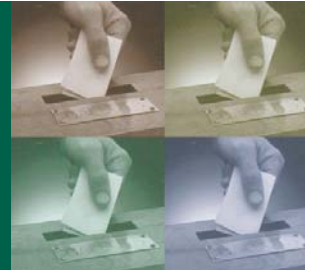




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Election Law News

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Lobbying Reform Proposals Pick Up Steam in the 109th Congress House and Senate Considering a Variety of Restrictions, Including a Lobbyist Gift Ban

On the floor of the Senate this week, lawmakers began debate on a pair of lobbying reform proposals designed to address several ethics issues arising out of the Jack Abramoff scandal. As part of the debate, the Senate announced an amendment to one of the bills that would ban lobbyist gifts for Members of Congress and their staff. As a first step toward its own lobbying reforms, earlier this year the House of Representatives passed a resolution eliminating floor and gym privileges for former Members of Congress who become lobbyists. These bills, however, are just a few of the nearly two dozen proposals that Republicans and Democrats on Capitol Hill have introduced in the last year. Although the specific details of each of these proposals differ, many of the broader themes addressed in each bill are similar, and the final result of the reform efforts, if any, is far from clear.

Nearly all of the proposed initiatives would require electronic filing and increased disclosure by lobbyists in the form of quarterly—rather than semi-annual—reporting. As part of the new disclosure obligations, many of the bills also call for lobbyists to disclose amounts spent on grassroots lobbying activities. Several of the proposals go a step further and would require lobbyists to itemize their campaign contributions and/or any payments made for events to honor legislative officials.

Beyond new disclosure obligations, several of the bills under consideration would enact additional restrictions on the ability of Members and their staff to accept gifts and privately-financed travel from lobbyists and nongovernmental organizations. Generally speaking, most of the Democratic proposals include a ban on all gifts from lobbyists, while Republican proposals enact some additional restrictions on lobbyist gifts but stop short of an outright ban. For example, the current version of the McCain-Shays proposal would require tickets without a face value

for sporting or entertainment events to be valued at the face value of the highest-priced ticket to the event, but would not curtail any other gifts from lobbyists. As initially reported out of the Senate Rules Committee, Senator Lott's bill (S 2349) would ban most gifts from lobbyists but would retain an exception for meals and refreshments subject to the current limits (*i.e.*, \$49.9 per event, \$99.99 per year). The initial proposal also required Members to post on their website within 15 days of receipt the value of meals and refreshments given to them or their staff along with the name of the person who paid for the item. Arguing that this disclosure requirement amounted to an effective ban, however, Senators passed an amendment on March 8, 2006, effectively banning meals and refreshments from lobbyists.

In the area of privately-financed travel, initial reports suggested that House Republicans might support a ban on all trips paid for with nongovernmental funds. However,

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Changes in the States

Tennessee

Tennessee Amends Its Lobbying, Ethics and Campaign Finance Rules

On February 15, 2006, Tennessee Governor Phil Bredesen signed into law the Comprehensive Governmental Ethics Reform Act, which has changed Tennessee state law regarding gifts, lobbying and campaign finance. With respect to gift and lobbying law, the new statute creates a statewide ethics commission for the first time and permits the Tennessee Registry of Election Finance to focus on campaign finance issues. The new law follows in the wake of a corruption investigation by the FBI called “Tennessee Waltz.”

With respect to lobbying rules, as of October 1, 2006, lobbyist employers will be required to register with the state ethics commission and will take upon themselves the burden for lobbying reports.

The changes to the gift rules became effective upon the Governor’s signature, but the general definitions of gifts, provisions against honoraria and executive branch gift restrictions governed by Executive Order 3, signed on February 2, 2003, have not changed. Likewise, the ban on gifts by lobbyists to officials in the legislative and executive branches remains the same. The exceptions to that ban, however, have changed. There are four major changes to these exceptions, all of which are primarily concerned with what benefits may be provided to state legislators.

