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THE LAW OF A ‘THING OF VALUE’

A Summary of the Sorts of Tangible and Intangible Goods and Services that have been Found to have ‘Value’ by the Commission and Other U.S. Government Entities¹

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What is a “thing of value” under the law?

The Federal Election Campaign Act (the “Act”)² defines a contribution to include “any gift, subscription, loan, advance, or deposit of money or *anything of value* made by any person for the purpose of influencing any election for Federal office.”³ “Anything of value” includes all “in-kind contributions,” defined as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.”⁴

Goods or services provided at the usual and normal charge may not constitute a contribution under the Act. Commission regulations permit any person or company to provide goods or services to a political committee, without making a contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary course of business, and at the usual and normal charge.⁵

The legal concept of a “thing of value” is not unique to the Act. The words “thing of value” “are found in so many criminal statutes throughout the United States that they have in a sense become words of art,” wrote the U.S. Court of Appeals for the Second Circuit.⁶ “The word ‘thing’ notwithstanding, the phrase is generally construed to cover intangibles as well as tangibles.”⁷ Federal courts have consistently applied an expansive reading to the term “thing of value” in a variety of statutory contexts to include goods and services that have tangible, intangible, or even *merely perceived* benefits, for example: promises, information, testimony, conjugal visits, and commercially worthless stock.⁸

The word “anything” means “all things.” “Read naturally, the word ‘any’ has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind,’” according to the Supreme Court.⁹ As the U.S. Court of Appeals for the Eleventh Circuit explained, “The United States Supreme Court and this Court have recognized on many occasions that the word ‘any’ is a powerful and broad word, and that it does not mean ‘some’ or ‘all but a few,’ but instead means ‘all.’”¹⁰

The Commission has held a long and diverse list of goods and services (both tangible and intangible, both easy and difficult to value) to qualify as contributions, including:

- opposition research;¹¹
- an activist’s contact list;¹²
- an email list;¹³
- staff time;¹⁴
- a business name or logo;¹⁵
- a severance payment;¹⁶
- the production elements for an event;¹⁷
- election materials;¹⁸
- a rent-stabilized apartment;¹⁹
- office space;²⁰
- a boat;²¹
- stocks and commodities;²²
- barter credit units and cryptocurrency mining awards;²³
- a gold coin;²⁴
- poll results;²⁵ and
- more generally, securities, facilities, equipment, supplies, personnel, advertising services, membership lists, mailing lists.²⁶

Thus, the Commission has, consistent with judicial rulings, interpreted “anything of value” broadly under the Act. The Commission has found that even where the value of a good or service “may be nominal or difficult to ascertain,” such good or service is nevertheless a “thing of value” under the Act.²⁷

¹ This summary was prepared by the Office of the Chair of the Federal Election Commission.

² 52 U.S.C. § 30101, *et seq.*

³ 52 U.S.C. § 30101(8) (emphasis added). The Act also defines “contribution” to include the “payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose.” 52 U.S.C. § 30101(8)(A)(ii); *see also* 11 C.F.R. § 100.54.

⁴ 11 C.F.R. § 100.52(d)(1). Goods or services offered for free or at less than the usual charge result in an in-kind contribution. Similarly, when a person pays for services on the committee’s behalf, the payment is an in-kind contribution. *Id.* at §§ 100.52(d)(1) & 100.111(e)(1). An expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate’s campaign is also considered an in-kind contribution to the candidate. *Id.* at § 109.20. Goods, such as facilities, equipment, supplies, or mailing lists, are valued at the price the item or facility would cost if purchased or rented at the time the contribution is made. For

example, if someone donates a personal computer to the campaign, the contribution equals the ordinary market price of the computer at the time of the contribution. Services, such as advertising, printing or consultant services, are valued at the prevailing commercial rate at the time the services are rendered. *Id.* at §§ 100.52(d)(2) & 100.111(e)(2).

⁵ 11 C.F.R. § 100.52(d)(1); 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services”). It should be noted that even foreign nationals or a foreign company may be permitted to provide goods or services to a political committee without making a contribution if done so as a commercial vendor—as long as foreign nationals do not directly or indirectly participate in any committee’s management or decision-making process in connection with its election-related activities. For example, in MUR 5998, the Commission found that the foreign national owners of a venue did not make or facilitate a contribution to a political committee by allowing the committee to rent the venue for a fundraising event. Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild). The venue at issue was rented out for events in the ordinary course of business, and the owners charged the committee the usual and normal amount for the service. *Id.* The Commission noted that there was no available information to suggest—and the foreign nationals and political committee expressly denied—that the foreign nationals had any “decision-making role in the event.” *Id.* at 5.

