



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 22, 2023

The Honorable Kamala D. Harris
President of the Senate
S-212, The Capitol
Washington, D.C. 20510

Dear Madam President:

Enclosed please find an Interim Final Rule on Contributions in the Name of Another that was approved by the Federal Election Commission on Thursday, May 18, 2023. In order to implement the orders of the United States District Court in *FEC v. Swallow*, the Final Rules amend FEC regulations to remove 11 C.F.R. § 110.4(b)(1)(iii), which is the prohibition on knowingly helping or assisting any person in making a contribution in the name of another.

The enclosed notice of the Interim Final Rule, which includes a detailed explanation and justification of the rules, will be published in the *Federal Register*. By this letter, the FEC is transmitting the rules to the House of Representatives in accordance the Federal Election Campaign Act of 1971, § 311(d)(1) (*codified at* 52 U.S.C. § 30111(d)(1)). A similar letter will be sent to the House of Representatives as well. The Interim Final Rule will take effect on August 5, 2023, which assumes that thirty legislative days without Congressional disapproval will have passed by that date.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "J. Duane Pugh".

J. Duane Pugh
Director, Congressional Affairs

Enclosure

cc: The Hon. Amy J. Klobuchar, Chairwoman
The Hon. Debra S. Fischer, Ranking Member
Committee on Rules and Administration



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 22, 2023

The Honorable Kevin McCarthy
Speaker of the House of Representatives
H-232, The Capitol
Washington, D.C. 20515

Dear Mr. Speaker:

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Thank you for your consideration.

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J. Duane Pugh
Director, Congressional Affairs

Enclosure

cc: The Honorable Bryan G. Steil, Chairman
The Honorable Joseph D. Morelle, Ranking Member
Committee on House Administration



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 22, 2023

The Honorable Patricia L. Murray
President *Pro Tempore* of the Senate
United States Senate
S-126, The Capitol
Washington, DC 20510

Dear Madam President:

Enclosed please find an Interim Final Rule on Contributions in the Name of Another that was approved by the Federal Election Commission on Thursday, May 18, 2023. In order to implement the orders of the United States District Court in *FEC v. Swallow*, the Final Rules amend FEC regulations to remove 11 C.F.R. § 110.4(b)(1)(iii), which is the prohibition on knowingly helping or assisting any person in making a contribution in the name of another.

The enclosed notice of the Interim Final Rule, which includes a detailed explanation and justification of the rules, will be published in the *Federal Register*. By this letter, the FEC is transmitting the rules to the House of Representatives in accordance the Federal Election Campaign Act of 1971, § 311(d)(1) (*codified at* 52 U.S.C. § 30111(d)(1)). A similar letter will be sent to the House of Representatives as well. The Interim Final Rule will take effect on August 5, 2023, which assumes that thirty legislative days without Congressional disapproval will have passed by that date.

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J. Duane Pugh
Director, Congressional Affairs

Enclosure

cc: The Hon. Amy J. Klobuchar, Chairwoman
The Hon. Debra S. Fischer, Ranking Member
Committee on Rules and Administration

FEDERAL ELECTION COMMISSION

11 CFR PART 110

[Notice 2023-09]

Contributions in the Name of Another

AGENCY: Federal Election Commission.

ACTION: Interim Final Rule.

SUMMARY: The Commission is removing the regulatory prohibition on knowingly helping or assisting any person in making a contribution in the name of another. The Commission is taking this action to implement the order of the United States District Court in *FEC v. Swallow*, which enjoined the Commission from enforcing the provision and ordered the Commission to strike it from the Code of Federal Regulations. The Commission is accepting comments on this revision to its regulations and any comments received may be addressed in a subsequent rulemaking document.

DATES: The effective date is August 5, 2023. Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Ms. Cheryl A. Hemsley, Attorney, (202) 694-1650 or (800) 424-9530.

ADDRESSES: All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission's website at <http://sers.fec.gov/fosers>, reference REG 2018-06, to ensure timely receipt and consideration. Alternatively, comments may be submitted in paper form addressed to the Federal Election Commission, Attn.: Amy L. Rothstein, Assistant General Counsel, 1050 First Street, NE, Washington, DC 20463.

Each commenter must provide, at a minimum, the commenter's first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website and in the Commission's Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

SUPPLEMENTARY INFORMATION:

The Federal Election Campaign Act, 52 U.S.C. 30101-30145 ("FECA"), states that "[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person." 52 U.S.C. 30122. The Commission has implemented this provision at 11 CFR § 110.4, which states that no person may "[k]nowingly help or assist any person in making a contribution in the name of another." 11 CFR § 110.4(b)(1)(iii).

On April 6, 2018, the United States District Court for the District of Utah issued a memorandum decision and order holding that the Commission's regulation at 11 CFR § 110.4(b)(1)(iii) was invalid, enjoining the Commission from enforcing that provision, and ordering the Commission to strike the provision from the Code of Federal Regulations.¹ *FEC v.*

¹ After adverse decisions, agencies are permitted in certain circumstances to maintain the invalidated interpretation of the statute or regulation in later matters that will come before courts in other jurisdictions. *See, e.g., Indep. Petroleum Ass'n v. Babbitt*, 92 F.3d 1248, 1261 (D.C. Cir. 1996). Agencies may only decline to accord court rulings nation-wide effect, however, as part of a search for eventual rulings from different Courts of Appeals and the Supreme Court. *See, e.g., Va. Soc'y for Human Life, Inc. v. FEC*, 263 F.3d 379, 393-94 (4th Cir. 2001)

Swallow (Swallow I), 304 F. Supp. 3d 1113 (D. Utah 2018); *FEC v. Swallow (Swallow II)*, No. 2:15-CV-00439 (D. Utah Sept. 20, 2018) (Westlaw) (order granting partial final judgment). To conform its regulation to the court orders in *Swallow I* and *II*, the Commission is removing 11 CFR § 110.4(b)(1)(iii) and renumbering paragraph (b)(1)(iv) as (b)(1)(iii). The Commission is accepting comments on this revision and any comments received may be addressed in a subsequent rulemaking document.

The Commission is taking this action without advance notice and comment because it falls under the “good cause” exception of the Administrative Procedure Act (“APA”), 5 U.S.C. 553(b)(B). The revisions are necessary to conform the Commission’s regulations to the court’s orders. Because this action does not involve any Commission discretion or policy judgments, notice and comment are unnecessary. 5 U.S.C. 553(b)(B), (d)(3). Moreover, because this interim final rule is exempt from the APA’s notice and comment procedure under 5 U.S.C. 553(b), the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2), 604(a).

(overturning nationwide injunction against Commission to permit development of the law). In declining to appeal to the Court of Appeals, the Commission chose not to take this path in this case. *See Indep. Petroleum Ass’n*, 92 F.3d at 1261.

11 CFR Part 110

Campaign funds, Political committees and parties.

For the reasons set out in the preamble, the Federal Election Commission amends 11 CFR chapter I, as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. Authority: 52 U.S.C. Sections 30101(8), 30101(9), 30102(c)(2), 30104(i)(3), 30111(a)(8), 30116, 30118, 30120, 30121, 30122, 30123, 30124, and 36 U.S.C. 510.
2. Amend § 110.4 by removing paragraph (b)(1)(iii) and redesignating paragraph (b)(1)(iv) as paragraph (b)(1)(iii).

Dated: [May 18, 2023].

On behalf of the Commission,

Dara S. Lindenbaum,

Chair,

Federal Election Commission.

BILLING CODE: 6715-01-P