Wiley Rein LLP

ELECTION LAW NEWS

Developments in All Aspects of Political Law | May 2016

TCPA Suits Against Political Campaigns on the Rise, with the Trump Campaign Facing Two Separate Class Action Suits

By Jan Witold Baran and Kathleen E. Scott

Since March, at least three Telephone Consumer Protection Act (TCPA) lawsuits have been filed against political campaigns, and the stakes are very high. The TCPA is a federal law that creates "clear limits" around automated calls and texts for political campaigns and other organizations—including PACs, Super PACs, trade associations, and 501(c)(4)s. The law creates statutory damages of $500-$1500 per call or text, a dollar amount that can quickly add up in class actions, which are the types of suits that recently have been filed against political campaigns.

First, on March 3, 2016, a plaintiff filed a class action complaint against a candidate for Commissioner of Metropolitan Water Reclamation District of Greater Chicago—Andrew Seo. The suit alleges that the Seo campaign placed prerecorded voice calls—commonly known as robocalls—to the plaintiff's cell phone without prior express consent.

continued on page 5

ALSO IN THIS ISSUE

New Rules, New Election: FEC Approves Separate Contribution Limit for North Carolina Congressional Primary

By Carol A. Laham and Louisa Brooks

The Federal Election Commission (FEC) issued an Advisory Opinion April 29th concluding that candidates participating in North Carolina's June 7th primary election face a new "electoral situation" and are thus entitled to a separate contribution limit for the primary, even if they were also candidates for the primary election that was scheduled for March 15th.

The June 7th primary will be held solely to select candidates for the U.S. House of Representatives. This congressional primary was originally slated to be part of the general state primary held March 15th; however, a little over a month before that election, a federal court ruled that two of North Carolina's congressional districts were racially gerrymandered in violation of the Equal Protection Clause of the U.S. Constitution and ordered

continued on page 6

DOL Final Overtime Rule Doubles White Collar Exemption Salary Threshold; Changes May Affect PAC Solicitable Class

By D. Mark Renaud and Jillian D. Laughna

On Tuesday, May 17, the White House and Department of Labor (DOL) announced the publication of the anticipated final rule updating the "white collar" exemption to the Fair Labor Standards Act's (FLSA) minimum wage and overtime pay requirements.

The final rule focuses primarily on updating the salary and compensation levels needed for executive, administrative, and professional workers to be exempt from the FLSA's overtime and minimum wage requirements. No changes were made to the "duties test." These changes, as we discussed in a July 2015 article, may dramatically affect those available to be solicited for corporate PACs.

Key features of the final rule include:

- **Raising Standard Salary Level.** Sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, currently the South to $913 per week or $47,476 annually for a full-year worker (this change does not this change does not alter the duties test or the salary/non-salary divide per se, but the change may push many employers to pay more employees on an hourly basis, which would make such employees ineligible to contribute to a federal PAC unless they also were stockholders);
- **Highly Compensated Employee (HCE) Total Annual Compensation Requirement.** Sets the total annual compensation requirement for HCEs subject to a minimal duties test to the annual equivalent of the 90th percentile of full-time salaried workers nationally to $134,004;
- **Automatic Updating.** Establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the above percentiles; and
- **Inclusion of Nondiscretionary Bonuses and Incentive Payments.** Amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments, including commissions, to satisfy up to 10 percent of the new standard salary level.

continued on page 9

What is an Official Act? A Skeptical Court in *McDonnell* Looks for Limits. Is Honest Services Fraud in the Crosshairs?

By Robert L. Walker

"What I think we're looking for is some limiting principle." In the April 27, 2016, oral argument before the Supreme Court in *McDonnell v. United States*, Justice Samuel Alito so summarized his—and, apparently, a majority of his fellow Justices'—concern over how expansively the Department of Justice has urged the Court to construe the term "official act" as used in the federal bribery statute, 18 U.S.C. Section 201.