First, tickets to charitable, cultural or educational events provided to all candidates or officials of a similar rank, which were previously allowable, now are no longer permissible.

Second, entertainment, food and beverages (and now health screenings) may be provided at an in-state event so long as all legislators, rather than just a committee of either house or a delegation from two or more senatorial districts as before, are invited at least seven days before the event. The cost of such events now may not exceed \$50 per day (rather than per event) and both the aggregate cost and the cost per person must be reported within 30 days following the event.

Third, entertainment, food, beverages and amenities may be served at in-state events where a candidate or official speaks to a meeting of any recognized membership organization as long as (1) the cost is reimbursed by the membership organization and (2) the per-person cost of the event does not exceed \$50 per person per day.

Finally, employers of lobbyists may provide food and beverages to legislators, as well as officials of either branch, so long as the value does not exceed \$50 per event per day, and so long as the aggregate amount spent on that legislator or official does not exceed \$100 per year. Furthermore, the legislator who is invited to the meal is not allowed to have received his per diem allowance for that day.

The new law also made many changes to the state’s campaign finance regime.

First, lobbyists are now banned from making contributions to campaigns, although they are still permitted to direct PAC contributions to campaigns.

Second, the Governor, the Governor’s campaign committee and Members of the General Assembly are now prohibited from fundraising during an extraordinary session. In addition, PACs that are controlled by parties or caucuses for General Assembly Members and the Governor are prohibited from fundraising during an extraordinary session. These moratoriums previously applied only to fundraising during the regular session.

Third, the maximum allowable aggregate contributions that any individual can make to all candidates and PACs every two years is \$101,400. The maximum for aggregate contributions to candidates is \$40,000, and the maximum for aggregate contributions to PACs is \$61,400. These amounts will be adjusted every two years for inflation.

Finally, PACs must include in their registration a certification of the names of all PAC officers and there must be at least one officer other than the treasurer. PACs must file quarterly reports in non-election years and quarterly, pre-primary and pre-general reports in election years.

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Diverse Group Petitions FEC for Protection of Grassroots Lobbying Activity

Looking to the FEC for an Exception before This Year's Elections

On March 9, 2006, the Federal Election Commission (FEC) put out for comment a petition for rulemaking proposed by a diverse set of organizations that engage in grassroots lobbying. The petition, filed on February 16, 2006, by a group of nonprofits that included the U.S. Chamber of Commerce and the AFL-CIO, asks the FEC for a rule change to protect certain types of grassroots lobbying from displacement by federal campaign finance laws. The petition comes on the heels of *Wisconsin Right to Life, Inc. v. FEC*, in which the U.S. Supreme Court remanded the case back to the district court to consider an as-applied challenge to the federal “electioneering communication” corporate and union prohibitions.

The petition asks the Commission to promulgate an exception to the electioneering communication prohibition, a provision that bans corporations and labor unions from paying for television and radio advertisements that mention or feature a federal candidate if those advertisements effectively can be received in the member’s state or Congressional district and the ads air within 30 days of a primary or within 60 days of a general election.

The petition seeks an exception to this blackout period for television and radio ads that call upon an incumbent to take a particular action or position with respect to a particular current legislative or executive branch matter, or for ads that call upon the general public to contact the incumbent and urge him or her to take a position or action.

The FEC rejected a lobbying exception when it first promulgated the electioneering communication regulations in 2002, but the recent *Wisconsin Right to Life* decision, although not on the merits, gives the petitioners hope that their grassroots lobbying efforts will not continue to be squelched in the name of campaign finance reform. The full petition can be found on the FEC’s website at www.fec.gov/agenda/2006/mtgdoc06-13.pdf. WRF represents the U.S. Chamber of Commerce in this proceeding. ■

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Changes in the States

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New York

Proposal Would Prohibit Gifts in Excess of \$75 per Year

Currently, New York law provides that gifts to a public official from a lobbyist are limited to \$75 “per item” or “per event.” However, the staff of the New York Temporary State Commission on Lobbying has put forward a proposal that would prohibit gifts to a public official “with a combined value in excess of \$75 *during a calendar year*” (emphasis added). See N.Y. Temp. State Comm’n on Lobbying, *Staff Draft Guidelines to the Lobbying Act*, at www.nylobby.state.ny.us/draftguidelines.html (rev. Dec. 28, 2005).

