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SEC AO2026-004 **November 19, 2026**

SUBJECT: Political Parties and Operating Disclosure Reports

SUMMARY: In light of recent guidance received from the South Carolina Attorney General's Office, political parties are not required to file Operating Disclosure Reports.

APPLICABLE LAW:

Section 8-13-1308 provides:

> (A) Upon the receipt or expenditure of campaign contributions or the making of independent expenditures totaling an accumulated aggregate of five hundred dollars or more, a candidate or committee . . . must file an initial certified campaign report within ten days of these initial receipts or expenditures . . .
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> (B) Following the filing of an initial certified campaign report, additional certified campaign reports must be filed within ten days following the end of each calendar quarter . . .
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> (D) (1) At least fifteen days before an election, a certified campaign report must be filed showing contributions of more than one hundred dollars and expenditures to or by the candidate or committee for the period ending twenty days before the election.
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> . . .

> (G) *Notwithstanding any other reporting requirements in this chapter, a political party, legislative caucus committee, and a party committee must file a certified campaign report upon the receipt of anything of value which totals in the aggregate five hundred dollars or more. For purposes of this section, "anything of value" includes contributions received which may be used for the payment of operation expenses of a political party, legislative caucus committee, or a party committee. A political party also must comply with the reporting requirements of subsections (B), (C), and (F) of Section 8-13-1308 in the same manner as a candidate or committee.* (emphasis added).

Section 8-13-1300(6) defines "committee" as:

> an association, a club, an organization, or a group of persons which, to influence the outcome of an elective office, receives contributions or makes expenditures in excess of five hundred dollars in the aggregate during an election cycle. It also means a person who, to influence the outcome of an elective office, makes: (a) contributions aggregating at least twenty-five thousand dollars during an election cycle to or at the request of a candidate or a committee, or a combination of them, or (b) independent expenditures aggregating five hundred dollars or more during an election cycle for the election or defeat of a candidate. 'Committee' includes *a party committee*, a legislative caucus committee, a noncandidate committee, or a committee that is not a campaign committee for a candidate but that is organized for the purpose of influencing an election. (emphasis added).

Section 8-13-1300(26) defines "political party" as:

> an association, *a committee*, or an organization which nominates a candidate whose name appears on the election ballot as the candidate of that association, committee, or organization. (emphasis added).

Section 8-13-1300(31) defines "operation expenses" as:

> expenditures for salaries and/or fringe benefits for part-time, full-time, temporary and/or contract employees; meeting expenses, travel, utilities, communications and/or communications equipment whether leased or purchased, printing or printing services, postage, food and/or beverage, advertising, consulting services, and/or any other expenditures which are not an authorized contribution to a candidate, committee, or ballot measure committee.

DISCUSSION:

The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Ethics Act). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

In South Carolina Citizens for Life, Inc. v. Krawcheck, 759 F. Supp. 2d 708 (D.S.C. 2010), the United States District Court for the District of South Carolina found the definition of "committee" in Section 8-13-1300(6) to be unconstitutional.[1] Since the Krawcheck decision, the application of South Carolina's campaign finance laws with regard to political action committees, ballot measure committees, and political parties has presented ongoing questions with few clear answers. However, in light of a recent opinion from the South Carolina Attorney General's Office, the Commission hereby issues this Advisory Opinion regarding political parties and Operating Disclosure Reports.

By way of background, in the wake of Krawcheck, the Commission ceased enforcement of virtually all registration and disclosure requirements except for those related to candidates. Subsequently, in 2015, the Commission's then-Executive Director issued a memorandum to all political parties, advising that Commission staff interpreted Section 8-13-1308(G) to require political parties to file Operating Disclosure Reports with the Commission disclosing any funds received by or spent from their operating account. As referenced above, Section 8-13-1308(G) provides that political parties, legislative caucus committees, and party committees must file "a certified campaign report upon the receipt of anything of value which totals in the aggregate five hundred dollars or more . . . includ[ing] contributions received which may be used for the payment of operation expenses."

In 2018, the Commission's current Executive Director sought an opinion from the Attorney General's Office with regard to the following question: "Does Krawcheck limit the Commission's ability to enforce [Section] 8-13-1308 with regard to a political party, as that term is defined in the Act?" The Attorney General provided an opinion in 2019, (Op. S.C. Att'y Gen., 2019 WL 3243935) (June 4, 2019) (2019 Opinion), that was primarily focused on whether requiring political parties to file Campaign Disclosure Reports was constitutionally problematic:

> While disclosure "statutes connected to the nomination or election of a candidate for public office" are "almost without exception upheld," statutes which encompass issue advocacy are far more constitutionally problematical. Here, a political party, although generally thought of as an entity which supports the nomination [or] election of its candidates, does much more. A party also engages in