As a former state official, former Virginia Governor Bob McDonnell was not directly charged with violation of this statute, which applies only to federal officials. But, as Deputy Solicitor General Michael Dreeben put it in his argument to the Court, the McDonnell "case has been litigated on the submission that Section 201 informed the [meaning] of 'official action' for purposes of the Hobbs Act and honest services" fraud bribery, two federal crimes with which the former governor was charged and on which he was convicted by a federal district court jury in 2014. Justice Anthony Kennedy expressed the Court's concern, and apparent frustration, with the government's broad approach to defining "official action" when—with a sharp rhetorical question—he cut off the Deputy Solicitor General's argument that it would be "absolutely stunning" for the Court to narrow the scope of federal bribery: "Would it be absolutely stunning to say the government has given us no workable standard?"

Whether the Court will find it workable or not, Noel Francisco, counsel for Governor McDonnell, did offer a clear standard to limit the scope of "official action" in federal bribery prosecutions.

continued on page 7

FEC Dismisses Several Pending LLC Enforcement Matters But Sends Warning about Contributing in "Name of Another"

By Michael E. Toner and Andrew G. Woodson

Last month, the Federal Election Commission (FEC) announced it had dismissed five enforcement cases against limited liability companies (LLCs) allegedly used to shield the identity of individuals contributing to Super PACs. While these cases were closed without assessment of any penalty, dueling statements from Democratic and Republican commissioners strongly suggest that those who use LLCs to shield their identities in the future will face legal consequences.

The central allegation in these cases was that the LLCs were not making contributions in their own name, but rather that they were used by individuals connected to the LLCs—including musician/rapper Prakazrel "Pras" Michel—to make the contributions without disclosure of the underlying individual contributor's name. As a result, the contributions purportedly violated the FEC's prohibition on making contributions in the "name of another." This category of offense is one of the more serious violations within the FEC's jurisdiction.

The FEC's three Democratic Commissioners left little doubt that, in their view, the respondents in these matters had violated the law. For them, none of these matters was "a difficult case. . . . Where an individual is the source of the funds for a contribution and the LLC merely conveys the funds at the discretion of that person, [the law requires] that the true source - the name of the individual rather that the name of the LLC - be disclosed as the true contributor."

The three Republican commissioners, by contrast, voted to dismiss these cases in an exercise of prosecutorial discretion, effectively terminating the proceedings (as four affirmative votes are necessary to proceed with enforcement). In a joint statement issued afterwards explaining their reasoning, the three Republicans acknowledged that LLCs can violate the "name of another" prohibition and be considered "straw donors" in certain circumstances but that, post *Citizens United*, any rule had to be applied prospectively. To this point, the Republicans argued, the regulated community lacked sufficient notice of how the recently-recognized right of corporations to make contributions to Super PACs interacted with the "name of another" prohibition.

Moreover, the Republicans' legal test for a violation focuses on whether funds "were

continued on page 8

New Jersey Pay-to-Play Drama Continues with Guilty Plea of Another Former Executive

By D. Mark Renaud and Louisa Brooks

We reported in March that the former CEO of Birdsall Services Group, Howard Birdsall, had pleaded guilty to corporate misconduct after a scheme to evade New Jersey's pay-to-play laws came to light. The unfortunate story of this once-respected engineering firm's downfall continues to unfold. On April 22nd, Howard Birdsall was formally sentenced to four years in prison. Then, on May 2nd, New Jersey's Acting Attorney General announced that William Birdsall, brother of Howard Birdsall and also a former executive of the firm, has also pleaded guilty to corporate misconduct for his role in the scheme. William Birdsall paid $129,115 to the state, representing the amount of the illegal political contributions for which he received reimbursement from the company, as well as a $75,000 penalty for public corruption profiteering.

