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State Law on Independent Expenditures

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Issue

This report summarizes Connecticut campaign finance law on independent expenditures (IEs), with a focus on registration and financial disclosure requirements for persons that make IEs.

Summary

In conformance with the U.S. Supreme Court's decision in *Citizens United v. Federal Election Commission*, state law authorizes persons to make unlimited IEs (see *Background*). An "independent expenditure" is an expenditure that is made without the consent, coordination, or consultation of a (1) candidate or candidate's agent, (2) candidate committee, (3) political committee (known as a PAC), or (4) party committee (CGS § 9-601c).

The law establishes (1) registration and financial disclosure reporting requirements for persons that make IEs ("IE-makers") and (2) attribution requirements for political advertisements that are made with IEs (see OLR Report 2020-R-0080 for detailed information on these IE attribution requirements). Additionally, it specifies factors that the State Elections Enforcement Commission (SEEC) must consider when determining whether an expenditure is independent.

Violators of the law's IE reporting provisions are subject to SEEC's enforcement authority. Principally, the commission may impose a civil penalty for noncompliance, and it may refer certain matters to the chief state's attorney (CGS §§ 9-7b and 9-601d(i)).

IE-Makers

State law authorizes persons to make unlimited IEs unless otherwise prohibited. “Person” means an individual, committee, firm, partnership, organization, association, syndicate, company trust, corporation, limited liability company, or any other legal entity of any kind. It does not mean the state or any political or administrative subdivision of the state (CGS § 9-601(10)).

According to SEEC, there are three types of IE-makers:

1. incidental spenders;
2. political committees, known as traditional PACs; and
3. independent expenditure political committees, known as IE-only PACs (SEEC Advisory Opinion 2014-02).

Incidental Spenders

With respect to IEs, “incidental spenders” are individuals or preexisting groups that spend personal or treasury funds, respectively, to make IEs. In other words, they do not raise money specifically for use in state or municipal elections or referenda. However, they may accept unlimited "covered transfers," which are donations, transfers, or payments of funds by a person to another person if the recipient (1) makes IEs or (2) transfers funds to another person that makes IEs. Among other things, a covered transfer does not include a donation, transfer, or payment that a person makes in the ordinary course of trade or business.

Traditional PACs

Traditional PACs are groups that, in addition to making IEs, (1) solicit and receive contributions in connection with state or municipal elections or referenda and (2) make contributions directly to, or expenditures coordinated with, candidates and committees. Thus, state law subjects contributions to and by these PACs to statutory limits and campaign finance reporting requirements (CGS §§ 9-601(3) and 9-615 et seq).

IE-Only PACs

Unlike traditional PACs, IE-only PACs do not make contributions directly to, or expenditures coordinated with, candidates and traditional PACs. Rather, these PACs are groups that make only IEs and solicit or raise funds earmarked for state or municipal elections or referenda. Like incidental spenders, they may accept unlimited covered transfers. They may also make contributions to other IE-only PACs.

IE-only PACs are not specifically authorized in state law. However, in Declaratory Ruling 2013-02, SEEC ruled that, in light of a line of federal cases ruling that contribution limits to IE-only PACs are unconstitutional, it would no longer enforce contribution limits to PACs that receive and spend funds only for IEs unless it received further guidance from the legislature or a court. It thus established a mechanism for PACs that act wholly independent of Connecticut candidates and parties to register as IE-only PACs.

Campaign Finance Forms and Filing Repository

State law requires IE-makers to use SEEC-prescribed forms to comply with campaign finance registration and financial disclosure requirements (CGS §§ 9-603 and 9-624). The forms contain certifications that must be signed under penalty of false statement, which is a class A misdemeanor, punishable by up to one year in prison, a fine of up to $2,000, or both (CGS § 53a-157b).

IE-makers that make expenditures only in connection with municipal elections or referenda must file the required registration and financial disclosure forms with the town clerk in the municipality where the election or referendum takes place. Those that make expenditures in connection with elections for legislative or statewide office, or judge of probate or for constitutional referenda, must file these documents with SEEC (SEEC Advisory Opinion 2014-02). Those that make expenditures in connection with both municipal and state elections or referenda should file only with SEEC.

Registration Requirements

State law requires traditional PACs to register with SEEC or a town clerk, as applicable, before raising or spending more than $1,000 in the aggregate (CGS § 9-602(a)). SEEC also requires IE-only PACs to comply with the same registration requirements (SEEC Declaratory Ruling 2013-02, pp. 22-25). Traditional PACs register using SEEC Form 3; IE-only PACs register using SEEC Form 8.

The law does not require registration by IE-makers that are considered incidental spenders. Rather, they must comply with incident-based reporting rules (see below). (For more information on when certain groups must form a PAC to comply with state campaign finance laws, see SEEC Declaratory Ruling 2013-02 and Declaratory Ruling 2018-01.)

