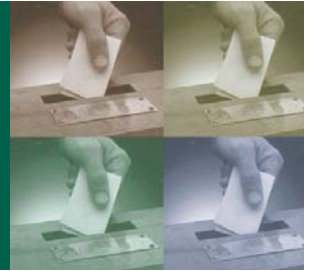




January 2006

Election Law News

A Publication of the WRF Election Law Practice Group



Florida Amends Gifts and Lobbying Laws

On December 20, 2005, Governor Jeb Bush of Florida signed a new law that amends the state's lobbying and ethics laws. Effective January 1, 2006, the new law does two things.

First, it appears to prohibit all gifts from lobbyists and lobbyist employers to legislators, legislative staff and many individuals in the state's executive branch. Second, the new law changes the lobbying code's reporting requirements to focus on the reporting of compensation received, as opposed to expenditures made (given that most expenditures are now banned). The first reports under the new scheme are not due until May 15, 2006, but reporting will now be quarterly.

The new statute also makes several other provisions effective in 2007. At that time, electronic filing will be required for the compensation reports. Moreover, starting in 2007 the new law permits random audits of 3% of all legislative lobbyists and 3% of all executive branch lobbyists. There appears to be some confusion in Florida as to the scope of the new law, but we expect the issues to be fleshed out over the next few months. ■

For more information, please contact Carol A. Laham (202.719.7301 or claham@wrf.com) or D. Mark Renaud (202.719.7405 or mrenaud@wrf.com).

Information on State Governments

Visit www.wrf.com/JanBaran_FindLaw to access Jan Baran's FindLaw page, which includes links to information on campaign finance, lobbying and ethics laws for all 50 states and DC.

FEC Reconsiders 120-Day Coordination Rule: Comments Due on January 13

Bowing to a decision in the U.S. Court of Appeals for the District of Columbia, the Federal Election Commission (FEC) is undertaking an expedited rulemaking on its coordination regulations. See www.fec.gov/law/law_rulemakings.shtml#coordinated. The Notice of Proposed Rulemaking (NPRM) was published on December 14, 2005, and comments are due on January 13, 2006.

The main focus of the rulemaking is the 120-day content factor in the FEC's coordination regulations. Under the regulations as they now stand, certain communications coordinated with a candidate or a political party are considered to be in-kind contributions to the candidate or political party, which are subject to contribution limits for PACs and individuals and prohibited if by corporations.

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FEC Bans Certain Candidate Public Service Announcements

By virtue of amendments to its regulations, the Federal Election Commission (FEC) has outlawed certain Public Service Announcements (PSAs) that mention or feature a federal candidate and air within 30 days of a primary or within 60 days of a general election, even if the PSA is distributed for free by a television or radio station, cable company or satellite provider.

After January 20, 2006, a broadcaster, cable company or satellite provider, may not, within 30 days of a primary election or within 60 days of a general election, air on the radio or on television any PSA that:

- Features the likeness of, or mentions the name of, a candidate for federal office.
- Can be received by 50,000 or more persons in the candidate's congressional district or state, as applicable (for Presidential elections, it is nationwide).

In order to avoid this situation, the FEC urges 501(c)(3) charities that produce PSAs to include expiration dates on all PSAs that mention or feature federal candidates so that the PSAs are not aired within the prohibited time periods.

Failing to perform proper due diligence and observe such expiration dates could create liability for a broadcaster, cable operator or satellite system.

Failing to perform proper due diligence and observe such expiration dates could create liability for a broadcaster, cable operator or satellite system, even if the individual on a PSA was not a candidate when the PSA was created or first distributed. According to the FEC, “[I]f an incorporated broadcaster provides free airtime for a PSA that satisfies the definition of ‘electioneering communication,’ then the broadcaster *may be responsible* for making an electioneering communication,” although the 501(c)(3) charity will generally escape liability if it has included a proper expiration date.

The prior FEC regulations had exempted not only communications paid for by 501(c)(3) charities (which was also done away with in the new regulations), but also communications otherwise covered by the law if they were

distributed for free. A federal court struck down these regulations, and the new regulations are an attempt by the FEC to comply with the court decisions.

