



# Political Law Update

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

---

**Ki P. Hong**

Partner / Washington, D.C.  
202.371.7017  
ki.hong@skadden.com

**Kenneth A. Gross**

Partner / Washington, D.C.  
202.371.7007  
kenneth.gross@skadden.com

---

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

One Manhattan West  
New York, NY 10001  
212.735.3000

1440 New York Avenue, N.W.  
Washington, D.C. 20005  
202.371.7000

## **H.R. 1 Passes in House, Under Consideration in Senate**

On March 3, 2021, the U.S. House of Representatives passed the For the People Act (H.R. 1), a sweeping package of reforms to federal voting, campaign finance and government ethics laws. Given that all Republican senators are widely expected to oppose its passage, in order for the companion bill (S. 1) to become law, Democrats would need all 50 members of their caucus to first vote to reform or outright remove the filibuster and then to vote in favor of the bill. The likelihood of this occurring appears minimal, given that Democratic Sens. Joe Manchin of West Virginia and Kyrsten Sinema of Arizona have expressed opposition to weakening the filibuster, with Sen. Manchin also criticizing the idea of passing S. 1 on a party-line vote. However, even if the Senate does not pass S. 1, there could be sufficient Republican support to pass portions of the bill as stand-alone measures with the requisite 60 votes needed to defeat a filibuster. We will therefore continue to track the bill's progress. Below, we highlight some of the more notable changes that the bill would enact.

## **Increased Disclosure of Donors to Politically Active Organizations**

H.R. 1 seeks to address “dark money” concerns by expanding disclosure requirements for certain politically active organizations that currently are able to shield the identity of their donors. Under current law, certain organizations, such as 501(c)(4) “social welfare” organizations and 501(c)(6) trade associations, are required to file reports only when running certain ads that meet the narrow definitions of an independent expenditure or an electioneering communication. Even if they run these ads, these organizations only need to disclose the identity of donors who contributed for the purpose of furthering such ads.

H.R. 1 would expand the triggers for disclosure to include (1) running ads that promote or attack a candidate, even if they fall short of expressly advocating the candidate's election or defeat; (2) running ads regarding federal judicial nominations; and (3) certain transfers of funds to politically active organizations, including where there is an understanding that the recipient will run covered ads. Moreover, the bill would require organizations triggering this disclosure to identify all donors (regardless of why they donated) that contribute \$10,000 or more during an election cycle, unless the donor specifically restricted their funds from being used for political ads or the organization funded such ads from a dedicated account, provided that all contributors to that dedicated account were disclosed.

# Political Law Update

---

This change would have implications for individual and corporate donors who contribute to these types of politically active organizations with an understanding that their identity as donors would not be made public.

## **Ban on Foreign National Political Contributions**

Under the Federal Election Campaign Act of 1971, as amended, and Federal Election Commission (FEC) regulations, foreign nationals have long been prohibited not only from making federal, state or local political contributions, but also from participating in decisions regarding such contributions. H.R. 1 generally does not change the status quo, but instead codifies existing FEC regulations and opinions regarding this type of involvement in candidate elections. However, the bill would extend this foreign national prohibition to apply to spending on state and local ballot measures, which is currently not covered under the statute or the relevant interpretations or guidance.

Furthermore, the bill would require the CEO (or the highest-ranking official) of any corporation, labor organization, LLC or partnership that makes a political contribution or expenditure to annually certify to the FEC, under penalty of perjury, that no foreign national participated in any decision regarding the making of a contribution or expenditure by that entity. A corporate PAC would be required to file a similar annual certification, in which it would be required to certify that no foreign national participated in any decision regarding the making of a contribution or expenditure by the PAC, that no foreign national manages the PAC, that any members of the board of directors of the corporation who are foreign nationals abstained from voting on matters concerning the PAC, and that the PAC does not solicit or accept recommendations regarding contributions and expenditures from foreign nationals.

