

Political Law

Compliance and Investigations Update

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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

Charles M. Ricciardelli

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

Tyler Rosen

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

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One Manhattan West
New York, NY 10001
212.735.3000

1440 New York Ave., NW
Washington, DC 20005
202.371.7000

320 S. Canal St.
Chicago, IL 60606
312.407.0700

Managing Pay-to-Play Risk When Federal Officials Run for State Office

In recent weeks, Congresswoman Elise Stefanik, R-N.Y., announced her campaign for governor of New York and Congressman Eric Swalwell, D-Calif., announced for governor of California, joining several federal officials already running for state office in 2026, including Rep. Byron Donalds, R-Fla., Rep. Nancy Mace, R-S.C., and Sen. Tommy Tuberville, R-Ala. Contributions to support such campaigns can implicate both state and federal pay-to-play rules. This can result in a situation where even a small contribution to a state campaign inadvertently triggers severe penalties for a company, including a multiyear ban on contracting with, or receiving compensation for contracting with, the government.

For example, such contributions will implicate federal pay-to-play rules for some companies, including SEC Rule 206(4)-5 (for investment advisers), MSRB Rule G-37 (for municipal advisors and broker-dealers), CFTC Rule 23.451 (for swap dealers), SEC Rule 15Fh-6 (for security-based swap dealers) and FINRA Rule 2030 (for FINRA members engaged in soliciting governments for investment advisory services). Even contributions to the federal campaign committee of a state candidate may raise questions under these rules.

At the same time, contributions to state candidates may also trigger state-level rules, which often have varying triggers, thresholds, and penalties. For instance, the California State Teachers' Retirement System (CalSTRS) generally bars companies engaged in or seeking an investment relationship with CalSTRS (and certain of their employees and financially affected persons) from making contributions in excess of \$1,000 individually or \$5,000 in the aggregate to certain candidates, including those for governor. Similarly, South Carolina prohibits companies from making any contribution to a candidate for public office involved in the award of a noncompetitive contract. Violations of state-level pay-to-play rules could trigger debarment, fines, or the voiding of contracts for the company.

As the midterm election cycle begins, and more candidates begin their fundraising efforts, companies should keep in mind that even contributions to federal officials can implicate pay-to-play rules if the official is running for state or local office and analyze requests accordingly.

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Contacts

Matthew Bobys

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

Melissa L. Miles

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

Theodore R. Grodek

Associate / Chicago
202.371.7262
theodore.grodek@skadden.com

Sam Rothbloom

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

Aanchal Chugh

Associate / Washington, D.C.
202.371.7359
aanchal.chugh@skadden.com

Lucy Kalar

Associate / Washington, D.C.
202.371.7304
lucy.kalar@skadden.com

Pavla Ovtchinnikova

Associate / Washington, D.C.
202.371.7306
pavla.ovtchinnikova@skadden.com

Alexa O. Santry

Associate / Washington, D.C.
202.371.7319
alexa.santry@skadden.com

Kirin Gupta

Associate / Washington, D.C.
202.371.7395
kirin.gupta@skadden.com

Kelvin Reese

Political Reports Group Manager
202.371.7498
kelvin.reese@skadden.com

John Mannion

Senior Political Compliance Analyst
202.371.7559
john.mannion@skadden.com

Minkeun 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

Michelle Chun

Political Reports Analyst
202.371.7277
michelle.s.chun@skadden.com

Jill Gribbin

Political Reports Analyst
202.371.7217
jill.gribbin@skadden.com

Liya Huluka

Political Reports Analyst
202.371.7283
liya.huluka@skadden.com

Brien Bonneville

Practice Group Senior Manager
202.371.7243
brien.bonneville@skadden.com