The final rules, as published in the *Federal Register* on December 21, 2005, can be found at www.fec.gov/law/cfr/ej_compilation/2005/notice_2005-29.pdf. ■

For more information, please contact Carol A. Laham (202.719.7301 or claham@wrf.com) or D. Mark Renaud (202.719.7405 or mrenaud@wrf.com).

Connecticut Amends Campaign Finance Laws

On December 7, 2005, Governor Jodi Rell of Connecticut signed into law legislation (former S.B. 2103) that amends the state's campaign finance legislation in three primary ways. The new law was the result of a special session of the legislature, called in wake of the various corruption scandals that have rocked the state in the past few years, including one that landed the former governor in jail.

First, the new law enacts a public financing scheme for statewide and legislative races. Second, the bill enacts new campaign finance prohibitions for state contractors, prospective state contractors, principals of communicator lobbyists, communicator lobbyists, the immediate family of communicator lobbyists and PACs controlled by communicator lobbyists. Third, the statutory changes eliminate the exception for purchases of advertising space by business entities in state political committee publications.

Most of the new changes are effective December 31, 2006, which follows the next round of state elections in Connecticut. Additional information about the new statute, including the full text, can be found at the website of the State Election Enforcement Commission, www.ct.gov/seec. ■

For more information, please contact Carol A. Laham (202.719.7301 or claham@wrf.com) or D. Mark Renaud (202.719.7405 or mrenaud@wrf.com).

President Appoints New FEC Commissioners

Toner Elected FEC Chair

On January 4, 2006, President Bush appointed Democrats Robert D. Lenhard and Steven T. Walther to the Federal Election Commission (FEC), where they will replace current commissioners Scott Thomas and Danny L. McDonald. The President also appointed Republican Hans von Spakovsky, filling the vacancy created by the resignation late last year of commissioner Brad Smith.

Prior to President Bush's appointments, the Commission elected as its chairman Michael Toner, a Republican, who has served on the Commission since 2002. Mr. Toner previously was chief counsel of the Republican National Committee and general counsel of the Bush-Cheney Transition Team and Bush-Cheney 2000 Presidential Campaign.

The Commission also elected Danny L. McDonald as Vice Chairman. Mr. McDonald, however, was replaced by President Bush, and the Commission now will have to elect a new Vice Chairman.

The Federal Election Campaign Act requires that no political party hold a majority of the seats on the Commission. ■

For more information, please contact Jan Witold Baran (202.719.7330 or jbaran@wrf.com) or Andrew G. Woodson (202.719.4638 or awoodson@wrf.com).

House and Senate Combine LDA Filing Procedures

The following notice was recently issued by the Clerk of the U.S. House of Representatives and the Secretary of the United States Senate:

Effective January 1, 2006, the Clerk will accept only electronically filed lobbying documents. Although the Secretary's and Clerk's e-filing applications are not compatible, a "File with the Senate button" on the Clerk's Adobe form application has been added as a solution for the February filing period. The modified Adobe forms will be posted on the web site in the near future. The February dual application will be available on both web sites.

The Senate Office of Public Records will accept these filings, filings generated by our own e-filing program and paper filings.

Accordingly, registrants under the federal Lobbying Disclosure Act are no longer required to separately file reports with both the House and Senate, but may simply file their information electronically with the House and then click the "File with the Senate button" to file the information with the Senate. ■

For more information, please contact Jan Witold Baran (202.719.7330 or jbaran@wrf.com) or Caleb P. Burns (202.719.7451 or cburns@wrf.com).

