737 (comments of Sen. Slossberg).

Today, I signed into law a bill that will vastly increase disclosure requirements for independent campaign expenditures .... Faced with [the Citizens United] tragic decision, which is now the law of the land, we can at least shine a light on the sources of private money in politics. The bill I'm signing today requires a level of disclosure that few if any other states require....this bill makes Connecticut a national leader in requiring disclosure and transparency.

*Gov. Malloy Statement on Signing Campaign Finance Legislation (June 19, 2013).*

Second, both the plain language of the 2013 Act and the legislative history make it clear that Public Acts 13-180 and 10-187 were designed to implement a policy requiring greater disclosure after *Citizens United*, and not to mask attempts at anonymous fundraising.

Third, the 2013 Act's relationship to existing legislation and common law principles governing the same general subject matter supports the conclusion that the 2013 Act intends to strengthen disclosure. Public Act 10-187 was the legislature's first response to the *Citizens United* decision, and it is clear that the legislature intended to strengthen the independent expenditure disclosure provisions, and not to undo or undermine them. *See* 56 S. Proc., Pt. 15, 2013 Sess., P. 4732 (comments of Senator Musto: "We're not trying to reduce disclosure, quite the contrary).

With all this in mind, the Commission looks to sections 8 and 33 of the 2013 Act. Under the new law there is a significant difference between the treatment of "covered transfers" and "contributions." Contributions must generally be disclosed no matter when they are solicited and received. General Statutes § 9-608 (c).<sup>14</sup> They also must be made by individuals, or by committees which in turn register and file periodic reports, disclosing where the money they spend comes from. General Statutes § 9-608 (c). Covered transfers, by contrast, only have to be disclosed on an incident-specific report filed by the person making or obligating to make the independent expenditure, and only under certain circumstances (if such covered transfers are over \$5000 in the aggregate, and if they are donated within the twelve month period before a primary or election to a person that makes an independent expenditure one hundred and eighty days before the primary or election, among other exceptions). General Statutes § 9-601d. Because a covered transfer may be made by other groups organized under section 527 or 501(c)(4) of the Internal Revenue Code, which do not have the same disclosure requirements for their

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<sup>14</sup> Once an individual's aggregate contributions to a committee exceed fifty dollars, the committee must disclose "the full name and complete address of each contributor and the amount of the contribution." General Statutes § 9-608 (c) (1) (A) For "small dollar" contributions (i.e. where the contributor has not exceeded the fifty dollar itemization threshold, the treasurer may "lump sum" such small dollar contributions on its disclosure but must maintain internal records to substantiate the contribution. General Statutes § 9-608 (c) (4).

incoming money, it is often impossible to establish the identity of the individual or business that is truly the source of the monies being spent.<sup>15</sup>

Even if the limiting phrase “*unless otherwise prohibited by law*” did not exist in section 8 to modify the permission to collect unlimited covered transfers and for separate segregated accounts, the policy of disclosure indicated in the legislative history would militate in favor of finding that any ambiguity be resolved in favor of forming a political committee when soliciting or receiving contributions specifically for the purpose of promoting the success or defeat of candidates or parties. This is in line not only with the hard fought efforts at reform the Connecticut legislature has consistently made since 2005 but also with campaign finance legal precedent, which has long held there are important distinctions between the two types of statutory restrictions: those on expenditures and those on contributions. In *Buckley v. Valeo*, the United States Supreme Court held that the regulation of expenditures imposed a greater infringement on protected political expression than the regulation of contributions because expenditures, made by individuals and groups to further their own political views, “impose direct and substantial restraints on the quantity of political speech.” *Buckley*, 424 U.S. at 39. Regarding contributions, however, the court held that “a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor’s ability to engage in free communication.... [Such a limitation] permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor’s freedom to discuss candidates and issues. While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor.” *Id.* at 20–21, 36. The *Buckley* court concluded that, while the federal act’s limitations on expenditures could not be constitutionally justified, its limitations on campaign contributions furthered important governmental interests by preventing corruption, and the appearance of corruption, in elective politics. *Id.* at 26–29. Connecticut’s Supreme Court has referred to *Buckley* as a guide to resolving the distinction between expenditures and contributions under Connecticut law. *State v. Proto*, 203 Conn. 682, 693 –702 (1987).

