

INSIGHTS

Political Consultant Convicted for Illegal Coordination

February 20, 2015

In what appears to be a first of its kind federal prosecution, Tyler Harber, a well-known political consultant, pleaded guilty in the U.S. District Court for the Eastern District of Virginia to illegally coordinating campaign activity between a Super PAC, also known as an Independent Expenditure Committee, and a congressional campaign committee.

Mr. Harber was the campaign manager for Christopher Perkins, a congressional candidate in Virginia in 2012. Harber also helped establish and manage a Super PAC, the National Republican Victory Fund that spent at least \$325,000 purchasing broadcast ads against Perkins' opponent, Congressman Gerald Connolly.

Super PACs have been allowed to accept and spend unlimited funds, including funds from corporations, as long as they operate completely independent of any candidate or that candidate's campaign committee. It is this independence the Supreme Court relied upon in landmark cases such as *Citizen United v. FEC*, which focused on the diminished likelihood of *quid pro quo* corruption present when a donor gives large sums of money to independent expenditure committees, rather than directly to federal candidates.

If a Super PAC coordinates its activity with a candidate's campaign, the money spent on such activity constitutes a contribution and is subject to all the rules regarding contributions, including strict limits on the amount allowed per election and the source of such funds. The Federal Election Commission, or ultimately a court, will consider whether a challenged campaign activity is paid for by a person or entity other than the campaign that benefits from such expense, for example, a paid communication that supports the candidate or opposes her opponent. In such a case, the court will look at five *content* standards, such as whether a federal candidate was named in the communication, whether there are references to political parties, and if the communication was a public communication. See 11 C.F.R. § 109.21(c). The court will also look at six factors to determine if there was improper *conduct*, such as whether the campaign suggested, materially assisted, or importuned the Super PAC to fund the communication. An additional factor is whether the communication occurred within 90 days of a congressional election or 120 days of presidential election. See *id.* § 109.21 (c) & (d).

There was abundant evidence of illegal coordination between the Super PAC and the Perkins campaign committee, making the \$325,000 spent by the Super PAC an illegal contribution to the Perkins Committee. The statement of facts, published by the U.S. Attorney's Office, indicated that Mr. Harber directed \$138,000 of the contributions to the Super PAC to an entity in Florida controlled by his mother for alleged political work, when in fact no such work was performed. Instead, Harber kept \$118,000 for his personal use and gave his mother \$20,000.

Moreover, Mr. Harber admitted he knew his direction of the activity of both committees was illegal and that he tried to hide his activity by using an online alias, obtaining an alias phone number and address, and filing false reports with the Federal Election Commission. It should be noted that there was no indication that the candidate, Mr. Perkins, was involved in any illegal activity.

The U.S. Attorney's press release stated that the Department of Justice "is fully committed to addressing the threat posed to the integrity of federal primary and general elections by coordinated campaign contributions, and will aggressively pursue coordination offenses at every appropriate opportunity." One should expect vigilance by law enforcement, including thorough investigations of allegations of illegal coordination, such as Mr. Harbor's activity in 2012, which may include additional cases from the 2012 and 2014 election cycles, as well as a bump in investigative resources devoted to scrutinizing spending during the 2016 election cycle.