Upcoming Dates to Remember

January

| | |
|-----------------|--|
| 01/31/06 | 2005 Year-end FEC report due for all federal PACs |
| 01/31/06 | 2005 Year-end IRS Form 8872 due for all nonfederal PACs ** |
| 01/31/06 | 2005 Year-end report for House and Senate candidate committees |

February

| | |
|-----------------|--|
| 02/14/06 | Lobbying Disclosure Act reports due |
| 02/20/06 | February monthly FEC report due for federal PACs filing monthly |
| 02/20/06 | February monthly IRS Form 8872 due for nonfederal PACs filing monthly ** |

** Qualified state and local political organizations are not required to file Form 8872 with the IRS.

FEC, IRS and Lobbying Disclosure Filing Dates for 2006

Monthly FEC Filing Dates for PACs

January - December 2006

| | | | |
|----------|----------------------|----------|-------------------------------------|
| 01/31/06 | 2005 Year-End Report | 07/20/06 | July Report |
| 02/20/06 | February Report | 08/20/06 | August Report |
| 03/20/06 | March Report | 09/20/06 | September Report |
| 04/20/06 | April Report | 10/20/06 | October Report |
| 05/20/06 | May Report | 10/26/06 | 12-Day Pre-General Election Report |
| 06/20/06 | June Report | 12/07/06 | 30-Day Post-General Election Report |

Note: Filing dates that fall on a weekend or holiday are not extended to the next business day. Paper filers must submit their reports on the previous business day. In addition, reports must be received by these filing dates. Only reports sent by registered or certified mail may be postmarked by the filing date, and reports sent by overnight mail must be received by the delivery service by the filing date.

Semi-Annual/Quarterly FEC Filing Dates for PACs

January - December 2006

| | | | |
|----------|-----------------------|----------|-------------------------------------|
| 01/31/06 | 2005 Year-End Report | 10/15/06 | Third Quarter Report |
| 04/15/06 | First Quarter Report | 10/26/06 | 12-Day Pre-General Election Report |
| 07/15/06 | Second Quarter Report | 12/07/06 | 30-Day Post-General Election Report |

Note: The 12-Day Pre-General Election Report and 30-Day Post-General Election Report are only required if a PAC makes contributions in connection with the general election. If a PAC makes contributions in connection with special elections or primary elections, it will have additional reports due. Filing dates that fall on a weekend or holiday are not extended to the next business day. Paper filers must submit their reports on the previous business day. In addition, reports must be received by these filing dates. Only reports sent by registered or certified mail may be postmarked by the filing date, and reports sent by overnight mail must be received by the delivery service by the filing date.

Lobbying Disclosure Act Filings

February - August 2006

| | |
|----------|--|
| 02/14/06 | Report covering July 1-December 31, 2005 |
| 08/14/06 | Report covering January 1-June 30, 2006 |

Additional information on Lobbying Disclosure Act reporting is available online at <http://clerk.house.gov/pd> and www.senate.gov/pagelayout/legislative/g_three_sections_with_tasers/lobbyingdisc.htm.

Quarterly House and Senate Candidate Committee FEC Filing Dates

| | | | |
|----------|-----------------------|----------|-------------------------------------|
| 01/31/06 | 2005 Year-End Report | 10/15/06 | Third Quarter Report |
| 04/15/06 | First Quarter Report | 10/26/06 | 12-Day Pre-General Election Report |
| 07/15/06 | Second Quarter Report | 12/07/06 | 30-Day Post-General Election Report |

Note: The 12-Day Pre-General Election Report and 30-Day Post-General Election Report are only required of candidates running in the general election. Candidates also are required to file Pre-Primary, Pre-Runoff and Last-Minute Contribution Reports when necessary. Filing dates that fall on a weekend or holiday are not extended to the next business day. Paper filers must submit their reports on the previous business day. In addition, reports must be received by these filing dates. Only reports sent by registered or certified mail may be postmarked by the filing date, and reports by overnight mail must be received by the delivery service by the filing date.

Additional information on FEC reporting is available at www.fec.gov/info/report_dates.shtml.