William Birdsall will be sentenced on July 11th. Two other former executives, Thomas Rospos and Scott MacFadden, are also awaiting sentencing after pleading guilty earlier this year. ■

D. Mark Renaud
202.719.7405
mrenaud@wileyrein.com

Louisa Brooks
202.719.4187
lbrooks@wileyrein.com

Maryland Semi-annual Pay-to-Play Report Due May 31

FEC Partially Deadlocks on Affiliation of Joint Venturers' PACs

By D. Mark Renaud and Eric Wang

Companies that form joint ventures have to contend with a panoply of complex legal issues. Companies that have connected political action committees (PACs) face an added layer of complexity in such transactions, as illustrated by the advisory opinion that Enable Midstream Services, LLC recently sought from the Federal Election Commission (FEC). Enable is a joint venture formed by the coming together of CenterPoint Energy, Inc. and OGE Energy Corporation, but the FEC was not able to come together on entirely resolving the question of the relationship between the entities' PACs.

At the center of FEC Advisory Opinion 2016-02 was the issue of "affiliation." Under the federal campaign finance laws, PACs are considered to be affiliated with each other if they are established, financed, maintained, or controlled by the same entity, person, or group of persons. Political contributions made by affiliated PACs are treated as if they are all made by a single PAC and subject a single contribution limit. For example, if PACs A and B may ordinarily contribute up to $5,000 each per calendar year to Candidate X, they may only contribute up to $5,000 *combined* to Candidate X if the two PACs are determined to be affiliated. The purpose of the affiliation rule is to prevent one entity or person from circumventing the contribution limits by forming a multitude of different PACs and taking advantage of the additional contribution limit afforded to each PAC.

Under the FEC's regulations, parent companies are considered to be *per se* affiliated with the subsidiaries in which they own a majority interest, and thus their PACs are also considered to be *per se* affiliated. Entities and PACs that are not *per se* affiliated are subject to a case-by-case determination that typically involves an analysis by the FEC of ten factors. In most of the joint ventures that the FEC has considered where each of the joint venturer companies held a 50-50 ownership and controlling interest in the joint venture, the FEC generally has concluded that the joint venture is affiliated with each of the joint venturers. However, if each of the joint venturers and the joint venturer forms a PAC, only half of the amount that the joint venture's PAC contributes to any recipient will be attributed to each of the joint venturers' PACs with respect to that same recipient.

The scenario that Enable Midstream Services presented to the FEC was quite a bit more complex, however, than the typical joint venture the FEC is asked to consider. Enable is wholly owned by a limited partnership in which CenterPoint holds a 55.4% ownership interest, OGE holds a 26.3% ownership interest, and investors from the general public hold an 18.3%

continued on page 8

Recent Penalties in San Diego and York County, PA for Straw Donor Schemes

By Karen Trainer

In April, the City of San Diego Ethics Commission issued a $128,000 penalty to Advantage Towing Company, Inc., which reimbursed employees for contributions to three different San Diego mayoral candidates in 2012. The limit on contributions to mayoral candidates for the 2012 election cycle was $500 per election. According to a proposed administrative enforcement order from a State Administrative Law Judge, 10 straw donors were reimbursed for 15 contributions. A City of San Diego Ethics Commission press release notes that the penalty is the largest in the Ethics Commission's history. Under the San Diego Municipal Code, the Ethics Commission could have assessed a penalty of up to $5,000 per violation, or $160,000.

In another case, York Building Products Inc. pled guilty in Pennsylvania state court to reimbursing campaign contributions made by executives. Media reports indicate that the company reimbursed nearly $95,000 in political contributions made by executives to local, state, and federal campaigns through bonuses. Media reports also indicate that the company will pay nearly $100,000 in restitution and penalties. ■

For more information, please contact:

Karen E. Trainer
202.719.4078
ktrainer@wileyrein.com

Arizona Overhauls Campaign Finance Laws

By Caleb P. Burns and Stephen J. Kenny

Arizona Governor Doug Ducey recently signed into law a major overhaul of the state's campaign finance laws. Among the provisions of S.B. 1516 are a consolidation of the different types of political committees and an increase in the contribution and expenditure thresholds that trigger registration requirements. The law is effective December 31, 2016, but the legislature is considering another bill that would make the legislation effective retroactively.

