

Government Contractors Can Breathe a Sigh of Relief (Sort of) – Congress Passes Two Different Bills Limiting Campaign Finance Disclosure by Government Contractors

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In April 2011, a draft Presidential Executive Order was leaked that would have required federal government contractors, as well as their executives, to disclose their political spending. As word spread of the proposal, it came under close scrutiny. Congress held hearings into the matter, and, at a May 12, 2011, joint hearing of the House Committee on Small Business and the House Committee on Oversight and Government Reform, Election Law & Government Ethics Practice partner Mark Renaud testified in opposition to the draft Executive Order.

To date, President Obama has not issued any such Executive Order. At the end of 2011, ostensibly in response to this draft Executive Order, Congress passed two bills that included provisions that would limit campaign finance disclosure by federal contractors. The provisions in these two bills, however, are slightly different.

First, President Obama signed into law the Fiscal Year 2012 omnibus appropriations bill, P.L. 112-74, on December 23, 2011. This bill funds most of the federal Government for Fiscal Year 2012 and includes a provision prohibiting the use of appropriated funds to require the disclosure of federal campaign finance activity by an entity submitting an offer on a federal contract. The restriction applies to the disclosure of contributions, expenditures, independent expenditures or disbursements for electioneering communications, as these terms are defined under federal campaign finance law. This provision does not, however, address disclosure during the performance of a contract.

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Second, President Obama signed into law the National Defense Authorization Act for Fiscal Year 2012, P.L. 112-81, on December 31, 2011. The defense authorization bill prohibits agency heads in the DoD and related agencies from requiring a contractor to disclose campaign finance activity during the contract solicitation process. Unlike the omnibus appropriations bill, the defense authorization bill also prohibits campaign finance disclosure during the performance of the contract. As with the omnibus appropriations bill, the restriction applies to contributions, expenditures, independent expenditures and disbursements for electioneering communications, as these terms are defined under federal campaign finance law.