



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

## STATEMENT OF CHAIRMAN LEE E. GOODMAN ON ADVISORY OPINION 2014-02 (Make Your Laws PAC)

The Federal Election Commission must embrace new technology and innovation. Today, the Commission endorsed the use of a new technological medium of exchange known as “bitcoins” in the funding of political campaigns. Advisory Opinion 2014-02 (Make Your Laws PAC) concludes that American citizens may make political contributions in the form of bitcoins.

While bitcoins may be a novel medium of exchange, the regulatory questions they raise are not.<sup>1</sup> The Commission historically has regulated the in-kind contribution of many different things of value donated to campaigns, ranging from barter credit units to securities to silver dollars to works of art.<sup>2</sup> Bitcoins are not different in any material respect from these kinds of contributions and can be regulated in the same manner.

I supported the final draft for two reasons. First, the requestor deserves the protection of an advisory opinion. Second, this Advisory Opinion’s logic supports the right of Americans to contribute bitcoins to political committees on the same legal basis as all other in-kind things of value up to the maximum contribution limits. I write separately to observe that the specific factual proposal that this Advisory Opinion addresses in no way establishes the outer boundary for the contribution and use of bitcoins, and to express my continued support for the unqualified endorsement of bitcoin contributions set forth in Agenda Document No. 14-24 (Draft A).

### I. Bitcoins Are In-Kind Contributions

As today’s Advisory Opinion states, bitcoin contributions will be regulated and reported by recipient political committees as in-kind contributions. As explained during the Commission’s discussion of Advisory Opinion 2013-15 (Conservative Action Fund), the Commission should treat the receipt and contribution of bitcoins as in-kind contributions as a matter of policy and practicality.<sup>3</sup> While bitcoins, as a medium of exchange, share

---

<sup>1</sup> See Comment on Advisory Opinion 2013-15 (Conservative Action Fund) by the Bitcoin Foundation (Sep. 17, 2013) at 1 (“While bitcoins may be novel in that they are digital in nature, the issues raised by accepting bitcoin political contributions are fundamentally no different than other forms of contributions that the Commission has previously approved.”).

<sup>2</sup> See 11 C.F.R. § 104.13(b) (concerning the reporting of “[c]ontributions of stocks, bonds, art objects, and other similar items to be liquidated”); Advisory Opinion 2000-30 (Pac.com) (stock); Advisory Opinion 1986-18 (Bevill) (cash management account); Advisory Opinion 1982-08 (Barter PAC) (barter credit units); Advisory Opinion 1980-125 (Cogswell) (silver coins).

<sup>3</sup> See Advisory Opinion 2013-15 (Conservative Action Fund), Agenda Document No. 13-45-B (Draft D) at 5-7. As in Advisory Opinion 2013-15, we do not believe it is necessary to resolve the complex legal and

characteristics commonly associated with money,<sup>4</sup> their treatment as money at this time would dramatically complicate the reporting of a committee's cash on hand by virtue of dramatic fluctuations in the U.S. dollar exchange value of bitcoins and the inability of committees to deposit bitcoins in their campaign depositories.<sup>5</sup> Thus, the most practical paradigm for categorizing bitcoin contributions is as in-kind contributions.<sup>6</sup> This is the same regulatory paradigm applied to similar assets, including barter credit units, securities, silver dollars, and works of art.<sup>7</sup>

The Commission has long recognized that committees may make in-kind contributions to other political committees,<sup>8</sup> leaving them free to contribute things of value that they receive as in-kind contributions to other political committees without first liquidating those assets. This principle applies to both making contributions and acquiring goods and services.<sup>9</sup> Thus, just as a committee may contribute computers it received as an in-kind contribution to another political committee, the requestor and others may contribute bitcoins they receive as in-kind contributions to other political committees and exchange those bitcoins for goods and services.<sup>10</sup>

## II. The Commission Lacks Statutory Authority to Impose Additional Limitations

As in-kind contributions, bitcoins are subject to the same contribution limits as all other contributions. Although this requestor represented that it would voluntarily limit its acceptance

---

philosophical questions surrounding bitcoin's status as "money" to provide practical guidance in response to the conduct proposed in this request. Further, we continue to express no opinion regarding the application of federal securities law, tax law, or other law outside the Commission's jurisdiction to the conduct at issue in this Advisory Opinion Request. *See id.* at 5 n.5.

<sup>4</sup> *See id.* at 5 n.5.

<sup>5</sup> *See* 2 U.S.C. § 432(h)(1); 11 C.F.R. § 103.2 (requiring each political committee to designate one or more State banks, federally chartered depository institutions, or depository institution the depository accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration). To the best of my knowledge, no qualifying institution or account currently accepts bitcoin deposits.

