A Question of Ethics
John Edwards Case Tests Campaign Finance Law

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Q: I heard that Citizens for Responsibility and Ethics in Washington is lobbying for the dismissal of criminal charges against John Edwards for allegedly violating campaign contribution laws in handling his relationship with his former mistress. This took me aback because I have always thought of CREW as an aggressive advocate for ethics in government. What is it about the charges against Edwards that might be different?

A: On June 3, the Department of Justice filed an indictment against Edwards for alleged violations of federal campaign finance laws. The primary law in question is the Federal Election Campaign Act of 1971, which at the time established a $2,300 limit on the amount that an individual could contribute to a candidate each election. It also requires federal election campaign committees to file periodic reports disclosing each person who contributed more than $200 to the committee within a given period.

The indictment alleges that Edwards conspired with others to violate these laws by accepting and failing to disclose hundreds of thousands of dollars in payments from Bunny Mellon and Fred Baron in order to “conceal Edwards’ extramarital affair” and his mistress’s pregnancy with his child.

According to CREW, the purposes of Mellon’s and Baron’s payments were not to provide anything of value that is provided “for the purpose of influencing” a federal election. Rather, Mellon and Baron “made a personal favor for Edwards and notes that the payments continued even after Edwards ended his campaign. Moreover, CREW argues, the payments cannot be considered campaign contributions because federal election law would prohibit the use of campaign funds for the uses to which the payments were put. In other words, Edwards could not have used campaign funds to make hundreds of thousands of dollars in payments to his mistress.”

Perhaps most significantly, CREW warns of the potential consequences of convicting Edwards based on Mellon’s and Baron’s payments to his mistress. According to CREW, the government’s position appears to rest not on Mellon’s and Baron’s intent in making the payments, but rather on the incidental benefit that Edwards’ campaign received from the payments, i.e., preserving the “family man” image that was part of Edwards’ campaign.

CREW argues that this position rests on a “near boundless theory of criminal liability” that “would sweep in anything of value given directly or indirectly to a candidate for federal office.”

So is the case really as significant as CREW suggests? Possibly yes. If payments to Edwards’ mistress were to be considered campaign “contributions” solely because of some incidental benefit received by Edwards’ campaign, the effect indeed could be far-reaching. As CREW points out, under similar reasoning, payments to a candidate to help pay off personal, private debts would be treated as campaign contributions (as opposed to gifts, which other federal laws require candidates to disclose). Any time a federal candidate received anything of value, federal campaign laws could be implicated.

From the indictment alone, it is not yet clear whether the DOJ really is advocating such a broad reading of what counts as a “contribution.” Indeed, the indictment alleges that the payments were made “in order to protect and advance Edwards’ candidacy for President.”

Nevertheless, CREW’s filing is a reminder that the proceedings against Edwards merit close attention from anyone involved in campaign finance. There is at least the potential for campaign finance laws to be extended further than ever before.
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