

Michael Toner Comments on Intellectual Property Developed by the Obama Campaign

Slate

April 4, 2012

Michael Toner, co-chair of the Election Law & Government Ethics Practice, was interviewed by *Slate* for an article on the Obama campaign's optimism that their technological innovations will have an impact on the presidential election in November.

Slate reported that there is "a clear path to market for technology incubated in the service of electing Obama" and pointed to a campaign staffer in 2008 who designed a more efficient program to automate the reporting and monitoring procedures commonly used by political campaigns. In the San Francisco tech office, the Obama campaign has gone so far as to ask that staffers "sign contracts with both nondisclosure and work-for-hire provisions." But Mr. Toner warned it would be difficult to enforce on volunteers.

"It's hard to enforce an agreement where money or other valuable consideration isn't being exchanged," said Mr. Toner, former chairman of the Federal Election Commission (FEC). "As a legal matter, if you had a volunteer on a campaign that came up with some asset that had commercial value it would be hard to bar that person from using it for non-campaign purposes."

Mr. Toner also advised that it would be unlikely for the FEC to allow the Obama campaign to sell away intellectual property rights for an invention. "Something like an app that has durable market value—the FEC hasn't grappled with that question in the past," said Mr. Toner. "I think it is unlikely that the FEC would permit a company like Google to pay a presidential campaign \$1 million for an app with the campaign pocketing that money."

Related Professionals

Michael E. Toner
Partner
202.719.7545
mtoner@wiley.law

Practice Areas

Election Law & Government Ethics
Election Law & First Amendment Litigation
Federal Election Commission
Representation
Foreign Agents Registration Act (FARA)