

Ninth Circuit Ruling Continues Trend of Adding Sarbanes-Oxley Charges to Campaign Finance Violations

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A U.S. Court of Appeals for the Ninth Circuit panel recently upheld the convictions of defendants involved in making prohibited foreign national contributions in connection with San Diego local elections. Notably, the court also upheld the defendants' convictions under the false records provision in the Sarbanes-Oxley law with respect to false campaign finance reports that were filed as a result of defendants' coverup of the prohibited contributions. The decision continues and extends a trend of courts upholding federal prosecutors' expansive applications of Sarbanes-Oxley to campaign finance violations.

Jose Azano, a foreign national, and his co-conspirators sought to influence San Diego local politicians during the 2012 election cycle with campaign contributions. To effectuate these contributions, the conspirators concealed Azano's identity using straw donors. In addition, Azano paid a campaign vendor to provide services free of charge to the politicians, resulting in in-kind contributions. Ravneet Singh, the vendor's CEO, misrepresented to the politicians that he was working for them "voluntarily" or vaguely stated that his bills had been "taken care of."

These schemes not only violated the federal ban against foreign nationals making contributions in connection with U.S. elections, but they also caused the candidates to fail to report the in-kind contributions and Azano as the true source of the contributions. Azano and Singh were convicted of, among other things, falsifying records in violation of Sarbanes-Oxley.

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Appellants appealed the verdict on all counts, raising multiple arguments for reversal. Focusing on the expansive application of the Sarbanes-Oxley provision, appellants argued that the prosecutors did not establish the elements of the provision. Moreover, appellants argued that the federal government did not have jurisdiction because the provision is meant to cover federal conduct, and appellants' conduct pertained exclusively to a local election and violated only state and local law.

Section 1519 of Sarbanes-Oxley makes it a crime for anyone to "knowingly alter[], destroy[], mutilate[], conceal[], cover[] up, falsif[y], or make[] a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States."

With respect to his conviction, Singh argued that he did not personally prepare any of the campaign finance reports that provided the hook for Sarbanes-Oxley to apply. However, the Ninth Circuit held that Singh was still liable because Section 2(b) of Sarbanes-Oxley prohibits anyone from indirectly violating any of the law's provisions, and here Singh had indirectly caused the candidates receiving the in-kind contributions to file false reports.

As for jurisdiction, the court agreed that violations of state and local campaign finance reporting laws, in and of themselves, do not fall within the federal government's jurisdiction. However, the FBI investigates criminal violations of the Federal Election Campaign Act (FECA), which prohibits foreign nationals from contributing in connection with any federal, state, or local election. Thus, the court held that the fact that the reports were filed pursuant to state law has no bearing since they were sought in connection with the investigation of a federal crime - foreign national contributions.

This last issue further expands the reach of the Sarbanes-Oxley provision, which, until now, has only ever been applied to federal reporting violations, and only in two other cases: *U.S. v. Benton* (U.S. Court of Appeals for the Eighth Circuit, 2018) and *U.S. v. Rowland* (U.S. Court of Appeals for the Second Circuit, 2016). In those cases, the courts held that a defendant may properly be convicted for violations of the FECA and Sarbanes-Oxley with respect to federal campaign finance reports. Here, by contrast, the defendants' Sarbanes-Oxley violations occurred in connection with local elections and violated state and local reporting requirements, while also violating the federal ban on foreign national contributions.

In its 2015 ruling in *Yates v. U.S.*, the U.S. Supreme Court held that applying Sarbanes-Oxley to a fisherman who had thrown illegally caught fish overboard to evade federal inspectors was a bridge too far. The Court warned against "cut[ting Section] 1519 loose from its financial-fraud mooring to hold that it encompasses any and all objects, whatever their size or significance, destroyed with obstructive intent." Nonetheless, the recent decisions in the lower courts demonstrate that Sarbanes-Oxley, which was enacted in 2002 in the wake of the Enron accounting scandal, continues to creep into campaign finance prosecutions. Regardless of whether one is on the giving or receiving end of a campaign contribution, this broad application of the financial fraud law adds another layer of potential legal liability.

The Ninth Circuit decision is *U.S. v. Singh*, No. 17-50337 (9th Cir. May 16, 2019).

The Sixth Circuit decision is *Schickel v. Dilger*, Nos. 17-6456/6505 (6th Cir. May 30, 2019).

NOTE: Andrea Martinez, a 2019 Wiley Rein summer associate, co-authored this article with Mr. Wang.