<sup>6</sup> This paradigm is consistent with the IRS's subsequent treatment of virtual currency such as bitcoins as property for federal tax purposes. IRS Notice 2014-21: Virtual Currency Notice at 2, March 25, 2014, *available at* <http://www.irs.gov/pub/irs-drop/n-14-21.pdf> ("For federal tax purposes, virtual currency is treated as property.").

<sup>7</sup> *See supra* note 2.

<sup>8</sup> *See FEC Campaign Guide for Nonconnected Committees 25* (May 2008), <http://www.fec.gov/pdf/nongui.pdf> ("In addition to contributing money, a nonconnected committee may donate goods or services to candidates and their committees.").

<sup>9</sup> *See* Advisory Opinion 1980-125 (Cogswell) (the Commission sanctioned a committee's payment of an employee's salary via silver coins it had received as a contribution); Advisory Opinion 1982-08 (Barter PAC) (the Commission concluded that nothing in the Act or Commission regulations prohibited the requestor from making contributions and purchasing goods and services with "credit units" that could be redeemed on a "barter basis").

<sup>10</sup> *See* Advisory Opinion 2014-02 (Make Your Laws PAC), Agenda Document No. 14-24 (Draft A) at 10-13; Advisory Opinion 2013-15 (Conservative Action Fund), Agenda Document No. 13-45-B (Draft D) at 15-17.

of bitcoins to values of no more than \$100 from any single contributor, the Commission lacks any statutory authority to impose a \$100 limit on bitcoin contributions as a general rule.

The Federal Election Campaign Act of 1971, as amended (“the Act”), states:

No person shall make contributions of currency of the United States or currency of any foreign country to or for the benefit of any candidate which, in the aggregate, exceed \$100, with respect to any campaign of such candidate for nomination for election, or for election, to Federal office.<sup>11</sup>

By its plain terms, this provision only applies to “contributions of *currency of the United States* or *currency of any foreign country*.”<sup>12</sup>

Although bitcoins may share characteristics with traditional currencies, they are not issued or guaranteed by the United States or any other foreign country.<sup>13</sup> Thus, by its plain language, the Act’s \$100 limitation on cash contributions does not and cannot apply to bitcoin contributions.

It has been suggested that the unambiguous text of the Act can be avoided based upon the reasoning that “bitcoins function more like currency than like the longstanding categories of in-kind contributions described in the Commission’s regulations and advisory opinions.”<sup>14</sup> Even assuming *arguendo* that this functional similarity is accurate, it is beside the point. The Act sets forth a discrete set of mediums of exchange that Congress has deemed subject to a more restrictive contribution limit – currency of the United States and currency of any foreign country. Congress did not modify these terms with words of general application, e.g. “such as,” “including,” or “for example.” They are therefore, a complete and discrete set.<sup>15</sup> Thus, the Commission lacks statutory authority to expand upon the plain, unambiguous language of the Act to extend the \$100 limit on cash contributions to bitcoins, regardless of policy arguments marshaled in favor of such course.

---

<sup>11</sup> 2 U.S.C. § 441g.

<sup>12</sup> *Id.* (emphasis added).

<sup>13</sup> See IRS Notice 2014-21: Virtual Currency Notice at 1, March 25, 2014, available at <http://www.irs.gov/pub/irs-drop/n-14-21.pdf> (“In some environments, [virtual currency] operates like ‘real’ currency – i.e., the coin and paper money of the United States or of any other country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance – but it does not have legal tender status in any jurisdiction.”).

<sup>14</sup> Advisory Opinion 2014-02 (Make Your Laws PAC), Agenda Document 14-24-A (Draft B) at 7.

<sup>15</sup> Pursuant to the omitted-case canon of statutory construction *casus omissus pro omisso habendus est* – a case omitted is held to be intentionally omitted. See generally Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 93-100, (Antonin Scalia & Bryan A. Garner 2012) (describing the omitted-case canon).

For the same reasons, the Commission cannot limit or restrict earmarked bitcoin contributions. The Act places no restrictions on earmarked contributions other than that they must be treated as contributions from the original contributor to a candidate and forwarded within a set time period.<sup>16</sup> The form of such contribution – currency, in-kind, etc. – is immaterial. So long as the contribution is otherwise lawful, and the entity serving as an intermediary is permitted to do so, the Commission lacks statutory authority to further restrict such contribution.

