

## FEC Approves 2-1 Charitable PAC Match Program

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Election and Political Law

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In a surprising move, the Federal Election Commission (“FEC”) announced on Friday that it has dismissed a complaint filed by three reform groups against Wal-Mart Stores, Inc. (“Walmart”), concluding that the company’s charitable PAC match program did not violate federal campaign finance law. See FEC MUR 6873.

The decision is important for two reasons. First, it is the first time the FEC has approved of a charitable PAC match of more than 1-for-1, and follows the agency’s 3-3 deadlock in a 2009 advisory opinion request from a company that wanted to sponsor a 1.5-1 and 2-1 charitable PAC match. See FEC AO 2009-03 (ICE, Inc.) Second, Walmart’s program only permits employees’ PAC contributions to be matched by a corporate contribution to the company’s own charity, which assists Walmart employees who experience unexpected financial distress. It is now clear that a 2-1 charitable match and single-charity choice are permissible parts of a federal PAC match program.

Since 2004, Walmart has offered an incentive program to encourage PAC contributions. Under this program, the company agrees that for each dollar an employee contributes to the PAC, the company will make a matching contribution of twice that sum to the Wal-Mart Associates in Critical Need Fund (“the Fund”), which is an IRS approved public charity dedicated to assisting Walmart employees and their family members who experience unexpected financial distress.

Public Citizen, Common Cause, and the Organization United for Respect at Walmart filed a complaint with the FEC in the fall of 2014, alleging that this program served as an improper exchange of corporate funds for PAC contributions and was coercive, citing the 2-1 match, the denial of donor choice of charities, and the selection of a company-controlled charity that only benefited company employees. They noted that an employee could generate a \$100 contribution to a favored charity by giving only \$50 to the PAC, which they alleged improperly incentivized PAC contributions.

In a 4-2 vote, the FEC approved a recommendation from the agency’s General Counsel’s Office that the Commission find the program to be consistent with the law and dismiss the matter. The recommendation of the General Counsel’s Office emphasized that the standard to be applied was whether a PAC donor “receive[d] a financial, tax or other tangible benefit from either the corporation or the recipient charity” as a result of the contribution. The report noted that while executive and administrative employees were eligible to receive benefits from the Fund, PAC donor status is not considered when evaluating a claim for benefits and only one-quarter of one percent of benefits in 2014 went to PAC donors. The Commission’s lawyers also concluded that if donors received an intangible benefit of enhanced support for a charity by the 2-1 gift, that did not constitute the type of tangible benefit that would violate the Commission’s rules. Nor did the

agency's lawyers find the allegations of coercion to show employees were threatened or forced to give. FEC Chairman Petersen and Commissioners Goodwin, Hunter, and Ravel voted to approve the General Counsel's report. Vice Chairman Walther and Commissioner Weintraub dissented, as they had in the 2009 Advisory Opinion request. Commissioner Bauerly, who also opposed approval of greater than a 1-1 match in the 2009 advisory opinion, left the FEC in 2013.

While this decision is a helpful clarification of the law, and is certainly an approach some corporate PACs will choose to follow, it was unclear from the pleadings in this case how successful Walmart's program has been. Walmart's PAC's receipts grew only 15 percent between 2003 (the year before the 2-1 match was adopted) and 2005 (the year after implementation). Since the 2004 election cycle, when Walmart's PAC was the fourth-largest corporate PAC, it has fallen to twelfth in the 2014 cycle, similar to the number thirteen ranking it held in the 2002 cycle, before adopting the 2-1 PAC match. This seems to indicate that while enhanced charitable incentives may help PAC fundraising, they should be viewed more as one aspect of a multi-part program to grow a donor base, and not as a "silver bullet."

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Election and Political Law practice group:

<b>Robert Kelner</b>	+1 202 662 5503	<a href="mailto:rkelner@cov.com">rkelner@cov.com</a>
<b>Bob Lenhard</b>	+1 202 662 5940	<a href="mailto:rlnhard@cov.com">rlnhard@cov.com</a>
<b>Zack Parks</b>	+1 202 662 5208	<a href="mailto:zparks@cov.com">zparks@cov.com</a>
<b>Derek Lawlor</b>	+1 202 662 5091	<a href="mailto:dlawlor@cov.com">dlawlor@cov.com</a>

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