According to press reports, the staff began enforcing the calendar-year limit even before the official regulation changed. See N.Y. Ethics Comm’n Adv. Op. 05-04 (Apr. 5, 2005). Staff with the lobbying commission have suggested that the new rule could be adopted at the commission’s March 14, 2006 meeting. Staff also indicated that they were unsure whether this change would be retroactive (*i.e.*, if a lobbyist has already given \$75 worth of gifts to a public official in 2006 under the old version of the rule, it is unclear whether that lobbyist would be prohibited from giving any additional gifts to that public official in 2006). ■

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Details of Abramoff Indictment Should Cause Corporate PACs to Redouble Compliance Efforts

Corporate PACs continue to be legal and effective tools to pool employee political contributions for the common purpose of supporting candidates for public office. Nonetheless, the recent plea agreement entered into between the federal government and lobbyist Jack Abramoff demonstrates how political contributions can be construed as impermissible bribes in certain circumstances and how corporate PACs should avoid such circumstances in the future.

The plea agreement states that Abramoff “engaged in a course of conduct through which . . . [he] . . . offered and provided a stream of things of value to public officials in exchange for a series of official acts.” The plea agreement describes the following “things of value:”

Campaign contributions to campaign committees and to political action committees and organizations, including, but not limited to, the following: \$4,000 in contributions to Representative #1’s campaign committee in 2000; and a \$10,000 contribution to the National Republican Campaign Committee (NRCC) in 2000 at Representative #1’s request.

To avoid even the appearance that a corporate PAC is being used to bribe public officials, PAC managers should take all necessary precautions to stay within the letter and spirit of federal campaign finance laws. Here are three practical suggestions to this effect:

First, do not solicit contributions to a corporate PAC by indicating that contributions will be used to obtain specific legislative results or other official action. For example:

- Solicitation materials should emphasize that PAC contributions will be made to support candidates who understand and share the views of the corporation on general issues of importance to it.
- Solicitation materials should not link PAC contributions to specific legislation or any official act and should not indicate that PAC contributions are used to “buy” access to officeholders.

Second, do not make PAC contributions to candidates or officeholders with the understanding that the contributions are in exchange for particular official action. For example:

- Do not deliver PAC contributions with a cover letter stating that the contributions are provided with the expectation of, or as a “thank you” for, some particular official act.
- Do not advise officeholders that PAC contributions will be withheld because of some specific official act taken or not taken by an officeholder.

Third, follow all the Federal Election Commission rules on PAC fundraising and make sure you know who is acting and saying things on behalf of the PAC during the solicitation and disbursement processes. ■

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FEC Cancels Conferences

Blaming budgetary shortfalls, the Federal Election Commission (FEC) has cancelled the remaining campaign finance conferences through Summer 2006 (and the end of its fiscal year). The FEC usually hosts several conferences per year to address the particular issues faced by trade associations, business corporations and their PACs. According to a March 2, 2006, press release, the FEC intends to offer other educational programs to assist candidates and committees in complying with the byzantine rules and interpretations thereof. The FEC advises interested persons to check its website at www.fec.gov for the latest developments. ■

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Employment Benefits and Campaign Finance Violations Included in “Duke” Cunningham Bribery Scandal

On February 23, 2006, Mitchell Wade, the former principal owner and chief executive officer of government contractor MZM, Inc., signed a guilty plea in which he admitted to bribing former Congressman Randy “Duke” Cunningham, providing improper benefits to U.S. Department of Defense officials and employees and funding political contributions made in the name of another.