Monthly IRS Filing Dates for Certain Nonfederal PACs

| | | | |
|----------|-------------------------|----------|-------------------------------------|
| 01/31/06 | 2005 Year-End Form 8872 | 06/20/06 | June Form 8872 |
| 02/20/06 | February Form 8872 | 07/20/06 | July Form 8872 |
| 03/15/06 | Form 1120-POL* | 08/20/06 | August Form 8872 |
| 03/20/06 | March Form 8872 | 09/20/06 | September Form 8872 |
| 04/20/06 | April Form 8872 | 10/20/06 | October Form 8872 |
| 05/15/06 | Form 990** | 10/26/06 | 12-Day Pre-General Election Report |
| 05/20/06 | May Form 8872 | 12/07/06 | 30-Day Post-General Election Report |

Additional information on IRS reporting including semi-annual/quarterly reporting dates is available at www.irs.gov/charities/political.

Note: Federal PACs and “qualified state and local political organizations” are not required to file Form 8872.

* For political organizations that account on a calendar-year basis.

** Need not be filed by federal PACs registered with the FEC or by certain “qualified state and local political organizations.”

Post-Abramoff: Now Is the Time to Review Ethics, Lobbying and Campaign Finance Laws

Earlier this month, lobbyist Jack Abramoff pleaded guilty to a variety of federal crimes, many of which included issues related to the Congressional gift rules, the Lobbying Disclosure Act (LDA) and campaign finance.

In the wake of calls for lobbying and ethics reform on Capitol Hill, Jan Witold Baran, chair of the Election Law and Governmental Ethics Practice Group, penned his thoughts in a recent Outlook section of *The Washington Post*. Baran's article, "Can I Lobby You? Don't Let One Bad Abramoff Spoil the Whole Bunch," examines the beneficial side of lobbying and highlights the thousands of lobbyists in Washington who render a service that is both critical to a democratic society and enshrined in the Constitution. Baran has also been quoted in numerous publications on the recent lobbying scandal, including *The Washington Post* and *The Washington Times*.

In order to aid our readers in their quests to avoid even the appearance of impropriety in their lobbying and political activities, the editors of *Election Law News* have created the following index of past newsletter articles about ethics rules, the LDA, pertinent Internal Revenue Service rules and the Federal Election Commission's campaign finance regulations. In future issues of *Election Law News*, we will address additional topics.

- Special Report: Gift and Travel Rules for Lobbyists (May 2005)
- Tax Corner: The Tax Code and the Lobbying Disclosure Act (March 2005)
- Practical Tip: Post-Government Employment (July 2004)
- Practical Tip: Corporate Communications Guide (May 2004)
- Tax Corner: Lobbying Restrictions for 501(c)(3) Organizations (May 2004)
- New FEC Airplane Reimbursement Rules Effective January 2004 (January 2004)
- The Corporation as Political Host: When Corporations Sponsor Appearances by Federal Candidates (July 2003)

To view these articles and past issues of *Election Law News*, please visit www.wrf.com/Election_Law_News. ■

For more information, please contact Jan Witold Baran (202.719.7330 or jbaran@wrf.com).

WRF Upcoming Speeches

January 18, 2006

Panelist: Jan Witold Baran
Presentations: Proposed Changes to the Current Ethics Rules for Gifts, Travel and the Political Activities of Judges, ABA Model Code of Judicial Conduct
Conference: Conference of Chief Justices
Location: Amelia Island, FL
Information: www.wrf.com/events

January 31, 2006

Speaker: Carol A. Laham
Presentations: PAC Legal Quick Start: Understanding the Federal Campaign Finance Law
Conference: Innovate to Motivate 2006: The National Conference for Political Involvement Professionals
Location: Key West, FL
Information: www.wrf.com/events

February 1, 2006

Speaker: Carol A. Laham
Presentations: Staying Out of Trouble: Answers to ALL of Your Campaign Finance Legal Questions
Conference: Innovate to Motivate 2006: The National Conference for Political Involvement Professionals
Location: Key West, FL
Information: www.wrf.com/events

February 6, 2006

Panelist: Jan Witold Baran
Presentations: University Club's Government Affairs Day
Location: Washington, DC
Information: www.wrf.com/events

Indiana to Regulate Executive Branch Lobbyists

On January 1, 2006, the Indiana Department of Administration issued final rules regulating the activities of individuals attempting to influence the executive branch of the state. For the first time, the state will require such individuals to register and report with the state.