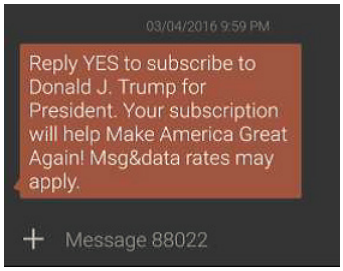
One provision of the law that has received significant attention is the exemption of certain tax-exempt organizations from political committee registration requirements. S.B. 1516 provides that only an entity with the "primary purpose" of influencing elections must register as a political committee. The law also specifies that an organization recognized as tax-exempt under Section 501(a) of the Internal Revenue Code is not organized for the primary purpose of influencing elections. If the organization satisfies additional criteria—such as properly filing its Form 990 with the IRS and remaining in good standing with the Arizona Corporation Commission—the organization need not register and report as a political committee in connection with participating in Arizona elections.

Critics of this legislation have organized a

continued on page 6

TCPA Suits Against Political Campaigns on the Rise, with the Trump Campaign Facing Two Separate Class Action Suits *continued from page 1*

The second and third suits (filed only a day apart from each other) are against Donald J. Trump for President, Inc. Both plaintiffs filed class actions for allegedly unauthorized text messages sent by the Trump campaign to their wireless numbers. In one Trump suit, filed April 25, 2016, the plaintiff claims that using autodialer equipment, the Trump



campaign sent the following text message to thousands of cell phone numbers:

The plaintiff alleges that he never voluntarily provided his phone number to the Trump campaign, and that the campaign did not have the prior express consent required to send such a text. In the second claim against Trump, filed on April 26, 2016, a similar text message is at issue. There, however, the plaintiff provided his number to Event Brite in order to obtain a ticket to a Trump rally. That plaintiff filed suit on behalf of the following class:

> *Every person: (1) to whom, from June 2015 to the filing of this action, defendant Donald J. Trump For President, Inc. (the "Trump Committee") sent a non-emergency telephone SMS message to the person's cellular telephone through the use of an automatic dialing system; (2) who provided his or her cellular telephone number to Event Brite to obtain a ticket to attend a Trump-related event; and (3) did not provide express consent to the Trump Committee to send an SMS message regarding Donald J. Trump's political campaign for President.*

While the outcomes of all of these cases are yet-to-be-known, as they must make their way through the federal court system, there is still a lesson to be learned from them. These cases show a growing trend to target political campaigns for calling and texting practices, and should serve to put all political campaigns engaging in voter, donor, or other outreach via automated phone calls or texts on notice. And not just political campaigns should be paying attention. Other organizations, such as nonprofits engaging in grassroots lobbying or Super PACs, may be caught by the rule, as well.

Before making automated calls or texts, including using an autodialer or a third party vendor, know the risks and know the rules. This includes federal law as well as state rules. The combination of Wiley Rein's preeminent election law practice group with its legendary communications practice group can help you navigate this minefield. ■

For more information, please contact:

Jan Witold Baran
202.719.7330
jbaran@wileyrein.com

Kathleen E. Scott
202.719.7577
kscott@wileyrein.com

Arizona Overhauls Campaign Finance Laws *continued from page 5*

campaign to repeal it through a referendum in November. If the law's opponents gather enough signatures to get the issue on the ballot, the law will be placed on hold. But the legislature is considering another bill (H.B. 2296) with provisions identical to S.B. 1516 that would apply retroactively. If passed, H.B. 2296 would render the repeal of S.B. 1516 irrelevant.