The original version of H.R. 1, introduced in the previous Congress, contained a provision that would have expressly extended the prohibition to domestic subsidiaries of foreign corporations and even domestic corporations with a certain percentage of foreign shareholders. The provision, however, was later removed from the bill. Given that the current version of H.R. 1 largely codifies existing FEC regulations and opinions, it appears unlikely that the bill would impact the current ability of such corporations to engage in political spending, provided that they observe the current guidance requiring foreign nationals to be insulated from any decisions regarding that spending.

## **Repeal of Budget Rider Prohibiting SEC Political Disclosure Rulemaking**

In December 2015, Congress passed the Consolidated Appropriations Act of 2016, which contained a budget rider prohibiting the use of federally appropriated funds by the Securities and

Exchange Commission (SEC) to finalize disclosure rules regarding political activity by publicly traded corporations. The budget rider, which was inserted into subsequent appropriations bills, remains in place today. H.R. 1 would repeal the budget rider, clearing the way for a political spending disclosure rule, which SEC Chairman Gary Gensler expressed interest in pursuing during his confirmation hearing.

## **Corporate PAC Governance Disclosure**

H.R. 1 would direct the FEC to collect, on an ongoing basis, information about the governance of corporate PACs, including (1) the extent to which corporate PACs have bylaws, (2) the extent to which corporate PACs that have bylaws also have boards of directors, and (3) the characteristics of PAC board members, including their relationship to the corporation operating the PAC. The language of the bill appears to require the FEC to collect this information via a PAC's statement of organization, which is publicly available. Accordingly, any new corporate PAC, or an existing corporate PAC amending its statement of organization, would be required to publicly disclose this information regarding its governance structure.

## **Expansion of Lobbyist Registration Requirements**

H.R. 1 would significantly expand the scope of individuals required to register as federal lobbyists under the Lobbying Disclosure Act. Currently, only those individuals who engage in more than one direct communication with a covered federal official and who spend 20% or more of their time on lobbying activities in a three-month period are required to register.

H.R. 1 would (1) lower the threshold for time spent on lobbying activities in a three-month period from 20% to 10% and (2) expand the definition of a "lobbying contact" to include certain advice and counsel provided to another person for that person's lobbying contacts. Accordingly, numerous individuals who support lobbying efforts "behind the scenes" would likely be required to register, even if they never personally engaged with a covered official.

## **FARA: Expansion of the Statute's Application to Activities Outside the US**

The Foreign Agents Registration Act (FARA) generally requires an entity to register as a foreign agent if it is acting on behalf of a foreign principal and engaged in, among other activities, efforts to influence the U.S. public or U.S. officials regarding certain matters. The law expressly covers those entities that are engaging in this activity "within the U.S." H.R. 1 would codify the Department of Justice's current informal position that the law covers those entities that are engaging in such activities directed into the U.S. even when they are located outside the U.S.

# Political Law Update

---

## **FARA: Disclosure of Gifts and Other Things of Value**

H.R. 1 would require a foreign agent registered under FARA to disclose any thing of financial value (including a gift, profit, salary, favorable regulatory treatment, or any other direct or indirect economic or financial benefit) that it knows its foreign principal has given to a federal or state official beginning 60 days prior to the date that the agent incurred an obligation to register and continuing throughout its registration.

## **FARA: Civil Penalties**

H.R. 1 would authorize civil penalties, in addition to existing criminal penalties, for failure to file timely and complete filings, and prohibit foreign principals from paying their agents' civil penalties.

## **Impact on State Voting Laws**

In the wake of the 2020 election, state legislatures across the country are considering legislation that would impact current voting laws. Already this year, more than 400 voting bills have been introduced, and some have already been enacted into law — most notably S.B. 202 in Georgia. These bills address a wide range of issues concerning voting, including, but not limited to, early voting, absentee voting, voter registration and voter identification.