⁶ *United States v. Girard*, 601 F.2d 69, 71 (2d Cir. 1979) (holding that information was “thing of value” under federal theft statute, 18 U.S.C. § 641, and that statute was not limited to tangible property or documents).

⁷ *Id.*

⁸ *See, e.g., id.*; *United States v. Scruggs*, 916 F. Supp. 2d 670 (N.D. Miss. 2012) (concluding promise to contact public official constituted “anything of value” under *quid pro quo* bribery theory of honest services fraud, 18 U.S.C. §§ 1341, 1346); *United States v. Rivera*, No. 6:12-cr-121, 2012 WL 6589526 (MD. Fla. Dec. 18, 2012) (holding “ordination as a prophet” to be “anything of value” under commercial sex act statute, 18 U.S.C. § 1591); *United States v. Townsend*, 630 F.3d 1003, 1010-11 (11th Cir. 2011) (concluding that freedom from jail and incremental increases of freedom constitute “anything of value” under federal programs bribery statute, 18 U.S.C. § 666); *United States v. Singleton*, 144 F.3d 1343, 1350 (10th Cir. 1998) (concluding promise of reduced jail time is “anything of value” under bribery statute, 18 U.S.C. § 201(b)), *rev’d on other grounds*, 165 F.3d 1297 (1999); *United States v. Marmolejo*, 89 F.3d 1185, 1191-93 (5th Cir. 1996) (holding conjugal visits to be “anything of value” under federal programs bribery statute, 18 U.S.C. § 666); *United States v. Nilsen*, 967 F.2d 539, 542-43 (11th Cir. 1992) (holding testimony of witness is a “thing of value” under extortion statute, 18 U.S.C. § 876(d)); *United States v. Schwartz*, 785 F.2d 673, 680-81 (9th Cir. 1986) (holding promise to provide assistance in merger of unions to be “thing of value” under racketeering statute, 18 U.S.C. § 1954); *United States v. Croft*, 750 F.2d 1354, 1361-62 (7th Cir. 1984) (holding labor of government employee, whose research work product was appropriated by defendant for private gain, was “thing of value” under theft statute, 18 U.S.C. § 641); *United States v. Williams*, 705 F.2d 603, 623 (2d Cir. 1983) (holding commercially worthless stock that defendant “believed” had value for himself to be “anything of value” under bribery and unlawful gratuity statutes, 18 U.S.C. § 201(c), (g)); *United States v. Sheker*, 618 F.2d 607, 609 (9th Cir. 1980) (holding information regarding whereabouts of witness was “thing of value” under false impersonation statute, 18 U.S.C. § 912).

⁹ *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting WEBSTER’S THIRD NEW INT’L DICTIONARY 97 (1976)); *cf. United States v. Alvarez-Sanchez*, 511 U.S. 350, 358 (1994) (reading a statute regarding “any law enforcement officer” to include federal, state, or local officers).

¹⁰ *Price v. Time, Inc.*, 416 F.3d 1327, 1336 (11th Cir. 2005).

¹¹ Factual & Legal Analysis at 13-20, MUR 6414 (Carnahan) (July 10, 2012) (explaining that a committee’s receipt of investigative or opposition research services without paying the usual or normal charge may result in an in-kind contribution).

¹² First General Counsel’s Report at 10, MUR 5409 (Grover Norquist, *et al.*) (Aug. 31, 2004) (adopted as dispositive by Commission Oct. 1, 2004) (finding reason to believe that master contact list of activists was something of value under Act even though it lacked commercial or market value and despite difficulty in quantifying its precise worth).

¹³ Advisory Opinion 2010-30 (Citizens United) (concluding that organization’s rental of its email list to

political committees would be something of value to the committee, absent payment of the usual and normal charge for such rentals).

¹⁴ Factual & Legal Analysis at 4, MUR 5158 (Brady Campaign to Prevent Gun Violence) (finding reason to believe that the time a corporate employee spent in her official capacity at a candidate endorsement press conference was a thing of value and that a portion of her salary should have been reported as an in-kind contribution); Advisory Opinion 1984-24 (Sierra Club) (concluding that a corporation's provision of services of its employees and the use of its facilities incidental to its employees' services to a candidate is a thing of value); Advisory Opinion 1991-32 (CEC, Inc.) (concluding that staff time to create a donor list is a thing of value).