Another notable provision of S.B. 1516 is the exemption of certain volunteer campaign services and expenses from the definitions of regulated contributions and expenditures. Among these are travel expenses, the use of real or personal property, and the cost of invitations, food, and beverages. Effectively, supporters of candidates would be permitted to spend unlimited amounts on these items without incurring disclosure obligations or other regulation under Arizona campaign finance law. Also excluded from the definition of contribution are certain expenses by political parties in support of their nominees, such as the purchase and distribution of bumper stickers and yard signs.

Wiley Rein has deep experience helping clients comply with state and federal campaign finance laws. ■

For more information, please contact:

Caleb P. Burns
202.719.7451
cburns@wileyrein.com

Stephen J. Kenny
202.719.7532
skenny@wileyrein.com

New Rules, New Election: FEC Approves Separate Contribution Limit for North Carolina Congressional Primary *continued from page 1*

the legislature to create a remedial plan. By the time of this court decision, thousands of absentee ballots for the March 15th primary had been mailed to voters—ballots that included the names of the congressional candidates from the then-existing districts. Moreover, a number of these absentee ballots had already been returned.

The North Carolina General Assembly convened a two-day session to redraw the state's congressional districts to comply with the court order, finalizing its new plan on February 19th. It also set the June 7th date for the congressional primary.

George Holding, who currently represents North Carolina's 13th Congressional District in the U.S. House of Representatives, ran unopposed in the primary election scheduled for March 15th. As part of the legislature's redistricting plan, Holding's 13th district was divided among several surrounding districts, with the majority of it landing within the new boundaries of the 2nd congressional district. Accordingly, Holding filed an amended statement of organization and new statement of candidacy with the FEC to seek election in North Carolina's 2nd district instead of the redistricted 13th more than 100 miles away. He also requested an advisory opinion from the FEC on whether he may raise funds under a separate contribution limit for campaign run for the 2nd district seat.

The FEC concluded that the June 7th primary is indeed subject to a separate contribution limit. It found that the "highly unusual electoral circumstances" of the court order that led to the June 7th congressional primary election placed the candidates in a "new electoral situation," and the June primary is thus a different election from the March 15th primary. In drawing this conclusion, the FEC noted first that the March 15th primary actually went on as planned, with voters being instructed to vote the whole ballot, including the congressional candidates for the then-existent districts. Additionally, state law required candidates to file a separate notice of candidacy for the June primary. It also changed the "substantial plurality" required to win the March primary, directing that a June primary candidate receiving a mere plurality of the votes would be declared the winner, eliminating the possibility of a runoff.

In short, with new district boundaries, and new statements of candidacy required, and new rules governing the number of votes required to win, the facts in North Carolina led the FEC to conclude the upcoming June primary is a new election. Candidates may thus raise funds under a separate contribution limit. ■

For more information, please contact:

Carol A. Laham
202.719.7301
claham@wileyrein.com

Louisa Brooks
202.719.4187
lbrooks@wileyrein.com

In his opening gambit, Francisco argued: "In order to engage in 'official action,' an official must either make a government decision or urge someone else to do so. The line is between access to decision-makers on the one hand and trying to influence those decisions on the other." Of course, in Governor McDonnell's appeal his counsel have maintained that, throughout his dealings with lavish gift-giver and favor-seeker Johnnie Williams, the former governor stayed on the right side of this bright line, that he was—to put it in the general terms used by attorney Francisco at the oral argument—"simply setting up a meeting so that somebody can appeal to the independent judgment of an independent decision-maker."

But even this asserted bright line between providing access to decision-making officials and trying to influence the decision of those officials soon smudged and dimmed. Chief Justice John Roberts—who through other exchanges with counsel at the argument showed himself to be significantly troubled by how broadly and inclusively the government would read the meaning of "official act"—asked if "arranging a meeting could be official government action, if that were your job." Petitioner's counsel Francisco conceded the hypothetical: "I think that's possible, Chief Justice. Of course, in this case we don't have anything like that. We simply have referrals to meetings with other officials . . .."

