



Wiley Rein & Fielding LLP

**MEMORANDUM**

**TO:** David Keating

**FROM:** Carol A. Laham  
D. Mark Renaud

**DATE:** November 18, 2005

**RE:** Government Contractor Restriction and Exceptions

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You asked whether individual shareholders in, and executives and employees of, entities that contract with the federal government may make contributions to the Club for Growth, Inc. PAC (“Club for Growth PAC”) and to federal candidates recommended to members of the Club for Growth by the Club for Growth PAC.

**SHORT ANSWER**

Generally, a Club for Growth member may contribute to Club for Growth PAC-recommended candidates and to the Club for Growth PAC as long as the member does not perform or is not in the process of negotiating a federal government contract as a sole proprietor. Club for Growth members must be sure to make contributions strictly from a personal (or joint with a spouse) checking account or through the use of a personal credit card. A Club for Growth member also should not use his or her company’s credit card or any other company funds to make a contribution under any circumstances, even if the member plans to reimburse the company or pay the credit card company directly for the contribution.

**ANALYSIS**

Per section 441c(a) of title 2 of the United States Code, Congress prohibits federal contractors from making contributions to federal candidates and committees. The prohibition lasts from the commencement of negotiations for such a federal contract until the later of the following:

- The completion of performance under the contract; or
- The termination of negotiations for such a contract.

2 U.S.C. § 441c(a)(1).

Despite this broad statutory provision, the regulations of the Federal Election Commission narrow the prohibition to the individual or entity that has or is negotiating a contract with the federal government. “Nothing in this part [of the regulations governing federal contractors] shall

prohibit the stockholders, officers, or employees of a corporation, the employees, officers, or members of an unincorporated association, cooperative, membership organization, labor organization, or other group or organization which is a Federal contractor from making contributions or expenditures from their personal assets.” 11 C.F.R. § 115.6. This means that an individual member of the Club for Growth who is a shareholder in, or an executive or employee of, entities that are federal government contractors are not covered by the government contractor contribution prohibition. Such individuals, then, may make contributions to the Club for Growth PAC and to federal candidates recommended by the Club for Growth PAC. Below, we analyze four common questions about the application of the government contractor contribution prohibition.

**Question 1:** I own a company that is currently performing a government contract. I am the majority shareholder. I wish to make a contribution from my personal funds and will not make a contribution from my company’s funds. May I make a contribution?

Answer. You may contribute to candidates for Congress and to the Club for Growth PAC. Be sure that your contribution comes from your personal funds such as your personal checking account or personal credit card.

**Question 2:** I am currently working on a federal government contract as a sole proprietor. May I make a contribution?

Answer: You may not contribute to candidates for Congress or the Club for Growth PAC.

Nevertheless, if you are married, your spouse may contribute to candidates for Congress or the Club for Growth PAC. According to 11 C.F.R. § 115.5, “The spouse of an individual or sole proprietor who is a Federal contractor is not prohibited from making a personal contribution or expenditure in his or her name.” To be completely safe, there are two additional steps. First, your spouse should make any such contribution from his or her individual checking account. Second, you should not give your spouse money for the purpose of making such a contribution.

Please note that sole proprietors are not banned for life from contributing to Club for Growth PAC-recommended candidates or to the Club for Growth PAC. According to 11 C.F.R. § 115.1(b):

The period during which a person is prohibited from making a contribution or expenditure is the time between the earlier of the commencement of negotiations or when the requests for proposals are sent out, and the later of—

(1) The completion of performance under; or (2) The termination of negotiations for,

the contract or furnishing of material, supplies, equipment, land, or buildings, or the rendition of personal services.

**Question 3:** I work for a company that performs government contracts. May I make a contribution?

You may contribute to candidates for Congress and to the Club for Growth PAC. Be sure your contributions comes from your personal funds such as your personal checking account or personal credit card.

**Question 4:** I am an individual member of a partnership that performs government contracts. May I make a contribution?

You may contribute to candidates for Congress and to the Club for Growth PAC. Be sure your contribution is made in your name and comes from your personal funds such as your personal checking account or personal credit card. No contribution should be made from any partnership account.