H.R. 1 would make a number of changes that would affect — and in some cases preempt — state voting laws. Some of these changes include:

- requiring states (other than those states in which all voting is done by mail) to provide for in-person early voting for federal elections for at least 15 days before the date of an election and for at least 10 hours each day;
- requiring states (other than those states in which all voting is done by mail) to provide for no-excuse mail-in voting for federal elections;
- requiring states in which people must be registered to vote to offer same-day voter registration for federal elections;
- requiring states in which people must be registered to vote to adopt automatic voter registration for federal elections; and
- requiring states in which people must present identification to vote (either in person or by mail) to allow people who lack identification (other than first-time voters who registered by mail) to vote in federal elections if they provide a sworn written

statement, signed under penalty of perjury, attesting to their identity and their eligibility to vote.

## **Independent Redistricting Commissions**

H.R. 1 would require states to establish independent citizen commissions to carry out congressional redistricting, a process that is carried out currently in most states by the legislature, subject to the governor's approval. The commissions would be composed of 15 members, comprising five Democrats, five Republicans and five independents. The commissions would be required to draw House maps based on the following criteria (in order of priority): (1) compliance with the Constitution, including, but not limited to, its requirement that districts have approximately the same population; (2) compliance with the Voting Rights Act (which, among other things, prohibits racial discrimination in redistricting); (3) compliance with additional safeguards against diluting the representational influence of racial minorities; and (4) respect for political subdivisions and "communities of interest" (*i.e.*, groups with shared ethnic, racial, economic, tribal, social, cultural, geographic or historic identities). The commissions would be prohibited from drawing maps that unduly favor or disfavor any political party, in addition to being prohibited from considering the residence of any House member or candidate. In order for a map to pass, it would need the support of a majority of commissioners, including at least one Democrat, one Republican and one independent. If a commission failed to pass a map, a three-judge federal district court panel would be tasked with drawing the map instead.

The bill exempts the following states from having to establish an independent redistricting commission: States that will have a single congressional district for the upcoming decade, states that already have independent redistricting commissions (provided that the commissions satisfy certain conditions) and Iowa (provided that the state passes the House map drawn by the state's Legislative Services Agency). Notably, the bill does not exempt states with other types of redistricting commissions (such as New Jersey, which has a bipartisan redistricting commission composed of political appointees) and states with other types of redistricting guardrails (such as Connecticut and Maine, which require legislative supermajorities to pass new maps).

Accordingly, if H.R. 1 were to be enacted as currently constructed, it would have a significant impact on congressional redistricting and the party-line breakdown of representation in House.

# Political Law Update

---

## Additional Contacts

**Melissa L. Miles**

Counsel / Washington, D.C.  
202.371.7836  
melissa.miles@skadden.com

**Matthew Bobys**

Counsel / Washington, D.C.  
202.371.7739  
matthew.bobys@skadden.com

**Charles M. Ricciardelli**

Counsel / Washington, D.C.  
202.371.7573  
charles.ricciardelli@skadden.com

**Tyler Rosen**

Counsel / Washington, D.C.  
202.371.7035  
tyler.rosen@skadden.com

**Karina Bakhshi-Azar**

Associate / Washington, D.C.  
202.371.7365  
karina.bakhshi-azar@skadden.com

**Shayla K. Parker**

Associate / Washington, D.C.  
202.371.7534  
shayla.parker@skadden.com

**Theodore R. Grodek**

Associate / Washington, D.C.  
202.371.7262  
theodore.grodek@skadden.com

**Sam Rothbloom**

Associate / Washington, D.C.  
202.371.7354  
sam.rothbloom@skadden.com

**Kelvin Reese**

Head Political Reports Analyst  
202.371.7498  
kelvin.reese@skadden.com

**Minkeum Oh**

Senior Political Reports Analyst  
202.371.7499  
minkeun.oh@skadden.com

**Jennifer Shaw**

Senior Political Reports Analyst  
202.371.7426  
jennifer.shaw@skadden.com

**Brien Bonneville**

Senior Political Compliance Analyst  
202.371.7243  
brien.bonneville@skadden.com

**John Mannion**

Political Reports Analyst  
202.371.7559  
john.mannion@skadden.com