Justice Stephen Breyer, in his comments and questions from the bench, captured the concern with what has been called the "criminalization of politics" that many fear would result if the Court were to endorse the government's proposed broad definition of "official act." Justice Breyer expressed appreciation for the government's help in trying to find "what the right words are" to define the scope and meaning of "official act," but he continued: "I'll tell you right now if those words are going to say when a person has lunch [with a constituent] and then writes over to the antitrust division and says, I'd like you to meet with my constituent who has just been evicted from her house, you know, if that's going to criminalize that behavior, I'm not buying into that, I don't think." Justice Breyer emphasized that he is not "in favor of dishonest behavior," but saw "two serious problems" in taking the criminal law as far as the government urged: "one, political figures will not know what they're supposed to do and what they're not supposed to, and that's a general vagueness problem"; and, second, "a separation of powers problem. The Department of Justice in the Executive Branch becomes the ultimate arbiter of how public officials are behaving in the United States, state, local, and national."

Through her questions and comments suggesting that the basic flaw with the McDonnell prosecution might have been the piece-meal way in which the conduct was charged, Justice Elena Kagan appeared to indicate essential agreement with the approach to defining "official act" urged by the McDonnell legal team. In an exchange with the government, Justice Kagan noted: "This might have been perfectly chargeable and instructable, but . . . I'm troubled by these particular charges and instructions, which seem to make every piece of evidence that you had an 'official act,' rather than just saying the 'official act' was the . . . attempt to get the University of Virginia to do something they wouldn't have done otherwise."

If the Court reverses the convictions in *McDonnell*, the ramifications for the Department of Justice could go far beyond the loss of a high profile case. As noted at the outset of this article, one of the principle charges on which former Governor McDonnell was convicted at trial was honest services fraud. This criminal statute remains a tool widely used by DOJ to prosecute official corruption at the federal, state, and local levels, even after the Supreme Court in *Skilling v. United States* (2010)—to preserve the constitutionality of the statute—narrowed the scope of its application to cases involving allegations of actual bribes or kickbacks. But *McDonnell* could provide the Court with the motive, means, and opportunity to revisit and reject the compromise reasoning of *Skilling*. Of the honest services fraud statute and the *Skilling* case, the Chief Justice observed during the oral argument in *McDonnell*: "I mean, there were, what, three votes to find it [the honest services fraud statute] unconstitutional? And the others say, well, no, because you can narrow it in this way to the core definition of bribery. And now maybe—the experience we've had here, and the difficulty of coming up with clear enough instructions suggests that the caution the Court showed at that point was ill-advised." ■

For more information, please contact:

Robert L. Walker
202.719.7585
rlwalker@wileyrein.com

FEC Dismisses Several Pending LLC Enforcement Matters But Sends Warning about Contributing in "Name of Another" *continued from page 3*

intentionally funneled through a closely held corporation or corporate LLC for the purpose of making a contribution that evades the [law's] reporting requirements." The purpose-based requirement arguably sets the bar high than their Democratic colleagues would prefer in future cases, but these cases still represent an important—and cautionary—tale. In a subsequent interview with *The Washington Post*, Republican Commissioner Lee E. Goodman confirmed that "Now everyone should be on notice[:] If you funnel money through an LLC entity for the purpose of making a political contribution and avoiding disclosure of yourself, that is an abuse of the LLC vehicle."■

For more information, please contact:

Michael E. Toner
202.719.7545
mtoner@wileyrein.com

Andrew G. Woodson
202.719.4638
awoodson@wileyrein.com

FEC Partially Deadlocks on Affiliation of Joint Venturers' PACs *continued from page 4*

ownership interest. Enable is managed, however, by a general partnership in which CenterPoint and OGE each holds a 50 percent management interest, but in which CenterPoint holds a 40% economic interest and OGE holds a 60% economic interest. CenterPoint and OGE each are represented by two directors on the general partnership's board of eight directors.