A copy of the new rules can be found at the department's website, www.in.gov/idoa, which includes frequently asked questions about the new rules.

Pursuant to the new rules, executive branch lobbyists are required to register within 15 days of making a lobbying contact. The lobbying rules pertain to "executive branch activities," which are defined as decisions of a state agency regarding:

- The expenditure of state funds with respect to the award of a contract, lease or any other financial arrangement.
- The proposal, drafting, development, consideration, promulgation, repeal or rejection by an agency of a rule.

There are several exceptions to the registration requirement. Online registration is available at the department's website.

Executive branch lobbyists, after registration, are required to file annual reports with the department, detailing lobbying activities. Such reports are due on January 15 of each year. ■

For more information, please contact Carol A. Laham (202.719.7301 or claham@wrf.com) or D. Mark Renaud (202.719.7405 or mrenaud@wrf.com).

WRF's Jan Baran Appointed by Virginia Attorney General to Assist in Election Recount

Jan Witold Baran, chair of the firm's Election Law & Government Ethics Practice, was appointed by Judith Williams Jagdmann, the Attorney General of the Commonwealth of Virginia, to provide special counsel to the Virginia State Board of Elections on the extremely close November 2005 race for Attorney General. The recount concluded on December 21, 2005.

Baran, named by *Washingtonian* magazine as a "Top Campaign & Elections Lawyer" and one of the "Top 50 Lawyers" in Washington, DC, frequently handles high-profile matters, advising clients and litigating on federal, state and local campaign finance laws, government ethics requirements and lobbying laws. Over the course of his legal career, he has served as Executive Assistant to the Chair of the Federal Election Commission, as a member of The President's Commission on Federal Ethics Law Reform and as a member of the Virginia Governor's Commission on Government Finance Reform. ■

For more information, please contact Jan Witold Baran (202.719.7330 or jbaran@wrf.com).

WRF Partner Elected as Secretary of Government Ethics Council

Carol A. Laham, a partner in WRF's Election Law & Government Ethics Practice, was elected to serve as secretary of the Council on Government Ethics Laws (COGEL), a professional organization for government agencies, organizations and individuals with responsibilities or interests in governmental ethics, elections, campaign finance, lobby laws and freedom of information. COGEL is the publisher of *The Blue Book*, a compilation of ethics agencies and information about statutory and regulatory functions, budgets and names of personnel and hosts an annual conference featuring seminars on current topics of concern to ethics administrators.

Laham counsels clients and litigates on compliance with federal, state and local election laws, the Ethics in Government Act, House and Senate Ethics, state ethics laws, the Lobbying Disclosure Act of 1995 and its state counterparts and the Foreign Agents Registration Act. ■

For more information, please contact Carol A. Laham (202.719.7301 or claham@wrf.com).

120-Day Coordination Rule

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The current list of covered communications is as follows: (1) campaign literature, (2) communications that expressly advocate the election or defeat of a federal candidate, (3) electioneering communications (certain television or radio communications aired within 30 days of a primary and 60 days of a general election that mention or feature a federal candidate) and (4) public communications disseminated within 120 days of a federal election that mention or feature a federal candidate and are directed toward voters in the candidate's congressional district or state. The D.C. Circuit stated that the FEC had failed to substantiate the choice of the 120-day time period.

The FEC considers a wide variety of options in its NPRM, including doing away with a time period altogether, reducing the time period to 30 days before a primary and 60 days before a general election and extending

the time period to the entire election year. Another option proposed is the retention of the 120-day period. The NPRM also considers other changes in the rules with respect to coordination, such as the inclusion of a "promote, support, attack or oppose" test, and the adoption of a test analyzing whether the "purpose" of a communication is to influence a federal election.

In addition, the FEC also calls for comments as to the effect of the coordination rules related to common vendors and former employees, the "request or suggestion" conduct prong, the use of firewalls by consultants and vendors and the use of publicly available information. ■

For more information, please contact Jan Witold Baran (202.719.7330 or jbaran@wrf.com) or Megan L. Brown (202.719.7413 or mbrown@wrf.com).

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