

New Campaign Finance Reform and Disclosure Measures Enacted In Multiple States (WA, NY, UT, AZ)

May 2018

March and April were significant months for new campaign finance contribution and reporting measures that were passed in various states throughout the country this year, including specifically the states of Washington, New York, Utah, and Arizona. These recent developments are summarized respectively by state below.

Washington

Together with a number of other campaign-related laws, on March 19, 2018, Washington Governor Jay Inslee signed into law the Disclose Act, which has the stated purpose of increasing transparency in Washington elections. This donor disclosure law provides that a nonprofit group contributing at least \$25,000 to election campaigns must publicly report: 1) its largest donors; 2) candidates or ballot measures the organization supports or opposes; and 3) identifying information about the organization's officers. These organizations are now also required to register with the state of Washington's Public Disclosure Commission, effective January 1, 2019. These measures are purportedly designed to bring about a more informed electorate.

New York

On April 18, 2018, New York Governor Andrew Cuomo signed the Democracy Protection Act into law, creating new disclosure requirements for social media political advertisements, as well as new restrictions on foreign entities' election activities. Specifically, the law requires any buyer of election ads on Facebook, Twitter, or other social media platforms to identify who paid for them, similar to

Authors

D. Mark Renaud
Partner
202.719.7405
mrenaud@wiley.law

Practice Areas

Election Law & Government Ethics

purchasers of TV and radio ads. These individuals and entities will also now be required to register with the New York State Board of Elections as an independent expenditure committee. The Board in turn must preserve the online advertising content and information for a period of five years.

According to a press release from Governor Cuomo, the law was passed to protect the integrity of both state and national elections from foreign interference. Governor Cuomo stated: "We have a crisis in our election system. We now know that our election system was influenced and tampered with by foreign entities. And it's not partisan rhetoric, it's not a science fiction novel. We know it. Russia was involved. Special prosecutor Mueller indicted 13 Russians." Accordingly, the law also prevents foreign entities from purchasing political advertisements or from forming independent expenditure committees. These measures are part of a larger package of changes (like banning outside income for legislators) that Governor Cuomo has repeatedly proposed but which have not passed due to resistance from Republicans who control the majority in the state Senate. Of these proposals, only the social media ads requirements and foreign entity restrictions successfully passed.

Utah

On March 16, 2018, Utah Governor Gary Herbert signed House Bill 320 (Campaign Finance Modifications), which expanded the existing prohibition on campaign contributions to legislators while the Legislature is in session to the lieutenant governor, attorney general, state auditor, or the state treasurer. This prohibition applies to any person, includes contracts, promises, or agreements to make a campaign contribution. The new law also prohibits these contributions to the personal campaign committee of any of the above covered individuals, or to a PAC controlled by those individuals. These prohibitions became effective immediately following Governor Herbert's signature.

Arizona

On April 5, 2018, Arizona Governor Doug Ducey signed a new campaign finance law that blocks local so-called "dark money disclosure" ordinances from requiring nonprofit groups contributing to local elections to register as PACs and report their donors.

According to the Arizona Capitol Times, Governor Ducey explained that while he believes in election transparency, this newly passed law reflects his view that people should be able to contribute anonymously to campaigns: "I think people have a First Amendment right as well to participate and not be bullied," he said. Advocates of this law have cited U.S. Supreme Court precedent, including its 1958 ruling in *NAACP v. Alabama*, which affirmed individuals' constitutional rights of anonymous speech and association.

The new law raises an important question likely to play out in the coming months: how will this legislation be applied to Arizona's "charter cities," which retain authority under the state constitution over matters of strictly local concern? Earlier this year, for example, residents of the charter city Tempe, Arizona, voted to enact a "dark money" disclosure law that requires reporting of campaign donors who spend more than \$1,000 on a local election. And twice in the past decade, the Arizona Supreme Court has affirmed the rights of charter cities to regulate their local elections without state oversight. So there remains the potential for future litigation

as Arizona implements the new law.