Further complicating matters, of the more than 1,800 Enable employees, most of whom previously had worked for CenterPoint, OGE, and their subsidiaries, 164 remain on the OGE payroll (for which Enable reimburses OGE) in a temporary arrangement that is designed to protect the employees' vested employment benefits. Both CenterPoint and OGE also perform certain administrative services for the Enable limited partnership and are reimbursed by the limited partnership for those services.

Five of the six FEC commissioners were able to agree that, under these circumstances, CenterPoint and Enable are not considered to be affiliated, and thus neither are their PACs. This was principally because the commissioners determined that CenterPoint does not have a controlling interest in, or governance or hiring authority over, Enable by virtue of having only two representative members on the eight-member board of Enable's management entity. In addition, the lack of common officers or employees between CenterPoint and Enable also was significant.

The FEC commissioners were not able to agree, however, on whether OGE and Enable and their PACs are affiliated. As indicated by the opposing drafts that the commissioners considered, the number of Enable employees who remained on OGE's payroll, as well as an individual who was an officer in both entities, was a significant sticking point. According to one draft, this employment arrangement was evidence of an "extensive entanglement" between OGE and Enable that "weighs heavily in favor of affiliation" between the two entities, while the other draft did not consider this factor to be significant enough to establish affiliation.

While Enable's advisory opinion presented a complex scenario that is probably unique to this particular joint venture's structure, it is an important reminder of the more general issue of affiliation that companies must remember to consider when making political contributions. It is also important to note that affiliation matters not only at the federal level; many states also have affiliation rules—not only for PAC contributions, but also for direct corporate treasury contributions where such contributions are permitted. Pay-to-play laws also may incorporate affiliation rules in their reporting requirements and special contribution limits or prohibitions for contractors. Under these affiliation rules, the affiliation relationship may have to be examined not only downstream (from the perspective of a parent company looking at its subsidiaries), but also upstream (from the perspective of a subsidiary looking at its parent company) and horizontally (from the perspective of a company looking at its sister entities).■

For more information, please contact:

D. Mark Renaud
202.719.7405
mrenaud@wileyrein.com

Eric Wang
202.719.4185
ewang@wileyrein.com

Wiley Rein Garners Top Marks in 2016 Corporate Equality Index; Named Among 100 Best Law Firms for Female Attorneys

Wiley Rein LLP received a perfect score of 100% on the 2016 Corporate Equality Index (CEI), a national benchmarking survey and report on corporate policies and practices related to LGBT workplace equality, administered by the Human Rights Campaign Foundation. The firm joins the ranks of 407 businesses that earned top marks on the 14th annual scorecard. Wiley Rein was one of 95 law firms nationally that received a 100% score. It was also one of only 10 Washington, DC-based companies—eight of which are law firms—that received a top score.

The 2016 CEI rated 1,024 businesses in the report, which evaluates LGBT-related policies and practices including nondiscrimination workplace protections, domestic partner benefits, transgender-inclusive health care benefits, competency programs, and public engagement with the LGBT community. Wiley Rein's efforts in satisfying all of the CEI's criteria resulted in the 100% ranking and the designation as among the "Best Places to Work for LGBT Equality." HRC is America's largest civil rights organization working to achieve lesbian, gay, bisexual, and transgender equality.

In addtition, *Law360* last month named Wiley Rein LLP to its 2016 list of "The 100 Best Law Firms for Female Attorneys," based on a survey of the firm's female representation at the partner and non-partner levels, and its total number of female attorneys. Wiley Rein is one of only six firms in the Washington, DC area to make the list this year. In summarizing the results of the survey, *Law360* pointed out that "for the firms that nabbed spots on the list, the number of women at all levels of the firm shows that firm leaders are finding some new ways to open doors and increase diversity." ■

DOL Final Overtime Rule Doubles White Collar Exemption Salary Threshold; Changes May Affect PAC Solicitable Class *continued from page 2*

The effective date of the final rule is December 1, 2016. The initial increases to the standard salary level (from $455 to $913 per week) and HCE total annual compensation requirement (from $100,000 to $134,004 per year) will be effective on that date. Future automatic updates to those thresholds will occur every three years, beginning on January 1, 2020.