Reporting Schedule

All IE-makers must disclose information about IEs they make or obligate to make exceeding $1,000 in the aggregate by filing certain reports (CGS § 9-601d(a)). (Generally, “obligate to make” means

that the person has taken affirmative action and promised to make a payment of funds for an IE (SEEC Declaratory Ruling 2014-01.)

IEs Made in Connection With Statewide and Legislative Candidates

The law sets different filing deadlines for IEs made in connection with statewide or General Assembly candidates based on whether they are made (1) before the primary or general election campaign period or (2) during this period. For both periods, the reporting requirement applies when IEs exceed $1,000 in the aggregate, and this threshold resets after each statement is filed (SEEC Advisory Opinion 2014-02, p. 6).

Before the primary or general election campaign period, IE-makers must file reports periodically, according to a statutory schedule. Under this schedule, (1) incidental spenders must file according to the periodic filing schedule for candidate committees and (2) traditional PACs and IE-only PACs must file according to the periodic filing schedule for PACs. Table 1 below summarizes the filing schedules for the period before the primary and general election.

During the primary or general election campaign period, IE-makers must electronically file IE reports within 24 hours after making or obligating to make an IE in connection with a statewide office or General Assembly candidate. Generally, during the primary campaign, the 24-hour reporting period begins the day after the convention, caucus, or town committee meeting held to endorse candidates. During the general election campaign, it begins the day after the primary or, if there is no primary, the day after the candidate's nomination (CGS §§ 9-601d(b) and 9-700(7) & (11)).

Other IEs

IEs made in connection with municipal elections or referenda, judge of probate candidates, or statewide referenda are not subject to the 24-hour requirement. Instead, for these expenditures, IE-makers must continue to follow the periodic filing schedule for the primary or general election period, as shown in Table 1.

Table 1: Periodic Filing Schedules

*Incidental Spenders (Incident-Specific Reporting)**	*Traditional PACs and IE-Only PACs (Continued Reporting)***
▪ January 10, April 10, July 10, and October 10 ▪ 7 days preceding the primary, if they have spent in connection with a primary ▪ 30 days following the primary, if they have spent in connection with a primary	▪ January 10, April 10, July 10, and October 10 ▪ 7 days preceding the primary or referendum, if they have spent in connection with a primary or referendum

Table 1 (continued)

*Incidental Spenders (Incident-Specific Reporting)**	*Traditional PACs and IE-Only PACs (Continued Reporting)***
▪ 7 days preceding the election	▪ 7 days preceding the election (during an odd year, if they have spent in connection with the election; during an even year, they must file regardless of activity) ▪ 45 days after the election when the election is not held in November

*Incidental spenders file incident-specific reports, meaning they do not need to file a report unless they make or obligate to make $1,000 in IEs during the period covered by the report.

**PACs must file periodic reports according to the schedule, regardless of whether they have any specific incidents of financial activity.

Financial Disclosures

All IE-makers must disclose information about IEs they make by filing prescribed forms with the appropriate repository. SEEC requires incidental spenders to file incident-specific long- and short-forms (i.e., SEEC Form 26-Long Form and SEEC Form 26-Short Form). PACs, including IE-only PACs, must file periodic campaign finance statements (i.e., SEEC Form 20 for traditional PACs and SEEC Form 40 for IE-only PACs). PACs and IE-only PACs must also use these forms to comply with the 24-hour reporting requirement.

All forms require that IE-makers include certain identifying information as well as information about the IEs they make, such as the name of any candidate about whom an IE was made or obligated to be made. Traditional PACs and IE-only PACs must additionally disclose all of the committee's funding sources.

Disclosing Covered Transfers

Long- and Short-Form Reports. As part of both the long- and short-form reports, in addition to disclosing information about IEs, incidental spenders must disclose information about covered transfers they receive. Specifically, they must disclose the source and amount of any covered transfer of $5,000 or more, in the aggregate, they received during the 12 months before the primary or election if the (1) transfer is intended to promote or oppose a candidate for statewide or legislative office and (2) IE (for which the report is being filed) is made or obligated to be made 180 or fewer days before the primary or election. However, if an incidental spender discloses the source and amount of a covered transfer as part of a report that it files with the Federal Election Commission or Internal Revenue Service, it may submit a copy of that report instead of reporting these transfers in the long- or short-form (CGS § 9-601d(f)).

Political Advertisements. For IEs made during the 90 days before a primary or election, the law requires that political advertisements identify in their attribution the names of the five persons that made the five largest aggregate covered transfers to the IE-maker during the 12 months immediately preceding the applicable primary or election ("top five transferors") (CGS § 9-621(h) and (*l*)). The requirement applies to covered transfers of $5,000 or more in the aggregate, which means that in practice, only incidental spenders and IE-only PACs are subject to it. (Traditional PACs are limited to accepting contributions ranging from $30 to $2,500 annually from a single contributor, depending on the source. For more information on these contribution limits, see SEEC's chart on Contribution Limits and Restrictions.)