Thus, it makes sense that Public Act 13-180, which was meant to respond to *Citizens United* and resulting growing concerns regarding “dark money” and anonymous

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<sup>15</sup> For example, in the 2012 federal elections, only approximately 41% of the of the estimated \$1.03 billion spent by outside groups (including superPACs, 527 organizations, 501(c) organizations, corporations, unions, and unincorporated organizations) was publicly disclosed, and the existing federal election laws “failed to prevent persons and organizations from passing contributions to super PACs through shell corporations in order to disguise the true source of the funds.” See Trevor Potter & Bryston B. Morgan, “The History of Undisclosed Spending in U.S. Election & How 2012 Became the ‘Dark Money’ Election,” 27 Notre Dame J. L. Ethics, & Pub. Pol’y 383, 385, 461 (2013); see also Paul Blumenthal, ‘Dark Money’ in 2012 Election Tops \$400 Million, 10 Candidates Outspent by Groups with Undisclosed Donors, Huffington Post, (Nov. 2, 2012), [http://www.huffingtonpost.com/2012/11/02/dark-money-2012-election-400-million\\_n\\_2065689.html](http://www.huffingtonpost.com/2012/11/02/dark-money-2012-election-400-million_n_2065689.html).

expenditures, would continue to regulate the solicitation or receipt of contributions where permissible.

The cases that petitioners cite to bolster their argument that a group receiving earmarked donations (contributions) does not have to form a political committee all involve *political committees* raising and spending funds. See Petition at 5 (referring to cases involving “contributions to IE-entities”). Petitioners conflate the term ‘entity’ with ‘political committee’ but fail to point out that the cases they cite in their petition all involve political committees raising and spending funds. While the courts have held that the source and amount limits on contributions to independent expenditure only committees were impermissible, as discussed earlier many of these cases they have also held that the registration and reporting requirements attendant with the formation of a political committee were permissible. See e.g. *SpeechNow.org v. FEC*, 599 F.3d at 697 (“Neither can *SpeechNow* claim to be burdened by the requirement to organize as a political committee as soon as it receives \$1000, as required by the definition of “political committee,” 2 U.S.C. § 431(4), 431(8), rather than waiting until it expends \$1000.... We cannot hold that the organizational and reporting requirements are unconstitutional.”); see also *Thalheimer v. City of San Diego*, 645 F.3d 1109 (9th Cir. 2011) (upholding injunction against enforcement of San Diego ordinance limiting fundraising of independent political committees) (*Wis. Right to Life State Political Action Comm. v. Barland*, 664 F.3d 139 (7th Cir. 2011); *Mich. Chamber of Commerce v. Land*, 725 F.Supp.2d 665 (W.D. Mich. 2010) (involved challenge of contribution limits to a *political committee*).

Similarly, the two Federal Election Commissions advisory opinions cited by petitioners involve questions about contributions to *political committees*. See FEC Advisory Opinion 2010-09 (Club for Growth); FEC Advisory Opinion 2010-11 (Commonsense Ten).

Petitioners also argue that section 8 is more “specific” than other statutory provisions and thus must govern. See Petition at 4. They contend that regardless, since Organizations 1 and 3 are “national” groups they fall outside of Connecticut’s definition of “committee” because they are not “organized” to influence Connecticut elections. See Petition at 4. This argument lacks merit. The definition of “committee” must be read in conjunction with Section 33 of the 2013 Act (amending General Statute § 9-602(a)) which directs when a committee must be organized. For example, under the law, a business entity or labor union is required to form a political committee if it wishes to make contributions (including coordinated expenditures), even though the business entity or labor union itself is not “organized” to influence Connecticut elections. This law applies to national unions and corporations, not merely those formed solely to do business in Connecticut.

Moreover, it is clear from the plain limiting language in section 8 (“unless otherwise restricted or prohibited by law, including, but not limited to, any provision of chapter 155 or 157 of the general statutes”) that section 8 was not intended to override other provisions in the statute. The plain language in section 33 instructs that a person receiving contributions (including donations earmarked to promote or oppose

Connecticut candidates or parties) is still required to form a political committee and disclose all funds received and spent. Read together, sections 8 and 33 instruct that a person receiving such contributions is still required to register a political committee.

Assuming *arguendo* there is some ambiguity when reading these two provisions together, as detailed above, the legislative history and circumstances surrounding the 2013 Act's passage support this conclusion. Petitioners themselves cite the comments of the Governor when he signed the bill, championing the 2013 Act as meant to "vastly increase disclosure requirements for independent campaign expenditures" and making Connecticut a leader in the nation for transparency and disclosure. *See* Petition at 3-4. To read the 2013 Act as Petitioners request would weaken Connecticut's disclosure laws.

It is clear from the 2013 Act's plain language, the legislative intent and Governor's comments, as well as the policy underlying the 2013 Act, that the 2013 Act is intended to increase disclosure and to make apparent who is providing funds to persons who make independent expenditures.

Accordingly, because Organization 2 is soliciting and raising donations to influence Connecticut elections (it is raising contributions) it is required to register a political committee and comply with all disclosure rules. *SpeechNow.org*, cited by the petitioners to support their claim, found that the requirement to form a political committee and to submit campaign finance disclosures was not overly burdensome. *Speechnow.org*, 599 F.3d 686, 697-98 (D.C. App. 2010).

