

Client Alert

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Political Activity in the Omnibus

The \$1.3 trillion spending bill to fund the government for the remainder of FY 2018 (September 30) contained several provisions affecting campaign finance laws and regulations.

Two provisions specifically prohibit the Securities and Exchange Commission (SEC) and the Internal Revenue Service (IRS) from issuing or clarifying new rules related to corporate and nonprofit political activity. The third rider prohibits the federal government from spending money to require federal contractors to disclose political contributions or expenditures.

Section 631 of the Consolidated Appropriations Act for Fiscal Year 2018 prevents any funds from being utilized by the SEC to “finalize, issue, or implement any rule, regulation, or order regarding the disclosure of political contributions, contributions to tax exempt organizations, or dues paid to trade associations.” As unique as this provision may seem, the same language has been included in appropriations bills and continuing resolutions since at least 2015.

Following the enactment of the SEC’s 2010 Investment Adviser Rule 206(4)-5, which prohibits investment firms from managing the assets of public pension funds for two years after executives or employees make certain political contributions, the SEC entertained additional regulations to compel public companies to publicly disclose their political contributions. Despite the rulemaking petition receiving more than one million comments, the SEC did not move to finalize the rules, and, in 2015, Congress inserted the same legislative language into previous appropriations bills that is also in the recently passed Omnibus.

In a similar fashion, a provision concerning the political activity of federal contractors reappeared in the Omnibus after its genesis during a party-line ideological battle in the wake of the Supreme Court’s 2010 Citizens United ruling.

Section 735 explicitly prevents any FY 2018 appropriation funds from being spent to require federal contractors to disclose political contributions to, or expenditures on behalf of, any candidate for federal office or any political committee. The provision was a direct response to the Obama administration’s draft executive order that would have required companies to reveal their political spending as a condition of submitting bids for federal contracts.

The final campaign finance-related provision bars the IRS from expending any funds to “issue, revise, or finalize” any regulation, ruling, or guidance “relating to the standard which is used to determine whether an organization is operated exclusively for the promotion of social welfare for purposes of section 501(c)(4) of the Internal Revenue Code.”

501(c)(4) organizations are exempt from federal taxes, provided that their primary purpose, as the above-noted provision suggests, is the promotion of “social welfare.” These organizations are permitted to partake in limited political activity, but, in contrast to other political groups, 501(c)(4) organizations are not required to disclose their donors publically, and must disclose their donors to only the IRS. The legislative language prohibiting the IRS from altering the status quo is likely in response to the 2013 controversy when the IRS revealed that it had selected groups applying for tax-exempt status for intensive scrutiny based on their names or political ideologies.

Although the FY 2018 Omnibus package contained multiple campaign finance provisions, a provision striking down the “Johnson Amendment,” which prohibits tax-exempt 501(c)(3) organizations—charitable foundations, religious groups, etc.—from engaging in political activity was not included in the funding bill.

We will continue to monitor legislation throughout the remainder of the 115th Congress for further action regarding political activity.

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