### III. Bitcoins Are No More Anonymous Than Any Other Contribution

Concern has been expressed over the potential for “anonymous” bitcoin contributions, but bitcoin contributions can be no more anonymous than any other contribution to a federal political committee.<sup>17</sup> Just like any other contribution, a committee treasurer must maintain records of the name and address of any person who makes a contribution over \$50,<sup>18</sup> and the identification of any person who makes contributions aggregating over \$200 in the course of a calendar year.<sup>19</sup> Furthermore, Commission regulations state that a “candidate or committee receiving an anonymous cash contribution in excess of \$50 shall promptly dispose of the amount over \$50.”<sup>20</sup>

To implement these provisions, the Commission requires committee treasurers to employ best efforts to obtain, maintain, and publicly report the name, address, occupation, and employer of each contributor who gives more than \$200 in a calendar year.<sup>21</sup> In order to show that a committee has made best efforts, a committee treasurer must show that he requested information identifying the committee’s contributors first at the time of solicitation and in a follow up request if necessary.<sup>22</sup> Best efforts do not require a treasurer to call the contributor’s bank every time a contribution is received and trace the source of those funds. Instead, for nearly all contributions, committee treasurers rely on contributors providing their identifying information. This is particularly true for in-kind contributions, such as tangible consumer goods, that may have no intrinsically identifying information.<sup>23</sup> For example, there is nothing on the face of a computer

<sup>16</sup> See 2 U.S.C. §§ 432(b), 441a(a)(8); see also 11 C.F.R. §§ 102.8, 110.6.

<sup>17</sup> See generally Comment on Draft Advisory Opinion 2013-15 (Conservative Action Fund) of the Bitcoin Foundation (Nov. 20, 2013) at 2 (“Bitcoin contributions are no more or less anonymous than other forms of contributions. As with contributions made by text message, or in-kind contributions of goods or services, campaigns can control the terms on which they accept contributions made in bitcoins, and thereby avoid the receipt of prohibited contributions.”).

<sup>18</sup> 2 U.S.C. § 432(c)(2); 11 C.F.R. § 102.9(a)(1).

<sup>19</sup> 2 U.S.C. § 432(c)(3); 11 C.F.R. § 102.9(a)(2). See also 11 C.F.R. § 102.9(a)(4) (additional regulatory requirements for contributions over \$50).

<sup>20</sup> 11 C.F.R. § 110.4(c)(3).

<sup>21</sup> 2 U.S.C. § 432(i); 11 C.F.R. § 102.9(d).

<sup>22</sup> 11 C.F.R. § 104.7.

<sup>23</sup> “Seen from this perspective, bitcoin contributions are really no different than other types of contributions in

or a mailing list that would tell a committee who paid for it, yet committees are clearly permitted to accept computers and mailing lists as in-kind contributions. Committees request identifying information and contributors self-identify.<sup>24</sup>

Furthermore committee treasurers have a legal obligation to “examin[e] all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitations of 11 CFR 110.1 or 110.2.”<sup>25</sup> Committee treasurers have an even greater obligation to examine contributions from potential foreign nationals. Under Commission regulations, no person may accept or receive a contribution if he is aware of facts that would cause a reasonable person to believe that there is a substantial probability a contribution is from a foreign national.<sup>26</sup> If a committee treasurer is aware of any facts that would cause a reasonable person to inquire whether the source of funds is a foreign national, they have an obligation to do so.<sup>27</sup> Such an inquiry will be considered reasonable if a treasurer seeks and obtains a copy of a valid U.S. passport papers for the contributor in question.<sup>28</sup>

To the extent there is concern that potential lawbreakers might lie to political committees, providing a false name when making a contribution, whether in cash, in-kind, or in bitcoins, is already patently illegal<sup>29</sup> and regularly prosecuted by the Department of Justice.<sup>30</sup> Further, bitcoin contributions are traceable. Once the person who made the contribution is identified (*i.e.*, precisely the information a committee must collect in order to accept a bitcoin contribution in the

---

which the transfer mechanism does not inherently identify the donor. Consider a donor that wishes to donate \$1,000 of gold nuggets. There is nothing inherent in the transaction that ties the gold nuggets to the identity of the donor. Yet a campaign may clearly accept the donation, so long as it obtains and maintains the information from the donor necessary to ensure compliance with federal election law.” Comment on Draft Advisory Opinion 2013-15 (Conservative Action Fund) of the Bitcoin Foundation (Nov. 20, 2013) at 2-3.

<sup>24</sup> As one commenter noted, “[n]othing inherent in the transaction ties that public identifier to a personal identity, yet the Commission did not regard that as a reason to disallow text message contributions.” Comment on Draft Advisory Opinion 2013-15 (Conservative Action Fund) of the Bitcoin Foundation (Nov. 20, 2013) at 2.

