



ALAN WILSON
ATTORNEY GENERAL

October 12, 2026

The Honorable Brandon M. Newton
South Carolina House of Representatives
518-B Blatt Bldg.
Columbia, SC 29201

Dear Representative Newton:

You have asked for a follow up to our June 4, 2019, opinion regarding “the constitutionality of enforcing certain provisions of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991... with regard to political parties, as that term is defined in the Act.” In that opinion, there was a statement made in passing which has caused confusion.

Our 2019 opinion relied upon South Carolina Citizens for Life, Inc. v. Krawcheck, 759 F. Supp. 2d 708 (D.S.C. 2010). In Krawcheck, Judge Wooten held that the Act’s definition of “committee” (§ 8-13-1300(6)), “simply swe[pt] too far and was facially unconstitutional in violation of the First Amendment.” 759 F. Supp. 2d at 720. The Krawcheck Court emphasized that “only unambiguously campaign related communications have a sufficiently close relationship to the government’s acknowledged interest in preventing corruption to be constitutionally regulable.” Id. at 714 (internal quotations omitted).

The 2019 opinion further stated the following:

Political parties have a unique role in serving the principle of open, robust debate on public issues; they exist to advance the members’ shared political beliefs.... A political party has its own traditions and principles that transcend the interests of individual candidates and campaigns; but in the context of particular elections, candidates are necessary to make the party’s message known and effective, and vice versa.... While clearly a party’s campaign account is most often used for the nomination or election of a candidate, that is only one “main purpose” for its use. Such account also may be used for issue advocacy. Where the election of or defeat of a candidate is not the “main purpose,” but instead influencing elections are “a major purpose,” a statute may well violate the First Amendment.

Op. S.C. Att’y Gen., 2019 WL 3243935 at *21 (June 4, 2019). Your letter notes that, following Krawcheck, “the Ethics Commission ceased all enforcement of § 8-13-1308(G) as applied to political party campaign accounts but continued to require operating expense reports from political parties under § 8-13-1308(G).” According to your letter, “[s]ince the 2019 opinion, the Ethics

Commission has continued to require operating account disclosures from political parties.” You state that “[i]t is still an open question whether § 8-13-1308(G), which requires only a single ‘certified campaign report’ permits the Ethics Commission to require a report for only operating expenses when you have opined that § 8-13-1308(G) is likely unconstitutional and best left unenforced.” Your analysis is correct.

The problem raised by the 2019 opinion is not the opinion’s conclusion, but the brief comment therein that the Ethics Commission may continue to enforce § 8-13-1308(G) with respect to a political party’s operating account. Section 8-13-1308(G) simply states in pertinent part that entities, such as a political party, must “file a certified campaign report” and include “...contributions received which may be used for the payment of operating expenses....” No further guidance is given by that provision.

Our bare statement in the 2019 opinion was that such provision “raises no constitutional issue.” Op. S.C. Att’y Gen., 2019 WL 3243935 at *8 (June 4, 2019). As has been correctly pointed out to us, this statement was made with no analysis, and was far from the opinion’s central conclusion. The Ethics Commission did not seek an opinion on this question. Yet, we appeared to opine upon a question not asked, but with no analysis. This was erroneous on our part.

You now ask that we review this question. Having considered the issue, we conclude that 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. In other words, it is impossible, based upon the current language of § 8-13-1308(G), 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.” 759 F. Supp. 2d at 714. Yet, § 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.

Of course, a political party possesses fundamental First Amendment rights, just as others do. See Op. S.C. Att’y Gen., 2019 WL 3243935 at *8 (June 4, 2019). See also National Republican Senatorial Committee v. Fed. Election Comm., 146 S. Ct. 2404 (2026) [federal limits on political parties’ “coordinate expenditures” with candidates violates First Amendment, overruling Fed. Election Comm. v. Colorado Repub. Fed. Campaign Comm., 533 U.S. 431 (2001)]. Thus, punishing a political party’s issue advocacy invokes fundamental First Amendment concerns. Op. S.C. Att’y Gen., 2019 WL 3243935 at *21 (June 4, 2019). Applying this rule, 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,

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paid wholly from its operating account. As we stated in the 2019 opinion, “[f]or one thing, contributions to a political party’s campaign account... may be used for issue advocacy as opposed to the nomination or election of a candidate.” The same is true with respect to the party’s operating account.

There is, under present circumstances, simply no meaningful way to separate the wheat from the chaff, so to speak—no meaningful way to segregate constitutional activity from protected expression in a party’s disclosure of its operating account. Political expression is, of course, afforded “‘the broadest expression’ under the First Amendment.” Fusaro v. Cogan, 930 F. 3d 241, 251 (4th Cir. 2019) (quoting McIntyre v. Ohio Elections Comm., 514 U.S. 334, 336 (1995)). Clearly, a political party’s operating account may be used to support issue advocacy, as well as the more routine costs and expenditures. As one court has stated, “...the court cannot separate constitutional applications to save a portion of the statute.” United Food & Commercial Worker’s Local 99 v. Bennett, 934 F. Supp. 2d 1167, 1206 (D. Ariz. 2013). And, as the Fourth Circuit found in N.C. Right to Life, Inc. v. Leake, 525 F. 3d 274, 284 (4th Cir. 2008), “[e]ven if some regulable speech falls within the ambit of... [the statute in question there], the statute’s open-ended terms do not lend themselves to a principled construction....” Further, as Leake emphasized, and as is the case with regard to § 8-13-1308(G), the statute “threatens to regulate the ordinary political speech that is democracy’s lifeblood.” Id.

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. Again, in the words of Krawcheck, compelled disclosure of activity in order to be constitutional, must be “unambiguously campaign related” activity. Unless and until the General Assembly—not the Ethics 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 § 8-13-1308(G) not be enforced at all.

I trust that this clarifies your issue.

Sincerely,



Robert D. Cook
Solicitor General