The bribery of former Congressman Cunningham has been widely reported, and on March 3, 2006, the former Congressman received more than eight years in prison for his part. The other two violations by Mr. Wade, however, have received less attention though they involve equally serious criminal violations.

First, Mr. Wade admitted to conspiring to defraud and deprive the U.S. Department of Defense of its right to honest and faithful services. The plea agreement states:

Wade provided benefits to [an unnamed] Official and other DoD employees in order to influence, induce and otherwise improperly cause them to show bias toward MZM in the discharge of their official duties, in ways that would enrich MZM and Wade Official and other DoD employees accepted these benefits, while having the capacity to exercise their official duties in ways that would enrich MZM and Wade.

The plea agreement states that the benefits included, among other things, jobs at MZM for the official and his son.

Second, Mr. Wade admitted to making unlawful “straw” political contributions. The plea agreement states:

Wade devised and engaged in a scheme to knowingly and willfully violate the [campaign finance laws] by reimbursing MZM employees and their spouses for contributions to campaigns for the United States Congress, including Representative A’s Campaign and Representative B’s Campaign. Wade targeted these two campaigns because Wade believed that Representative A and Representative B had the ability to request appropriations funding that would benefit MZM.

Press reports have indicated that the unnamed Representatives are Katherine Harris of Florida and Virgil Goode of Virginia. Press reports also have indicated that Representatives Harris and Goode were not aware of the illegal contributions and have not been accused of any wrongdoing. ■

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WRF’s Upcoming Speeches

March 11, 2006

Speaker : *Jan Witold Baran*
Presentation: Lobbying and Campaign Finance Reform
Conference: National Association of Realtors Issues Conference
Location: Miami, FL

March 15, 2006

Speaker : *Jan Witold Baran*
Presentation: House Ethics Rules and How They Apply to Congressional Spouses
Conference: Congressional Club’s Monthly Luncheon for Spouses of Members of the U.S. House of Representatives
Location: Washington, DC

September 14-15, 2006

Co-Chair : *Jan Witold Baran*
Conference: Practising Law Institute’s Corporate Political Activities 2005: Complying with Campaign Finance Lobbying & Ethics Laws
Location: Washington, DC
Information: www.wrf.com/events

Don't Forget the Aggregate Limits That Apply to Your Federal Contributions

Caught up in the excitement of another important election year when the red will be separated from the blue, many individual contributors forget or misinterpret the aggregate contribution limits that apply to their federal contributions over a two-year election cycle (e.g., 2005-2006). Below is a summary of the rules that must be followed by individuals so that even normal contributions do not fall afoul of the Federal Election Commission (FEC).

First, contributions made to federal candidates between January 1, 2005, and December 31, 2006, may not aggregate to more than \$40,000. In addition, any

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senatorial campaign contributions made before January 1, 2004, to Senate incumbents up for election in 2006 must be added to this total (based upon a now-changed quirk in the FEC regulations).

Second, contributions made between January 1, 2005 and December 31, 2006, to all political party committees and to all federal PACs combined may not exceed \$61,400. Importantly, there is an applicable sublimit within this figure that also must be observed: Despite annual limits, contributions to federal PACs and state and local (but not national) political party committees may not exceed \$40,000 in the aggregate for the 2005-2006 election cycle.

Putting the two main aggregate limits together, it is clear that the ultimate aggregate limit for the election cycle

is \$101,400. Of course, the per-election and per-year limits are also important since the aggregate limits simply overlie the smaller limits. For individuals, these limits are as follows:

- Contributions to federal candidates: \$2,100 per election.
- Contributions to federal PACs: \$5,000 per calendar year.
- Contributions to state and local party committees: \$10,000 per calendar year combined.
- Contributions to national political party committees: \$26,700 per calendar year. ■

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House to Consider Freedom for the Internet

