Political Action Committees in Nevada

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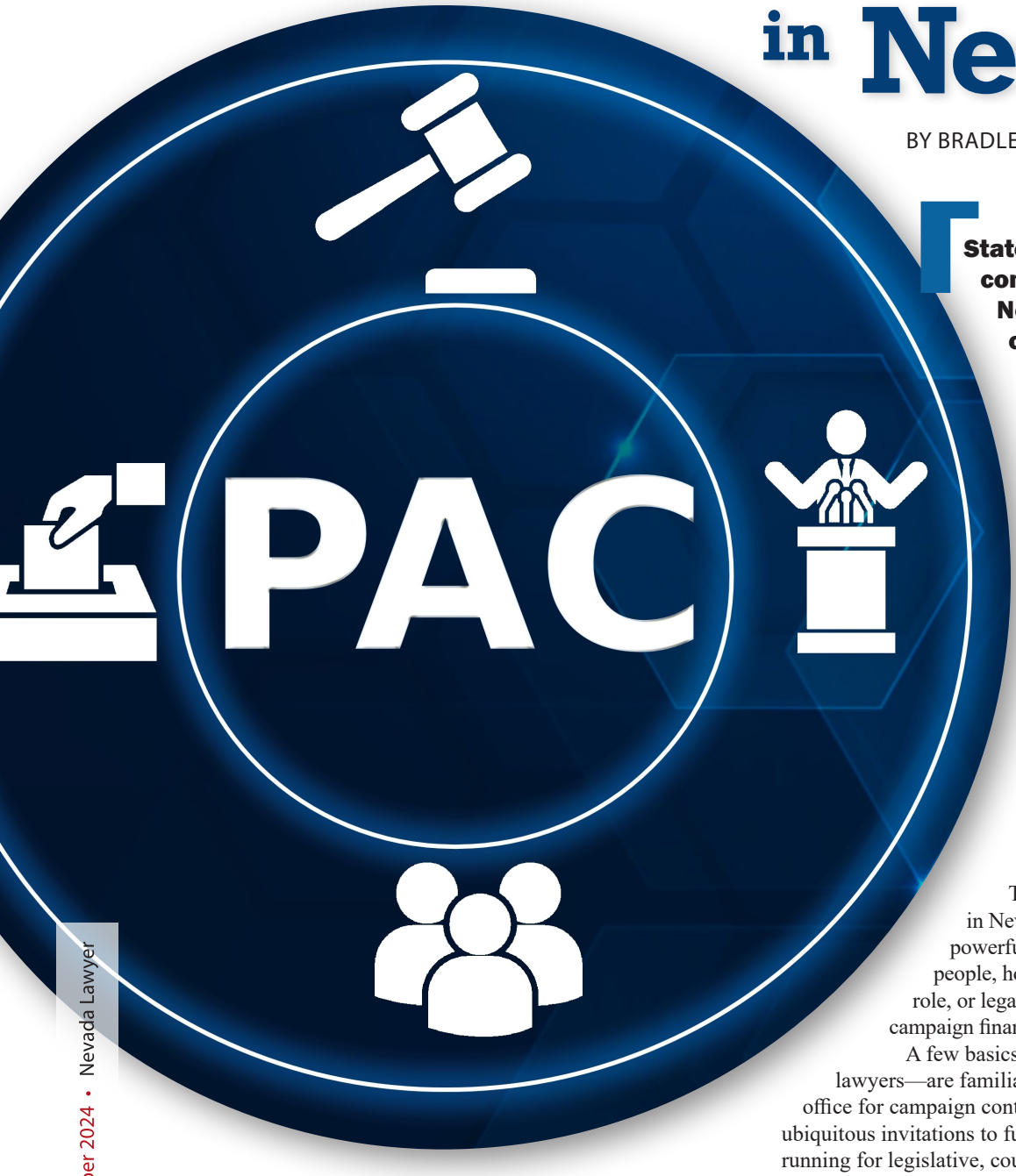

State-law political action committees (PACs) in Nevada are the undisputed champions of our state's campaign activity. No sustained political effort can succeed in Nevada without them; the money that flows through PACs feeds every candidate's race and wins or loses every ballot measure campaign. No one is anyone in Nevada politics unless you have, or can make good friends with someone who has, a political action committee.

There are hundreds of PACs operating in Nevada, all incredibly flexible and powerful, but also lightly regulated. Not many people, however, fully understand the function, role, or legal status of PACs within Nevada's campaign finance structure.

A few basics: Many of us—certainly most lawyers—are familiar with calls from candidates for office for campaign contributions every election cycle, or the ubiquitous invitations to fundraising happy hours. Candidates running for legislative, county, or municipal offices ask you or your firm for whatever amounts you can spare, checks to be made out to the "Friends of So and So," or "Joe Blow for Nevada"—the candidate's official campaign committee account.

Individual candidates are permitted only one campaign account, and contributions to candidates are limited to $5,000 per election (a total of $10,000 per cycle, therefore, if a candidate goes on the general election from the primary). Campaign contributions are strictly monitored through regular, comprehensive public reporting, and contributions exceeding the limitations are felonies for both the candidate who receives the excess money, *and* for those who make the unlawful contributions.

The exact uses of a candidate's campaign funds are also sharply regulated and can only be spent in conjunction with the political activity of the candidate or public official. Candidates who abuse campaign funds in Nevada have been indicted, jailed, and their political careers destroyed. Unused campaign monies must be disposed of promptly after a politician is no longer a candidate and, after a recent amendment to state law, all candidates must report—to the penny—the balance in their campaign accounts every fiscal quarter.

One would think that with such strict limits, reporting requirements, harsh penalties, and oversight when it comes to candidate campaign finances that PACs would come in for the same or similar sort of scrutiny, but this is not the case. PACs are, compared to candidates and their campaigns, relatively unconstrained by law, out of proportion to their importance in state politics.

