

State Party's Weekly Bingo Games Result in Numerous FEC Violations, \$500,000 Civil Penalty

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Political committees are increasingly turning to contests, sweepstakes, bingo, auctions, and other entertaining ways to raise funds, but—as a state party recently learned the hard way—these fundraising devices present complex compliance and accounting issues and can be a costly trap for the unwary.

In a Federal Election Commission (FEC) enforcement matter recently made public, the Michigan Democratic State Central Committee agreed to pay a \$500,000 civil penalty—the 11th largest civil penalty in the FEC's history and the largest civil penalty imposed since 2007—for violating multiple provisions of federal campaign finance law in connection with the state party's weekly bingo games. Although the weekly bingo games appeared to comply with state gambling laws, the state party seemed to have overlooked federal campaign finance regulation of these activities.

The root of the Michigan Democratic State Central Committee's recent compliance issues stemmed from its decision to operate the weekly bingo games on a cash basis for over a decade. Players bought bingo cards in cash; the collected cash was used to pay for prizes, jackpots, and other overhead costs of the bingo games; and only the remaining cash was deposited into the committee's federal account and ultimately reported to the FEC. Because the state party failed to keep adequate records of these cash transactions, the committee grossly underreported its receipts and disbursements on FEC disclosure reports by approximately \$4.37 million and \$3.94 million, respectively. Without adequate records, the state party was unable to track contributor information and had no way of knowing whether the

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bingo receipts—which were “contributions” under the law and subject to the same prohibitions, limits, and reporting requirements as other contributions—came from permissible sources or exceeded contribution limits. For over a decade, the state party filed reports that not only omitted contributions, but also inaccurately disclosed information about the contributions that were reported. On certain occasions, committee staff purportedly fabricated contributor information for FEC reports. On top of these serious violations, the weekly bingo games also violated the FEC prohibition against accepting cash contributions in excess of \$100 and anonymous contributions in excess of \$50.

While the Michigan Democratic State Central Committee’s case demonstrates the potential federal campaign finance compliance issues associated with entertainment-based fundraising, state regulation of these activities—which vary by jurisdiction—can also catch political committees off-guard. For example, most states consider raffles—whereby an individual provides consideration for a chance to win a prize—as a form of illegal gambling. These states, however, generally permit sweepstakes and contests under certain conditions. Sweepstakes remove the consideration element by allowing participants to enter through an alternative free method of entry instead of purchasing a ticket. Contests, on the other hand, remove the chance element by selecting winners based on skill instead of at random. Some states allow certain non-profit organizations to operate raffles or bingos, but the ability to do so often comes with licensing and/or bonding requirements and additional accounting, reporting, and compliance obligations. Additionally, several states regulate live and/or silent auctions, oftentimes requiring the involvement of a professionally licensed auctioneer. Navigating these issues in one jurisdiction is difficult, but can become overwhelming when conducting a sweepstakes, contest, or virtual silent auction on a national scale.

Contests, sweepstakes, bingo, and auctions offer a way to raise funds while engaging with supporters, but present complex legal compliance issues under both federal and state law. Political committees are strongly encouraged to seek legal advice before undertaking any of these activities. Wiley Rein’s Election Law and Government Ethics practice regularly advises clients on federal campaign fundraising rules, as well as state regulation of raffles, bingo, sweepstakes, contests, and auctions.