Once the political committee is formed, the state contractor limitations will apply pursuant to General Statutes § 9-612.

- 3) *Section 527 organization which receives and spends funds to do many things in addition to making independent expenditures to influence Connecticut elections, and which does accept donations earmarked to make such independent expenditures in Connecticut ("Organization 3").***

To the extent that Organization 3 solicits and receives earmarked donations to make independent expenditures in Connecticut, the answer to this question is the same as the answer regarding Organization 2. Because Organization 3 is soliciting and raising donations to influence Connecticut elections (it is raising contributions) it is required to register a political committee once it exceeds the \$1,000 "safe harbor" threshold, and it must comply with disclosure rules applicable to Connecticut political committees.

With that said, the Commission recognizes that Organization 3 is a national organization that may be less aware of each state's requirements for forming a political committee than an organization formed with a purpose of participating in Connecticut elections. The Commission is reasonable, and generally recognizes that a minor comment by a solicitor during a phone call seeking a donation to Organization 3 about Connecticut candidates is different than a planned and orchestrated effort to raise earmarked donations to promote or oppose Connecticut candidates or parties.

State contractors making donations to national 527s that have been active in Connecticut are urged to exercise caution. The law requires state contractors to “make reasonable efforts to comply” with the limitations and provides a safe harbor of thirty days to effect the return of an improper contribution should a state contractor make a prohibited contribution. General Statutes §§ 9-612 (f) (2) (C) & (5). Section 8 of the new law provides a fail-safe device for those donating to such national independent expenditure organizations in that separate segregated accounts may now be established. If a contractor is concerned about coordination of expenditures, he or she may request that their donation be put into a segregated account that will never be used for expenditures to promote the success or defeat of Connecticut candidates or parties.

### ***Recent Second Circuit Ruling***

On November 1, 2013, the petitioners submitted a supplement to their request for a declaratory ruling which cites *N.Y. Progress & Prot. PAC v. Walsh*, supra, and argues that this preliminary ruling on the likelihood of success mandates that the Commission decide that only section 8 reporting is required and that political committee registration and disclosure requirements, as well as contribution limits, do not apply to those organizations soliciting and receiving contributions specifically for independent expenditures promoting the success or defeat of Connecticut candidates and parties. The Commission recognizes that the legal trend seems to be quite clear that many source and amount contribution limits on independent expenditure only political committees are impermissible. As the *Walsh* court noted “[f]ew contested legal questions are answered so consistently by so many courts and judges.” *Walsh*, 733 F.3d at 483. The answer to the legal question, however, does not mandate the outcome that the petitioners propose.

Nothing in the decisions cited by the petitioners holds that the registration and disclosure requirements that attach to political committees are impermissible. Indeed, when those cases address the issue, they have found these requirements are entirely permissible. See e.g. *SpeechNow.org*, supra. The decision requested by the petitioners would require the Commission to invalidate all of the additional disclosure, which is not inconsequential, that is applicable to political committees but is not required for those reporting under section 8. This it cannot do.

That said, the recent decision in *Walsh* by the Second Circuit strongly suggests that the law is changing with respect to contribution limits for independent expenditure only candidate committees. Last summer, the Vermont District Court agreed with this widely-held view that states may not limit contributions to independent expenditure only political committees. *Vermont Right to Life v. Sorrell*, 875 F. Supp. 2d 376, 403-404 (D. Vt 2012). The Vermont court reasoned that: “The Supreme Court has found that independent expenditures do not raise concerns of the reality or appearance of corruption, since their very separation from candidates ensures ‘[t]he candidate-funding circuit is broken.’” Id. at 403 (quoting *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 131 S. Ct. 2806, 2826 (2011)). Federal courts to address the issue since *Citizens United* have emphasized that because independent expenditures cannot corrupt, governments have no

valid anti-corruption interest in limiting contributions to independent-expenditure-only groups. As we noted, this case is currently on appeal before the United States Court of Appeals for the Second Circuit. *Vermont Right to Life Committee, Inc. v. Sorrell* (2d Cir., Case No. 12-2904-cv). Until the appeal is resolved, the Vermont Attorney General has issued a statement that it will not enforce contribution limits to independent expenditure only political committees “until further guidance is received from the Second Circuit or Vermont courts.” See Vermont Attorney General’s Guidance Regarding Independent Expenditure Committees (July 25, 2012), available at <http://vermont-elections.org/elections1/Independent%20Expenditure%20Guidance-%2007-25-12%20-%20HKT2L87.pdf>.