On March 9, 2006, the House Administration Committee unanimously reported out the Online Freedom of Speech Act (HR 1606) sponsored by Rep. Jeb Hensarling (R-TX). This bill proposes to exempt communications over the Internet from the definition of “public communications” found in the Federal Election Campaign Act of 1971, as amended. The bill’s sponsors expect the change to offer greater protection to political communications made over the Internet, especially by bloggers. The full House will likely consider the bill in the next few weeks. ■

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IRS Provides 501(c)(3)s with Guidance in Area of Political Compliance

Accompanying a report on political activity by tax-exempt organizations, the Internal Revenue Service (IRS) on February 24, 2006, also provided further guidance to 501(c)(3) charity organizations to help them avoid political pitfalls. The IRS provided such guidance because, under the Internal Revenue Code, 501(c)(3)s are prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of or in opposition to any candidate for elective public office. A charity's undertaking prohibited activity can lead to a loss of its tax-exempt status, among other things.

Despite the prohibition on political activity, there are several activities in the political world that do not count as prohibited activities under the Code. For one thing, charities may conduct certain non-partisan voter education activities, non-partisan voter registration activities and non-partisan get-out-the-vote activities. Fact Sheet FS-2006-17 from the IRS addresses these issues as well as the imputation to a charity of political activity by the

charity's leader or leaders and the undertaking of business activity with candidates, parties and PACs. Through FS-2006-17, the IRS also provides examples with respect to candidate appearances at charity events, public forums and issue advocacy. The issue advocacy section builds upon previous advice issued by the IRS with respect to all types of non-profits and not just charities. Finally, the IRS guidance discusses the thorny issue of voter guides as well as issues raised by a charity's website (where links and other communications are cheaply available to the world). ■

Guidance from the IRS can be found at www.irs.gov/newsroom/article/0,,id=154780,00.html.

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Upcoming Dates to Remember

March

03/15/06

IRS Form 1120-POL due for all federal and state PACs and other political organizations having more than \$100 in taxable income (e.g., interest and dividends)

03/20/06

March monthly FEC report due for federal PACs filing monthly

03/20/06

March monthly IRS Form 8872 due for nonfederal PACs filing monthly*

April

04/15/06

Quarterly FEC reports due from House and Senate campaign committees

04/15/06

Quarterly FEC reports due for federal PACs filing quarterly

04/15/06

Quarterly IRS reports due for nonfederal PACs filing quarterly*

04/20/06

April monthly FEC report due for federal PACs filing monthly

04/20/06

April monthly IRS Form 8872 due for nonfederal PACs filing monthly*

Deadlines are not extended if they fall on a weekend.

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

Lobbying Reform

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following the election of a new majority leader and discussions with Members of the House Republican Conference, House Republicans appear to be moving away from the concept of a total ban, but it is still too early to know for sure. A bill advanced by the House and Senate Democratic leadership would ban all privately-financed travel except for trips paid for by certain organizations that do not use or employ lobbyists. Some other proposals currently on the table would require that all travel be approved in advance by the appropriate House or Senate Ethics Committees and that lawmakers pay the charter rate for the use of a corporate jet.

A number of the current proposals, including the McCain-Shays, Reid (S 2180) and Pelosi bills (HR 4682) would require Members of lobbying coalitions to disclose their identities. Additionally, these proposals would require disclosure of grassroots lobbying activities and require reports for large grassroots expenditures. Efforts have been proposed to create an independent commission to review

lobbyist reports but have generally been met with fierce opposition on both sides of the aisle, including a defeat in Senate committee. Several of the legislative proposals also include campaign finance reform, with curbing the role of 527 organizations a chief focus of several Republican efforts. Other areas where there is general agreement among the leading Republican and Democratic bills include: (1) extending the post-employment restrictions on lobbying from one year to at least two years, (2) requiring Members to disclose prospective employment negotiations and (3) increasing the penalties for violators.

Although the final result of all of these lobbying reform efforts is unclear, additional action is anticipated on several of these proposals in the coming weeks. ■

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