¹⁵ MUR 7302 (Campbell) (explaining that the appearance of a business name and logo in background of campaign ad may constitute things of value); *see also* MUR 6542 (Mullin for Congress) (same).

¹⁶ Factual & Legal Analysis at 29-30, MUR 6718 (John Ensign, *et al.*) (Feb. 6, 2013) (finding reason to believe payment made by candidate's parents to committee's former treasurer for the loss of her job following extramarital affair was in-kind contribution).

¹⁷ General Counsel's Brief at 7-8, MUR 5225 (New York Senate 2000) (July 5, 2005) (probable cause finding by Commission Oct. 20, 2005) (detailing approximately \$395,000 worth of in-kind contributions related to joint fundraising concert event, including the services of an orchestra, gospel choir, talent assistants, make-up and hair artists, and publicists, that were unreported); Advisory Opinion 2015-07 (Hillary for America) (recognizing that food, beverages, and valet parking are things of value, but concluding that campaign event attendees' payments for their own food, beverages, and valet parking at a campaign event would not be in-kind contributions provided that attendees' payments did not relieve the committee of expenses it would otherwise incur).

¹⁸ Advisory Opinion 2007-22 (Hurysz) (concluding that election materials, like flyers, advertisements, door hangers, tri-folds, signs, and other printed materials, previously used in foreign elections would constitute a thing of value because "[a]lthough the value of these materials may be nominal or difficult to ascertain, they have some value").

¹⁹ Factual & Legal Analysis at 10-11, MUR 6040 (Rangel for Congress, *et al.*) (Mar. 5, 2010) (finding reason to believe that rent-controlled apartment occupied by political committees under terms and conditions that differed from other tenants was excessive in-kind contribution).

²⁰ Advisory Opinion 2004-36 (Risley) (concluding that the free use of the rental property for a campaign office would constitute an in-kind contribution).

²¹ Advisory Opinion 2009-07 (Neugebauer) (concluding that the Committee's use of a boat without charge would constitute an in-kind contribution).

²² Advisory Op. 2000-30 (pac.com) (concluding that stock is a thing of value); Advisory Opinion 1980-125 (Cogswell for Senate Comm. 1980) (concluding that silver coins are a thing of value).

²³ Advisory Opinion 1982-8 (Barter PAC) (concluding that barter credit units are a thing of value); Advisory Opinion 2018-13 (OsiaNetwork) (concluding that monetary mining rewards from individuals' participation in cryptocurrency mining pools are a thing of value).

²⁴ Factual & Legal Analysis at 3, 7-8, MUR 6725 (Ron Paul 2012) (Mar. 7, 2013) (finding reason to believe committee failed to disclose value of gold coin as in-kind contribution of commodity to be liquidated).

²⁵ 11 C.F.R. § 106.4(b); Advisory Opinion 2006-04 (Tancredo) (concluding that providing access to polling data constitutes a "thing of value"); Factual & Legal Analysis at 4-6, MUR 5480 (Levetan for Congress) (Oct. 6, 2005) (concluding that federal committee accepted an in-kind contribution that it failed to disclose when it accepted state campaign committee's transfer of polling data without payment); *see also* 11 C.F.R. 106.4(e)(1)-(4) (recognizing that a contribution may not include the full results of a poll and providing the means of calculating the allocable portion of the cost); Advisory Opinion 1990-12 (Strub) (stating that when an individual with knowledge of a poll shares data or analysis, the "amount of such contribution will be determined by calculating the share of the overall cost of the poll allocable to that particular information").

²⁶ 11 C.F.R. § 100.52(d)(1). *See, e.g.*, Advisory Opinion 1977-12 (Meyer) (concluding that the provision of facilities and equipment to campaign is something of value); Advisory Opinion 1987-16 (Dukakis for President)

(concluding that computer equipment is a thing of value); Advisory Opinion 1988-47 (Vento) (concluding that the provision of free magazines is a thing of value).

²⁷ See, e.g., Advisory Opinion 2007-22 at 6 (Hurysz) (citing Regulations on Contribution Limitations and Prohibitions, 67 FR 69928, 69940 (Nov. 19, 2002) (“As indicated by the title of section 303 of BCRA, ‘Strengthening Foreign Money Ban,’ Congress amended [52 U.S.C. 30121] to further delineate and *expand* the ban on contributions, donations, and other things of value by foreign nationals.”) (emphasis added)); see also *Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 565 U.S. 1104 (2012) (upholding the ban on political spending by foreign nationals in a case involving a total of \$700 plus the cost of copying political flyers).