

Political Law

Compliance and Investigations Update

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New Year, New Political Law Trends

As we enter a new election year, we thought it would be helpful to point out some notable trends and developments in political engagement and their impact on political law risks. Below are some, but not all, of those trends.

Increase in Political Engagement

Spending on federal lobbying reached an all-time high of approximately \$4.5 billion in 2024 and continues to increase. Federal political action committees (PACs) raised \$25.3 billion in the 2020 election cycle and \$25.4 billion in the 2024 cycle, both more than doubling any previous election cycle, according to Federal Election Commission data. This upward trend continues in the 2026 cycle.

In addition to traditional giving, we have seen companies rush to give to and/or establish alternative contribution vehicles, such as 501(c)(4) organizations, which offer opportunities to spend unlimited amounts on issue or political advocacy while affording the company anonymity. But these vehicles also raise new risks that need to be controlled. Chief among these risks are so-called illegal “dark money” issues, wherein a 501(c)(4) acts as a conduit to shield a company from disclosure by the ultimate recipient, such as giving to a 501(c)(4) with the understanding that it will transfer those funds to a Super PAC that is required to disclose its donors or a company establishing a 501(c)(4) without the required independence.

In addition to dark money issues, a company establishing a 501(c)(4) must also consider pay-to-play laws, linkage, and impermissible coordination with candidates or parties, and how to maintain the organization’s “social welfare” nonprofit status. If one is merely giving to a 501(c)(4) and not otherwise involved in its day-to-day operations, many of these issues can be addressed by obtaining an appropriate representation letter.

Political Law Due Diligence in M&A Transactions

With the increasingly outsized role that government plays in business and the reputational risks accompanying political activity, we have seen a spike in the number of acquirors requesting that their M&A counsel diligence the target under political laws. A target company’s political law missteps can result in decreased company profits and costly investigations, and in some cases affect the company’s valuation. Companies with heightened risk are those with significant government contracts, politically active leadership, or large government relations or public policy operations.

Numerous states have pay-to-play laws under which a political contribution by a covered director or officer, and in some cases even their spouse or child, triggers an automatic multiyear ban on government contracts. Most financial institutions are also subject to federal pay-to-play rules that impose contribution bans in all 50 states. Moreover, violations of recently expanded anticorruption laws applying to U.S. officials can lead

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to criminal liability. We have seen such corruption cases lead to as much as a 35% decline in stock value. This will also play out against the backdrop of high-level scrutiny from activist shareholders regarding the company's political spending, as evidenced by the large number of shareholder proposals on the subject.

Companies can get ahead of these hazards by conducting political law due diligence on target companies by determining if the target is in one of the foregoing high-risk categories, analyzing potential exposure to a political law and structuring the transaction to minimize exposure. Conducting political law diligence, particularly in the context of M&A transactions, not only informs acquiring companies of a target company's existing violations but also enables them to more accurately assess the value of a company and structure transactions to mitigate future risks.

In addition to diligencing target companies, there is an unprecedented wave of companies retaining lobbyists to secure government approvals of transactions (such as antitrust approval). Hiring a lobbyist raises issues not only under applicable lobbying and post-employment laws, but the related political engagement (such as donations or gifts and entertainment) also raises issues under other political laws.

Investment Firms & Portfolio Company Compliance

The risks for investment advisers have also increased as missteps by their portfolio companies (Portcos) can impact their profitability and create reputational harm, especially in the current polarized political environment. For the reasons described above, Portcos in the higher-risk areas are feeling the pressure to increase political engagement and pursue alternative methods of giving, such as through a 501(c)(4), thus increasing the risk in this space. As a result, some advisers are feeling the need to be more proactive in making sure that Portcos are at least sensitized, if not actually complying with political laws. These advisers are taking steps ranging from merely educating their Portcos on political law issues to ensuring they have proper policies and procedures, or retaining qualified counsel.

Preparing for Possible Change in Congressional Control

If the Democrats take control of the House or Senate in 2026, it gives them the authority to wield subpoena authority. As a result, such change increases the likelihood of a company facing a formal congressional investigation regarding its current political activities with the administration or the majority. Although the statute of limitations may not be necessarily relevant for a congressional investigation, it is interesting to note that it is five years under most political laws. To prepare for this possibility, companies should review their government interactions and political activities for noteworthy engagements. Indeed, even activities that were properly undertaken may be subject to lengthy and intrusive investigations if they involve politically sensitive topics. If a company discovers concerning activity, it should consider conducting an internal investigation. Companies should also consider revisiting their political law policies and procedures to ensure they are being followed and properly implemented.

Given the foregoing possibility, a company should be intentional in how it responds to current voluntary inquiries from congressional Democrats, who may soon have subpoena authority if they take the majority. Indeed, Sen. Richard Blumenthal of Connecticut, who is currently ranking member of the Permanent Subcommittee on Investigations, recently pointed out that if he were chairman, companies "would have to answer" his questions and letters. When responding to inquiries today, a company should consider how its response will be received if congressional control shifts.

International Lobbying

While only four countries had lobbying laws by the early 2000s, there are now at least 34 countries, plus the European Union, with lobbyist regulations, and that number continues to grow. While these laws generally promote transparency and minimize clandestine influence on government processes, there are differences in who must register, the types of activities regulated, how activities are disclosed and how violations are punished. Given these variations, we have helped clients centralize reporting and coordinate filings and advice across jurisdictions to ensure consistency.

Please contact us with any questions or for assistance responding to any of the above trends.

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