[1] In Krawcheck, the court found the definition of "committee" violated the First Amendment because it imposed numerous burdens without reference to a person or entity's major purpose. More specifically, the court set forth a test to ensure that each person or entity "subjected to the burdens of political committee designation were engaged primarily in regulable, election-related speech" and that by regulating persons or organizations "that have the opposition or support of political candidates as [] *a* major purpose" (rather than *the* major purpose) there was a risk of burdening a substantial amount of constitutionally protected political speech. Krawcheck, 759 F. Supp. 2d at 716 (emphasis added). The Krawcheck court further declined to limit the application of Section 8-13-1300(6) to groups whose major purpose is influencing the outcome of an election, reasoning that this would be tantamount to rewriting the statute, particularly where the definition of "committee" was a component of a "comprehensive legislative scheme that involves detailed regulations governing all entities that are encompassed by the statutory definition." Id. at 720.

> issue advocacy . . . we believe it is best to err on the side of caution by continuing the Commission's present policy of non-enforcement of [Section] 8-13-1308 and await clarification by the General Assembly.

The 2019 Opinion further held that although the Commission possesses no authority to determine the constitutionality of a statute, it has "the sole jurisdiction to enforce the Act administratively." Citing Buckley v. Valeo, 424 U.S. 1 (1976), the landmark United States Supreme Court case regarding campaign finance, the Attorney General further advised that which is "unambiguously related to the campaign of a particular candidate" may be permissibly regulated. The 2019 Opinion also noted that an organization could have multiple major purposes and that imposing regulatory burdens on a multi-faceted organization could be constitutionally problematic. Noting that political parties possessed First Amendment rights of political expression and free speech, the 2019 Opinion concluded that, regarding Campaign Disclosure Reports, "there are indeed credible First Amendment issues raised by enforcement of [Section] 8-13-1308." In contrast, as to Operating Disclosure Reports, the 2019 Opinion summarily stated, with no analysis, that "no constitutional issue is raised by requiring a political party to disclose contributions to its operating account."

Recently, the Attorney General issued a clarifying opinion to a member of the South Carolina House of Representatives as to whether requiring political parties to file Operating Disclosure Reports implicated the same constitutional concerns set forth in its 2019 Opinion. Op. S.C. Att'y Gen., 2026 WL 3131647 (October 12, 2026) (2026 Opinion). Therein, the Attorney General stated that its 2019 Opinion contained "a statement made in passing which has caused confusion." More specifically, the 2026 Opinion questioned whether Section 8-13-1308, which required only a single "certified campaign report" permitted the Commission to require a report only for operating expenses in light of Section 8-13-1308(G)'s likely unconstitutionality. The 2026 Opinion concluded:

> disclosure of a political party's operating account raises many of the same constitutional questions discussed at length in our 2019 opinion and runs the same constitutional risks without clarification from the General Assembly . . . it is impossible, based upon the current language of [Section 8-13-1308], to separate constitutional uses of a political party's operating account from unconstitutional ones. As Krawcheck made clear, "only unambiguously campaign related communications have a sufficiently close relationship to the government's acknowledged interest in preventing corruption to be constitutionally regulable." Yet, [Section] 8-13-1308(G) is vaguely worded and offers no instruction as to how a party may segregate any issue advocacy activities which might be included as part of its operation expenses account.
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> It is easy to envision that a party may, in some instances, employ its

> operating account or operating expenses for issue advocacy purposes as well as for the election of candidates. Not only is an operating account used to "keep the lights on" and paying staff, but the party might easily prepare flyers or leaflets in support of or opposition to a particular piece of legislation its members might support or oppose, paid wholly from its operating account . . .
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> Thus, while our 2019 opinion suggested that no constitutional issue was raised by a political party's being required to report its operating account, such a suggestion was a mistake and we today revoke it. . . Unless and until the General Assembly—not the [Commission]—clarifies this situation, and finds a way to separate what is constitutional activity from issue advocacy even in a political party's operating account, we suggest that [Section] 8-13-1308(G) not be enforced at all.

CONCLUSION: The Commission recognizes that Section 8-13-1308(G) contemplates a single certified campaign report and does not expressly establish reporting requirements for campaign and operating accounts. The Commission also finds there are substantial and unresolved First Amendment concerns present in the enforcement of this provision. Although the Commission does not purport to declare Section 8-13-1308(G) unconstitutional,[2] the Commission concludes that, in light of the controlling constitutional principles and the Attorney General's opinions, political parties are not required to file Operating Disclosure Reports pursuant to Section 8-13-1308(G) unless and until the General Assembly clarifies these issues.

[2] Administrative agencies have no power to rule on the constitutionality of a statute or to declare a statute unconstitutional. See S.C. Tax Comm'n v. S.C. Tax Bd. of Review, 278 S.C. 556, 559, 299 S.E.2d 489, 491 (1983) (finding the authority to declare a statute as unconstitutional is a "power beyond [an administrative agency's] jurisdiction").