In light of this strong line of cases finding that contribution limits to independent expenditure only political committees are unconstitutional, the Commission will not enforce contribution limits to political committees that receive and spend funds for independent expenditures only, until it receives further guidance from the Connecticut legislature or a court of competent jurisdiction. Connecticut law does not currently distinguish between political committees that make contributions (including coordinated expenditures) and/or independent expenditures, versus political committees that make *only* independent expenditures. The Commission will therefore establish a way for political committees that will act wholly independent of Connecticut candidates and parties to register as “independent expenditure only” political committees. Until we receive further direction from either the courts or the Connecticut General Assembly, with respect to contributions received by those committees formed to make exclusively independent expenditures, the Commission will not enforce those contribution limits contained in General Statutes §§ 9-612 (a) and (b), 9-613 (e), 9-615 (d), 9-618 (a) (except as to legislative leadership and legislative caucus committees) and 9-619 (a) (except as to legislative leadership and legislative caucus committees). Such political committees will still be required to comply with Connecticut’s registration and disclosure requirements.

In addition, the Commission agrees with comments submitted by the petitioners regarding whether persons other than individuals who contribute to independent expenditure only political committees are required to form political committees in order to make such contributions. Until we receive further direction from either the courts or the General Assembly, the Commission will not generally enforce the provision that would otherwise require persons other than individuals to register a political committee in order to make a contribution to an independent expenditure only political committee registered in Connecticut. Practically speaking, this means, for example, that a labor union, 527 organization, business or non-profit corporation that is not a state contractor may make contributions from its general treasury to a Connecticut independent expenditure only committee.<sup>16</sup> Similarly, a political committee registered in Connecticut (and which is not a principal of a state contractor, a legislative leadership or caucus

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<sup>16</sup> However, if such person making a contribution to an independent expenditure only political committee is itself raising contributions, it is not exempted from the requirement to form its own political committee.

committee, an exploratory or candidate committee, or a political slate committee) may make such contributions to a Connecticut independent expenditure only committee.

This response balances the concerns at the heart of the *Walsh* decision and the need to provide the public with the information necessary to evaluate communications. The Supreme Court has long recognized that “informed public opinion is the most potent of all restraints upon misgovernment.” *Buckley*, 424 U.S. at 67 (quoting *Grosjean v. American Press Co.*, 297 U.S. 233, 250 (1936)). The *Buckley* Court held that “disclosure requirements deter actual corruption and avoid the appearance of corruption,” explaining that a “public armed with information about a candidate’s most generous supporters is better able to detect any post-election special favors that may be given in return.” *Id.* at 67. “The sources of a candidate’s financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.” *Id.* More recently in *Citizens United*, specifically with regard to independent political spending, the Court recognized that disclosure can provide “citizens with the information needed to hold . . . elected officials accountable for their positions and supporters” and “see whether elected officials are ‘in the pocket’ of so-called moneyed interests.” *Citizens United*, 558 U.S. at 370 (internal quotation marks omitted) (quoting *McConnell*, 540 U.S. at 259 (opinion of Scalia, J.)).<sup>17</sup>

This constitutes a declaratory ruling pursuant to General Statutes § 4-176, and provides guidance about the disclosure requirements for independent expenditures. A declaratory ruling has the same status and binding effect as an order issued in a contested case and shall be a final decision for purposes of appeal in accordance with the provisions of General Statutes § 4-183, pursuant to General Statutes § 4-176 (h). Notice has been given to all persons who have requested notice of declaratory rulings on this subject matter.

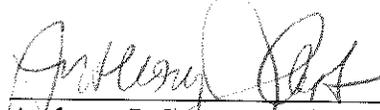
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<sup>17</sup> The petitioners also raise in their comments, for the first time, an argument that Connecticut’s “one person, one PAC” rule does not bar a section 527 organization from registering and maintaining two political committees: (1) a traditional political committee, which makes contributions to candidates and is subject to source and dollar contribution limits, and (2) an independent expenditure only political committee free from most of these limits. The Commission declines to address these comments in this declaratory ruling, as this was neither part of the initial request for a declaratory ruling received on October 9, 2013, nor part of the supplemental information provided by petitioners on November 1, 2013. This new issue raised in the comments was not noticed to the public, and also may have implications for the independent expenditure reporting regime under Section 8 of the 2013 Act. Therefore, the Commission believes that this issue is more appropriately addressed separately.

State Elections Enforcement Commission  
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This declaratory ruling is only meant to provide general guidance and addresses only the issues raised. Questions about the disclosure requirements for a specific independent expenditure should be directed to the Commission staff.

Adopted this 19<sup>th</sup> day of February, 2014, at Hartford, CT, by vote of the Commission.

  
Anthony J. Castagno, Chair  
By Order of the Commission