<sup>25</sup> 11 C.F.R. § 103.3(b). As one commenter noted, “[b]ecause each transaction may be traced in the system to the sending and receiving public keys, other contributions made by the same donor may be identified and aggregated for accounting purposes.” Comments on Advisory Opinion Request 2013-13 (Conservative Action Fund) of the Bitcoin Foundation at 9-10 (Sep. 17, 2013).

<sup>26</sup> 11 C.F.R. § 110.20(a)(4)(ii), (g).

<sup>27</sup> 11 C.F.R. § 110.20(a)(5).

<sup>28</sup> 11 C.F.R. § 110.20(a)(7).

<sup>29</sup> 2 U.S.C. § 441f (“No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person.”); *see also* 11 C.F.R. § 110.4(b).

<sup>30</sup> *See, e.g., U.S. v. D’Souza*, No.14-cr-00034 (S.D.N.Y. 2014); *U.S. v. Danielczyk*, 683 F.3d 611 (4th Cir. 2012), *cert. denied*, 133 S. Ct. 1459 (2013).

first instance), that person's bitcoin wallet can be audited during an investigation.<sup>31</sup> That wallet can be audited to verify that the contribution originated with the person who self-identified as the contributor.<sup>32</sup> Thus, bitcoin contributors cannot escape regulatory accountability any more than contributors of other things of value, and existing laws afford regulators sufficient tools to police abuse of bitcoins.

#### IV. Technology Cannot Wait for Governmental Action

Technology cannot and will not wait until government regulators are comfortable to move forward, experiment, and innovate. This is not the first time that the Commission has examined bitcoins. On August 13, 2013, the Conservative Action Fund submitted an advisory opinion request that asked a number of similar questions regarding the receipt and disbursement of bitcoins.<sup>33</sup> The Commission debated this matter for over three months before finally voting on a draft advisory opinion on November 21, 2013.<sup>34</sup> At that time, the Commission lacked four votes to provide advice regarding how to use bitcoins. In the absence of Commission guidance, several committees announced that they would begin accepting bitcoin contributions. At least one has done so.<sup>35</sup> In short, new technology has moved forward without the Commission.

Political committees that have proceeded to accept bitcoins in the absence of Commission guidance have done so properly and may continue to do so. The Supreme Court has made clear that "prospective speakers are not compelled by law to seek an advisory opinion from the FEC before the speech takes place."<sup>36</sup> Innovation and technology should not and will not stand idly by while the Commission dithers.

---

<sup>31</sup> "[T]here is nothing in the Bitcoin protocol that prevents the disclosure of identifying information by Bitcoin users. Just as with any other financial system, Bitcoin users are free to identify themselves as the owner of their public key addresses to the extent that they choose to do so. . . . In fact, unless a user reveals their public key, there is no way any other user could send bitcoins to them." Comment on Draft Advisory Opinion 2013-15 (Conservative Action Fund) of the Bitcoin Foundation (Nov. 20, 2013) at 4-5.

<sup>32</sup> "[T]he block chain contains a record of every Bitcoin transaction ever made. The Commission – and for that matter, any user on the Bitcoin network – can see every donation made to each campaign. This provides an incredible public resource for tracking contributions." *Id.* at 5.

<sup>33</sup> Advisory Opinion Request 2013-15 (Conservative Action Fund) (Aug. 15, 2013).

<sup>34</sup> Advisory Opinion 2013-15 (Conservative Action Fund), Certification (Nov. 21, 2013).

<sup>35</sup> The Libertarian National Committee has reported accepting a \$5,000 bitcoin contribution on October 15, 2013 and a \$1,000 bitcoin contribution on November 26, 2013. See Libertarian National Committee (C00255695), November Monthly Report Schedule A: Itemized Receipts (filed Nov. 20, 2013) at 155-156, available at <http://docquery.fec.gov/pdf/613/13942583613/13942583613.pdf>; Libertarian National Committee (C00255695), December Monthly Report Schedule A: Itemized Receipts (filed Dec. 20, 2013) at 39-40, available at <http://docquery.fec.gov/pdf/112/13964931112/13964931112.pdf>.

<sup>36</sup> *Citizens United v. FEC*, 558 U.S. 310, 335 (2010).

**V. Conclusion**

Although I adhere to the reasoning and conclusions set forth in Agenda Document No. 14-24 (Draft A), I support today's Advisory Opinion 2014-02 because it provides this requestor the answers it requested and lays a foundation for the use of bitcoins specifically and new technologies generally within the Commission's well established regulatory framework.



Lee E. Goodman  
Chairman

May 8, 2014