"Nesting Dolls" Disclosure. If a person that is listed on an attribution as one of the top five transferors, as described above, is also a recipient of a covered transfer, the IE-maker must, with the exceptions described below, disclose in its reports to SEEC the names of the top five transferors to those recipients (CGS § 9-621(j)(1)). This additional level of disclosure is often referred to as the "nesting doll" provision.

Exceptions to the Nesting Dolls Disclosure. The law prohibits disclosing the name of any person that made a covered transfer to a 501(c)(4) organization if the organization is a top-five transferor included in the attribution and has not has its tax-exempt status revoked (CGS § 9-621(j)(2)). (Under federal law, these organizations are not required to publicly disclose their donors.)

The law also prohibits disclosing the name of any person that made a covered transfer to a top-five transferor listed on an attribution if the recipient accepts covered transfers from at least 100 different sources. The prohibition applies if no source accounts for 10% or more of the covered transfers accepted by the recipient during the 12 months immediately preceding the applicable primary or election (CGS § 9-621(j)(3)).

Expenditures From Dedicated IE Account

The law authorizes incidental spenders to establish a dedicated account to engage in IEs (CGS § 9-601d(g)). The dedicated account must be segregated from any other account the incidental spender controls. The account (1) may receive covered transfers directly from other persons but (2) cannot receive covered transfers from another account that the incidental spender controls, with one exception. Specifically, if a person makes a covered transfer to a different account that the incidental spender controls, and requests that the funds be used for IEs from the dedicated account, the same amount may be transferred into the dedicated IE account. In that case, it is treated as a covered transfer made directly to the incidental spender's dedicated account.

If an incidental spender makes an IE from a dedicated account, then any required disclosure of the source and amount of covered transfers may include only those transfers made to the dedicated account.

Determining Whether an Expenditure is Independent

Rebuttable Presumption When Evaluating Expenditures

For the purposes of evaluating whether expenditures are truly independent, the law creates a "rebuttable presumption" of coordination for certain expenditures. Under the rebuttable presumption, SEEC must presume that certain expenditures are not IEs and are thus coordinated and considered contributions for campaign finance purposes. Generally, these expenditures involve communication with a candidate, candidate committee, party committee, PAC, or consultant or agent of a candidate or any such committee (CGS § 9-601c(b)). (For more information on coordinated expenditures and the rebuttable presumption, see SEEC's Guide for Traditional Committees, pp. 61-62.)

Activities That SEEC Cannot Presume Constitute Coordination

When SEEC evaluates an expenditure to determine whether it is an IE, the law prohibits it from presuming that certain activities constitute evidence of consent, coordination, or consultation. Generally, these activities are:

1. participation by a candidate or his or her agent in an event that an entity sponsors;
2. membership of the candidate or his or her agent in the entity; and
3. financial support for, or solicitation or fundraising on behalf of, the entity by a candidate or his or her agent.

In addition, SEEC must consider a firewall policy, created by the person making the expenditure, as an effective rebuttal to the presumption of coordination. By law, the firewall policy must be designed and implemented to prohibit the flow of information between (1) employees, consultants, or other individuals providing services to the person paying for the expenditure and (2) the candidate or his or her agents (CGS § 9-601c(c & d)).

Failure to File IE Financial Disclosure Reports

The law subjects IE-makers to penalties for failure to file financial disclosure reports. The penalty depends on whether the IE is made in connection with a state or local election or referendum.

Specifically, if an IE-maker fails to report an IE in connection with a municipal election or referendum, or a judge of probate candidate, SEEC may impose a civil penalty of up to $2,000. A knowing and willful failure to file is a class D felony, punishable by imprisonment for up to five years, a fine of up to $5,000, or both (CGS §§ 9-7b(a)(2)(D) and 9-623(a)).

If an IE-maker fails to report an IE in connection with a candidate for General Assembly or statewide office, SEEC may impose a penalty of (1) up to $10,000 for failure to file more than 90 days before a primary or general election or (2) up to $20,000 for failure to file 90 days or fewer before a primary or general election. For a knowing and willful failure to file an IE report, SEEC may impose a fine of up to $50,000 and refer the matter to the chief state's attorney (CGS § 9-601d(i)). Additionally, any knowing and willful violation of Chapter 155 of the General Statutes (i.e., campaign finance, other than the Citizens' Election Program) is a class D felony (CGS § 9-623(a)).

Background

Related Case

In 2010, the U.S. Supreme Court ruled in *Citizens United v. Federal Election Commission* that corporations and unions have the same political speech rights as individuals under the First Amendment. It found no compelling governmental interest for prohibiting corporations and unions from using their general treasury funds to make election-related IEs. Thus, it struck down a federal law banning this practice and also overruled two of its prior decisions. The Court also ruled that the disclaimer and disclosure requirements associated with "electioneering communications" were constitutional (*Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010)).

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