

Policy Alert

January 18, 2018

2018 Political Law Update

As we enter the new year, there are new changes in state and federal lobbying, gift and campaign finance laws.

California: In September, Gov. Jerry Brown signed new campaign finance laws that require political committees to disclose contributions or independent expenditures aggregating \$5,000 or more to support or oppose a single local ballot initiative or referendum. Previously, disclosure was required for state-level ballot measures only.

Less than a month later, the state legislature passed the DISCLOSE Act (the “Act”), which the Governor also signed into law. Under this new campaign finance law, disclosure of an ad’s top donors must be displayed more prominently on the ad than previously required, including special rules for disclosures on social media, websites and other forms of electronic communications. The Act also requires disclosure of the original source of earmarked donations, closing a loophole that committees previously used to hide the true identity of their donors. All of California’s changes took effect January 1, 2018, in time for the 2018 gubernatorial race and other state elections.

Federal: A week after taking office, President Donald Trump issued an executive order prohibiting executive branch appointees from accepting gifts from registered lobbyists and lobbyist employers, lobbying their respective agency for five years after leaving their position, engaging in an activity that would require registration under the Foreign Agents Registration Act (FARA), and requiring that registered lobbyists appointed to an executive office recuse themselves from working on any matter on which they lobbied for the first two years of their appointment.

The Financial Industry Regulatory Authority (FINRA) Rule 2030 took effect on August 20. This new rule generally bans all FINRA members from engaging in distribution or solicitation activities for compensation with a government entity on behalf of an investment advisor that provides, or is seeking to provide, investment advisory services to such government entity within two years after a contribution to an official of the government entity is made by the covered member or a covered associate. The new FINRA rule closely parallels the Securities and Exchange Commission’s Rule 206(4)-5, which prohibits similar contributions by investment advisors.

Kentucky: Campaign finance legislation enacted in March doubled the contribution limits applicable to individuals contributing to state or local candidates (\$1,000 → \$2,000), state executive committees (\$2,500 → \$5,000) and caucus committees (\$2,500 → \$5,000). The bill also eliminated the PAC-to-PAC and individual-to-PAC aggregate limit of \$1,500 in favor of an annual \$2,000 cap.

Through most of 2017, Kentucky had some of the strictest ethics laws in the country, including a complete ban on gifts from lobbyists and their employers to Kentucky legislators. In addition to the gift ban, lobbyists in Kentucky were also prohibited from making political contributions to members of the state legislature or candidates for the state legislature. In comparison, lobbyist employers were prohibited only from making political contributions to members of the state legislature or candidates for the state legislature during an active legislative session. Kentucky's gift and campaign finance restrictions were challenged in court this year.

On June 6, U.S. District Judge William Bertelsman upheld the ban applicable to lobbyist employers during an active legislative session, but struck down the outright ban on political contributions from lobbyists. In explaining the difference, he wrote that the "time-specific prohibition is less restrictive than a complete ban, and is closely drawn to the goal of deterring corruption or its appearance by preventing money from exchanging hands between legislators and lobbyists during legislative sessions when quid pro quo corruption would be a greater danger." Bertelsman also reversed the prohibition on lobbyists serving as campaign treasurers.

The Kentucky Registry of Election Finance (KREF) and Kentucky Legislative Ethics Commission (KLEC) decided to continue enforcing the rules struck down by Bertelsman, pending appeal. This came to an end on December 7, when Bertelsman issued a permanent injunction, requiring KREF and KLEC to obey his previous ruling. KLEC has not declared its intentions yet, but it may appeal the decision in the Kentucky Court of Appeals.

Missouri: Missouri Gov. Eric Greitens signed an executive order on January 10 that prohibits executive branch officials and employees from accepting gifts from registered lobbyists. The order also prohibits gubernatorial staff from lobbying the governor's office after leaving their position for the remainder of the Greitens administration.

In May 2017, a U.S. District Court Judge reversed several aspects of the constitutional amendment adopted by voters on November 8, 2016. As passed, the amendment would have prohibited corporations and labor unions from making direct contributions to state candidates, campaign committees and political parties in Missouri, as well as PAC-to-PAC contributions. The court ruled that corporations and labor organizations are permitted to make contributions to campaign committees that support or oppose a ballot measure and that PACs may continue to receive contributions from other PACs.

New Mexico: On September 8, Secretary of State Maggie Toulouse Oliver approved new rules requiring independent expenditure groups that spend more than \$3,000 in support or opposition of a non-statewide race or ballot measure or more than \$7,500 in support or opposition of a statewide race to disclose the names and address of each person who contributed more than \$200 in total for independent expenditures over the previous 12 months. However, for contributions to quasi-political groups, the new rule provides a disclosure carveout for individuals who expressly designate that their money not be used for political activities.

Vermont: On June 15, Gov. Phil Scott signed a bill approving the creation of a state code of ethics and a state ethics commission. The bill also prohibits former lawmakers and executive officers from lobbying for one year after leaving office and prohibits employees of businesses contracting with state executive agencies from making campaign contributions to candidates for office in the respective agency.

Virginia: On April 26, Gov. Terry McAuliffe signed legislation into law that requires registered lobbyists to send a summary of all “gifts” (anything of value more than \$20) to each assemblymen and executive official to whom gifts were given within three weeks of adjournment of the regular session of the General Assembly.

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