There is no cost to opening a state PAC, and the process takes only a few minutes; all one needs is a catchy name for the PAC, a designated officer, and some contact information. Anyone may operate as many PACs in Nevada as they wish, which can aid in masking or diffusing the sources of money in state politics.

Furthermore, there is no real oversight of who makes the actual decisions about where and how a particular PAC takes in or spends money, and no documentation about how those decisions are executed. PACs are *entities*, certainly, but they are not NRS Title 7 entities, have no corporate structure or requirements beyond reporting money in and out, and—unlike candidates—need not disclose their ending balances when reporting their contributions and expenditures. PACs, also, are perpetual, and technically can remain active, without disposing of unspent funds, indefinitely.

After registering and opening a bank account, PACs can thereafter accept unlimited contributions, and are essentially free to spend those monies in any political way their operator desires. Some PACS engage in full-blown "independent expenditure" campaigns, meaning they more or less run entire election campaigns parallel to, but independent from, those of actual candidates.

This is why much of your spring and autumn political mail or the advertisements you see on television, which very obviously name and support, or attack, specific candidates, will carry disclosures identifying innocuous sources like "Paid for by Nevadans for Happiness," instead of naming a candidate's committee as the payor. Those disclosures indicate independent expenditure campaigns, which are funded and run outside of an actual election campaign's purview and control.

In fact, there are legal penalties if PAC and a candidate coordinate on campaign activities, messaging, or advertisements, because election communications created and disseminated by PACs are meant to be independent. They should not be developed in conjunction with candidates in any respect, either in content, medium, or even at the level of what universe of voters a particular advertisement will target for delivery. But because a candidate's positions are usually well-known (or, conversely, because his or her weaknesses have also been aired publicly), it is no great trick to fashion a parallel campaign effort that meshes, in an overall sense, with the aims of the official campaign of any politician. All it takes is the money to fund it.

PACs can give to candidates, directly, within the standard contribution limits, but can also contribute to other PACs, who then can contribute to still *other* PACs, and on and on, creating a potentially endless circuit of political money that can easily obscure the original sources or targets of the sizable contributions that PACs take in. There is no shortage of ways to make confusing the trails political money travels before it results in those glossy pieces that fill your mailbox.

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This is why those calls and invitations you receive every election season rarely mention PACs or ask for donations to them: Candidates are very happy to receive your $1,000 check to their campaign committee, which they then control and can use for election or re-election. But retail politics are time-consuming and offer limited return in terms of actual dollars; more often these transactions build relationships, rather than actual war chests. PACs, on the other hand, traffic in five-, six-, and seven-figure contributions from wealthy individual donors, corporations, and trade associations, the sort of real money that supports political television commercials and other mass media efforts.

This is not to say that PACs do not also serve functions and interests we want, or at least agree, to support in our political system. Ballot measure campaigns, in particular, are short-term projects with extremely high costs associated with defining an initiative project, polling, gathering signatures, and conducting a statewide issue campaign. Without PACs as a vehicle to raise the necessary funds, popular initiatives could almost never get off the ground, much less succeed.

Historically, PACs grew out of bans on direct corporate contributions to candidates and were developed in the middle of the last century as ways to fund electoral activity without violating the law. Since then, both state and federal PACs have expanded in their roles and political power, culminating in judicial decisions establishing political spending, even corporate spending, as protected speech.[1]

In Nevada, PACs were recognized in state law for the first time in 1989, and its current regulatory regime only started in earnest, really, after 2001. Those early drafters and regulators, however, never would have envisioned, nor would now recognize, the campaign landscape that PACs have created either in Nevada or across the country.

But if you agree, as many do, that political speech requires broad avenues for its free expression (and also that political campaigns, as currently conceived and

CONTINUED ON PAGE 18

CONTINUED FROM PAGE 17

Political Action Committees in Nevada

run in America cost enormous amounts of money) then PACs start to seem necessary, even necessary evils.

There are ways, however, in which regulation of PACs in Nevada could be improved. There could be more regular reporting of contributions and expenditures, compared to candidate reporting, due to the scope of monies flowing through PACs. PACs could be required to provide cash-on-hand reports, or to agree, as a condition of being allowed to operate, to regular audits or subpoenas of banking records. Officers of PACs, and PACs themselves, could be required to disclose more readily their affiliations, or be made to state and adhere to declared purposes in a more regularized fashion.

Furthermore, Nevada Secretaries of State could be provided with the enforcement tools necessary to better regulate either a stricter legal regime or the set of statutes we have in place now. This would require investment in new technologies, but also the hiring of investigators and auditors dedicated to campaign finance matters. Such investment would permit that office to become more proactive in its enforcement generally. The sheer proliferation of PACs in this state has made it exceedingly difficult to monitor their activities.

As it is, given the current resources it has at hand, the Secretary of State's office is forced to rely upon an adversarial system of campaign finance regulation, in which complaints are lodged by political opponents against one another in a sort of mutual policing system. This can often result, unfortunately, in a landscape in which political actors reach unspoken agreement not to pursue complaints, or certain kinds of complaints reaching useful aspects of campaign conduct that may be at the margins of lawful activity, so that all sides can be assured of continuing to use those strategies and tactics.

PACs in Nevada will always remain the most powerful vehicles for election activity. With better and more conscientious regulation, however, they can be dragged out of the twilight in which they currently operate.

ENDNOTE:

1. Many will be familiar with *Buckley v. Valeo,* 424 U.S. 1, 96 S.Ct. 612 (1976) and *Citizens United v. Federal Election Commission,* 558 U.S. 310, 130 S.Ct. 876 (2010), for instance.

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