Although the Office of Management and Budget (OMB) has reviewed and approved the final rule, the document has not yet been published in the Federal Register and is scheduled to be published on May 23. DOL has drafted fact sheets and guidance for small businesses, non-profits, and higher education institutions which can be found here: https://www.dol.gov/whd/overtime/final2016/. We will keep you updated on further developments.

D. Mark Renaud
202.719.7405
mrenaud@wileyrein.com

Jillian D. Laughna
202.719.4187
lbrooks@wileyrein.com

DOJ Introduces Self-reporting FCPA Pilot Program

In April, the U.S. Department of Justice (DOJ) introduced a one-year pilot program that would allow companies that voluntarily self-disclose potential violations of the Foreign Corrupt Practices Act (FCPA) to reduce sentencing fines by up to 50 percent.

The mitigation credit is reserved for companies that not only cooperate and remidiate, but voluntarily self-disclose the conduct. Companies that do will likely face a reduced sentencing fine and will generally not be required the appointment of a monitor.

The move comes as DOJ is enhancing the capabilities of its Criminal Division's Fraud Section through the addition of 10 prosecutors to its FCPA unit.

Wiley Rein is hosting a webinar focused on FCPA enforcement priorities of 2016, including DOJ's policy statements on the voluntary disclosure of FCPA violations and the implications of the Yates Memo.

To register for the webinar, click here or contact Matt Huisman at 202.719.3103 or mhuisman@wileyrein.com.

Election Law Professionals

Jan Witold Baran	202.719.7330	jbaran@wileyrein.com
Michael E. Toner	202.719.7545	mtoner@wileyrein.com
Carol A. Laham	202.719.7301	claham@wileyrein.com
Thomas W. Kirby	202.719.7062	tkirby@wileyrein.com
D. Mark Renaud	202.719.7405	mrenaud@wileyrein.com
Caleb P. Burns	202.719.7451	cburns@wileyrein.com
Andrew G. Woodson	202.719.4683	awoodson@wileyrein.com
Robert D. Benton	202.719.7142	rbenton@wileyrein.com
Claire J. Evans	202.719.7022	cevans@wileyrein.com
Robert L. Walker	202.719.7585	rlwalker@wileyrein.com
Ralph J. Caccia	202.719.7242	rcaccia@wileyrein.com
Roderick L. Thomas	202.719.7035	rthomas@wileyrein.com
Bruce L. McDonald	202.719.7014	bmcdonald@wileyrein.com
Jason P. Cronic	202.719.7175	jcronic@wileyrein.com
Thomas W. Antonucci	202.719.7558	tantonucci@wileyrein.com
Daniel B. Pickard	202.719.7285	dpickard@wileyrein.com
Eric Wang	202.719.4185	ewang@wileyrein.com
Stephen J. Kenny	202.719.7532	skenny@wileyrein.com
Louisa Brooks*	202.719.4187	lbrooks@wileyrein.com
Karen E. Trainer, Senior Reporting Specialist	202.719.4078	ktrainer@wileyrein.com

*Not admitted to the DC bar. Supervised by the principals of the firm.

To update your contact information or to cancel your subscription to this newsletter, visit: www.wileyrein.com/newsroom-signup.html

SPEECHES/UPCOMING EVENTS

Seventeenth Annual Private Equity Forum
Carol A. Laham, Speaker
June 29-30, 2016 | New York, NY

Corporate Political Activities 2016: Complying with Campaign Finance, Lobbying and Ethics Laws
Jan Witold Baran, Co-Chair
Caleb P. Burns, Speaker
Practising Law Institute
September 8-9, 2016 | Washington, DC

NABPAC Post-Election Conference
Jan Witold Baran, Speaker
November 16-19, 2016 | Palm Beach, FL