

Lobbying, Campaign Finance and Ethics – What Are the New Risks and Pitfalls for Corporations?

SPEAKERS:

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Presentation Outline

- Introduction
- At the Federal Level
 - Lobbying
 - Campaign Finance
 - Ethics
- In the States
 - Key Developments in California, the District of Columbia, Georgia, New York, North Carolina and Texas

Introduction

At the Federal Level

Lobbying

Lobbying Disclosure Act

- LDA Guidance
- DOJ Enforcement
 - Unprecedented complaint filed
- GAO Audits
 - New survey to be completed within five days of receiving audit notification
- GAO Report
 - Most recent report reveals steady increase in enforcement actions

Campaign Finance

FOCUS: Reviewing the Basics

- Fundraising
 - The Rules for Fundraising for PACs and Candidates Are Very Different
 - A corporation can use corporate resources to raise funds for its PAC.
 - No corporate resources can be used to raise money for a candidate.

FOCUS: Reviewing the Basics

- Fundraising
 - PACs and SuperPACs
 - PACs, whether connected or non-connected, may contribute funds to candidates. But they must follow contribution and expenditure limits.
 - SuperPACs may NOT contribute to candidates. They may, however, accept unlimited and corporate funds.
 - Their expenditures must be “independent” from the targets of their activities.

FOCUS: Reviewing the Basics

- What Does Independent Mean?
 - Independent means not coordinated.
 - 3 prong test: Payment, Content & Conduct
 - Conduct is where the trouble is:
 - Was the communication created, produced or distributed at the request or suggestion of a candidate, candidate's agent or political party?
 - Was the candidate, candidate's agent or political party materially involved in decisions regarding the means or mode of communication?
 - Was the communication created, produced or distributed after substantial discussions about it?
 - Did the person paying for the communication employ a common vendor to create, produce or distribute the communication?
 - Did the person previously employed or an independent contractor of candidate's campaign committee use or convey information about the candidate's campaign?

FOCUS: Reviewing the Basics

- Fundraising
 - Social Welfare Organizations: Increased Scrutiny

FOCUS: Reviewing the Basics

- Avoiding the Appearance of Offering Campaign Contributions for Official Acts
 - In order to avoid even the appearance of impropriety, care should be taken to avoid the suggestion that a contribution is given in exchange or as a reward for official action.
 - Pending legislation should not be discussed in the context of a contribution, as the conversation could be misinterpreted as suggesting a quid pro quo.
 - A gift or a campaign contribution should never be made as a way of saying “thank you” for prior legislative action. This could suggest an illegal gratuity.

Supreme Court of the United States

- *McCutcheon v. FEC*
- *Wagner v. FEC*
- *Stop This Insanity, Inc. Employee Leadership Fund, et al. v. FEC*
- *Van Hollen v. FEC*

Executive Branch

- Federal Election Commission
 - New commissioners onboard; period of productivity expected
 - Other internal issues brought to light
 - Report: candidate and party fundraising steady; PAC and SuperPAC fundraising rising sharply
 - Advisory Opinions

Executive Branch

- Federal Communications Commission
 - Status of rules regarding political advertising

Executive Branch

- Internal Revenue Service
 - Ongoing issue of disclosure by 501(c)(4) and 501(c)(6) organizations
 - IRS issues “Charting a Path Forward at the IRS”

FOCUS: Disclosure of Corporate Political Activities

- Status of disclosure rules
- Ongoing efforts by outside groups and shareholders to require disclosure
- Status of self-disclosure by corporations

Congress

- CRS Report on political activity by charities
- Van Hollen continues disclosure fight
- DISCLOSE Act of 2013 – H.R. 148
- Update on political intelligence – STOCK Act

Ethics

Congress

- House Ethics Committee activities

In the States

California

California

- Fair Political Practices Commission activity
- New rules enacted:
 - Disclosure and enforcement of conflict-of-interest rules for public officials
 - Campaign finance changes stalled

District of Columbia

District of Columbia

- New Board of Ethics and Government Accountability activities

Georgia

Georgia

- Two ethics bills signed into law in May
 - Both effective January 1, 2014
 - Restore rulemaking powers to the Government Transparency and Campaign Finance Commission
 - Amend rules regarding who qualifies as a lobbyist
 - Set a gift limit of \$75 per lobbyist
 - Require more campaign transparency for local races
 - Provide for public notice of campaign contributions given to members of the General Assembly leading up to the start of the legislative session

New York

New York

- Impact of *McCutcheon* -- \$150,000 aggregate limit on contributions by individuals

North Carolina

North Carolina

- New rules enacted
 - Annual fees on lobbyists increased
 - Electronic registration and reporting
 - Contribution limits
 - Lobbyist bundling
 - Disclaimers

Texas

Texas

- Texas Ethics Commission activities
 - Political contributions by text message

Speaker Biography



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Thomas J. Spulak

Tom Spulak has over twenty-five years of experience in Washington including previously serving as General Counsel to the U.S. House of Representatives and as Democratic Staff Director and General Counsel of the House Rules Committee. Mr. Spulak is a Partner and Practice Group Leader of the Government Advocacy and Public Policy group and in his current practice, he assists clients with legislative, regulatory and executive branch solutions to a wide range of legal and business matters, particularly those emphasizing congressional rules and procedure, congressional tax, budget and appropriations, congressional ethics issues and federal election law.



Speaker Biography



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Claudia Hrvatin is an Associate in the Government Advocacy and Public Policy group and currently counsels firm clients on federal and state ethics and election law matters. With nearly 20 years of experience in Washington, she also represents public and private entities on a variety of legislative and regulatory issues before the federal government, ranging from aviation and healthcare to intellectual property and tax. Prior to entering private practice, Ms. Hrvatin served for five years on Capitol Hill, advising in the areas of agriculture, appropriations, immigration, parliamentary procedure and technology.

