

# Daily Journal

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PERSPECTIVE

## Campaign finance fraud laws still thrive

By Timothy Perry

With less than two years until the next presidential election, a new campaign fundraising cycle has already begun. Indeed, most expect 2016's federal campaigns to be the costliest in history, spurred in part by the U.S. Supreme Court's loosening of campaign finance restrictions through opinions such as *Citizens United v. FEC*. Yet there is at least one area of campaign finance law that remains unscathed by Supreme Court's recent precedents: the strictly *criminal* law of campaign finance fraud.

### A Deregulatory Trend

By any measure, the past five years of Supreme Court campaign finance decisions have followed a deregulatory trend. Most famously, in 2010, *Citizens United* struck down, on First Amendment grounds, the ban on certain private organizations' independent expenditures on political campaigns. In 2014, in *McCutcheon v. FCC*, the high court voided the aggregate cap on individual contributions to federal candidates and committees. And in January, the justices heard argument on whether to undo a Florida law prohibiting state judges from directly soliciting campaign contributions — a case that many predict will result in yet another invalidated campaign finance law.

But the court has declined to extend *Citizens United* into areas of criminal law that intersect with campaign finance law. This has not been for lack of opportunity. In 2013, Washington, D.C. lobbyist Kevin Ring petitioned the Supreme Court to overturn his conviction for honest services wire fraud, a form

of bribery. At Ring's trial, prosecutors had introduced "emails describing how [his] contributions were being used to reward or influence public officials."

Ring argued that his donations were covered by the First Amendment, which he said prosecutors violated when they introduced his emails into evidence. Although Ring's case presented an opportunity to extend *Citizens United* to the criminal arena, the court declined to hear the case.

### Prosecutors Take a Hard Line

Meanwhile, federal prosecutors have filed several federal campaign finance fraud charges in recent years. Last year, the U.S. attorney's office for the Southern District of New York indicted political commentator Dinesh D'Souza for funneling money through conduits or "straw donors" to a U.S. Senate candidate. D'Souza pled guilty to a felony and was ultimately sentenced to probation.

In March 2014, Washington, D.C. businessman Jeffrey E. Thompson pled guilty to helping wage a "shadow campaign" to funnel more than \$2 million in financing through conduits, in part to the successful Washington, D.C. mayoral campaign of Vincent Gray. In August 2014, federal prosecutors in San Diego charged six defendants, including Mexican businessman Jose Susumo Azano Matsura, in connection with a scheme to steer foreign money to various candidates and committees in support of San Diego candidates for mayor and Congress.

Most recently, in November 2014, Ohio businessman Michael Giorgio was sentenced to 27 months in prison after pleading guilty to

seven counts of conspiracy, false statements, making straw donations and obstructing justice.

Not content to merely put handcuffs on violators, federal prosecutors have issued a steady drumbeat of press releases, condemning those who would buck "transparency" in democratic elections. In short, while the Roberts court has loosened many campaign finance strictures, the criminal enforcement regime remains in full force, and prosecutors continue to investigate and prosecute violators.

### Campaign Finance Fraud

With prosecutions untouched by the Supreme Court's recent decisions, it behooves donors and candidates alike to have some familiarity with the criminal law of campaign finance. Among the prosecutions, the three most important types are:

- Cases of a straw donor. Anyone who "willfully" contributes campaign cash or goods "aggregating \$25,000 or more" through a "conduit," or straw donor, can be charged with a felony. This is the most common campaign finance crime: Federal prosecutors charged D'Souza, Thompson and Azano with variations of it.

- Cases involving a false filing. Federal candidates and committees must report contributions to the Federal Election Commission. If the reported information turns out to be willfully false — for example, if the filing lists a straw donor rather than a donation's true source — then the true donor, the straw donor and even the candidate could be charged under the federal false statements statute. Further, since every false statement tends to conceal the truth of the underlying

transaction, federal prosecutors can also bring any number of obstruction charges.

- Cases where the money is foreign. So-called "foreign nationals," such as San Diego's Azano, are prohibited from contributing to any campaign at the federal, state or local level — from president of the United States to dogcatcher. While this prohibition should be obvious (imagine the "Vladimir Putin Super PAC"), dollar signs can sometimes blind a candidate to the right ethical path.

For now, these types of prosecutions remain unaffected by *Citizens United* and related precedent. While campaign finance restrictions continue to loosen, prosecutors may see fit to pick up the regulatory slack.

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