IN COMPLIANCE

HOLTZMAN VOGEL'S MONTHLY ROUND-UP

Former FEC Chairmen Urge Supreme Court to Clarify Bribery Standard, Warn Against Criminalizing Routine Campaign Interactions

Matthew Petersen, former Federal Election Commission (FEC) Chairman and current partner at Holtzman Vogel, joined an ***amicus brief***—along with three other former FEC Chairmen—urging the U.S. Supreme Court to grant certiorari in a case involving a bribery conviction of a former Cincinnati city council member. In that case, prosecutors argued that the member's acceptance of otherwise lawful campaign contributions constituted bribery, even though they presented no explicit evidence of a quid pro quo—an exchange of an official act for contributions. The former Chairmen's brief contends that, without a clear requirement for such explicit evidence, ordinary interactions between elected officials and donors would be vulnerable to criminal prosecution.

The case centers on Alexander "P.G." Sittenfeld, a former Cincinnati city council member and longtime advocate for redeveloping blighted areas in the city's downtown, who was the target of an FBI sting operation. Two undercover agents, posing as real estate investors, approached Sittenfeld with a proposal to refurbish a downtown building, offering campaign contributions in exchange for Sittenfeld's support of the project. While the agents ultimately contributed to Sittenfeld's campaign, Sittenfeld made no explicit statement indicating that his support was contingent on receiving those funds; rather, during his conversations with the agents, he expressly stated that "nothing can be a quid pro quo." Nor did Sittenfeld accept anything for personal use. In fact, he had a long and well-established record of supporting downtown revitalization efforts, including the specific building at issue, which he described as a "no brainer" for redevelopment.

Despite the absence of clear evidence showing that Sittenfeld agreed to trade official action for campaign contributions, the U.S. Department of Justice brought public corruption charges against him, and a jury convicted him. On appeal, a divided panel of the **Sixth Circuit Court of Appeals upheld** the conviction. The panel's dissenting judge noted that the majority sustained a conviction of "a politician who refused contributions that did not comply with the law, resisted frequent attempts by the FBI's pretend donors to cajole him with personal gifts, and repeatedly reminded these donors of how to contribute to his campaign legally." Sittenfeld subsequently **filed a petition for certiorari** with the Supreme Court.

In May, Sittenfeld received a **presidential pardon** from Donald Trump. Nonetheless, Sittenfeld has continued to pursue his petition, noting that the case presents a live controversy—including the fact that the $40,000 criminal fine imposed after his conviction has not been returned.

In their amicus brief, the former FEC chairmen—Petersen, Bradley Smith, Michael Toner, and Allen Dickerson—emphasize the need "to reestablish a bright-line rule for bribery prosecutions involving campaign activity." They urge the Supreme Court to reaffirm the standard set forth in ***McCormick v. United States***, which held that a public corruption conviction involving campaign contributions requires proof of a quid pro quo—specifically, that a payment was "made in return for an explicit promise or undertaking by the official to perform or not to perform an official act." As the Court explained in McCormick, such a promise reflects an official asserting "that his official conduct will be controlled by the terms of the promise or undertaking." The brief warns that without this heightened evidentiary threshold, routine campaign fundraising activities could be treated as criminal offenses.

Drawing on their experience reviewing thousands of campaign-related enforcement matters, the former chairmen caution that criminalizing ambiguous or commonplace interactions between candidates and donors could harm the political process and undermine core First Amendment rights. They point to the facts in Sittenfeld as illustrative: discussions between politicians and prospective supporters, they argued, exemplify "the central concept animating democratic campaigns"—that "[c]andidates seek support by aligning with donors' principles, and donors contribute to candidates they trust to act on issues they care about." As they explain, "[p]olitics is inescapably a game of give and take; a loose criminal standard cannot be squared with that dynamic."

The brief concludes that only explicit quid pro quo arrangements should trigger criminal liability, and that vague or subjective standards threaten to chill protected political speech and association under the First Amendment. In short, according to the former chairmen, "the Court should re-establish that criminal prosecutions in this protected sphere should target the heartland of verboten activities featuring personal slush funds and explicitly corrupt deals, not the periphery based on routine candidate-donor speech and interactions and ambiguous evidence."

The Court will decide whether to hear the case in coming months.

Universities Face Stricter Data Reporting Requirements Under New Trump Policy

On August 7, 2025, President Trump signed a **Presidential Memorandum** to require greater transparency regarding university admissions practices. The Memorandum reinforces previous executive orders and memoranda regarding DEI practices. Under this Memorandum, the Secretary of Education is directed to take regulatory action to compel universities that accept federal funds to disclose additional information on admissions numbers, and more fulsome and accurate data, to the Department of Education to provide greater transparency for students, parents, and taxpayers.

Background

In 2023 the Supreme Court held in ***Students for Fair Admission ("SFFA") v. Harvard*** that discrimination based on race is prohibited by the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964. In the years since, however, some universities, scholarships, and accreditation organizations, such as the American Bar Association, have looked for "loopholes" and other ways to get around the Court's order in *SFFA* and continue affirmative action practices.

In January 2025, President Trump signed **Executive Order 14173** "Ending Illegal Discrimination and Restoring Merit-Based Opportunity." The Order, among other things, required the Secretary of Education and the Attorney General to issue guidance to State and local education agencies and institutions of higher education that receive federal funds regarding measures and practices required to comply with *SFFA*.

The Memorandum

The Presidential Memorandum regarding admissions data does a few things. First, it directs the Secretary of Education to make the Integrated Postsecondary Education Data System ("IPEDS") more efficient, accessible, and "intelligibly presented." Under Section 487(a)(17) of the Higher Education Act of 1965, postsecondary schools participating in Title IV programs are required to annually report data—including costs, financial aid, admissions data, enrollment, and graduation rates. The IPEDS is repository for that data, housed in the National Center for Education Statistics. In concert with other agencies, the Secretary is directed to overhaul the data collection mechanisms to streamline the process and more efficiently organize and utilize data submitted by institutions.

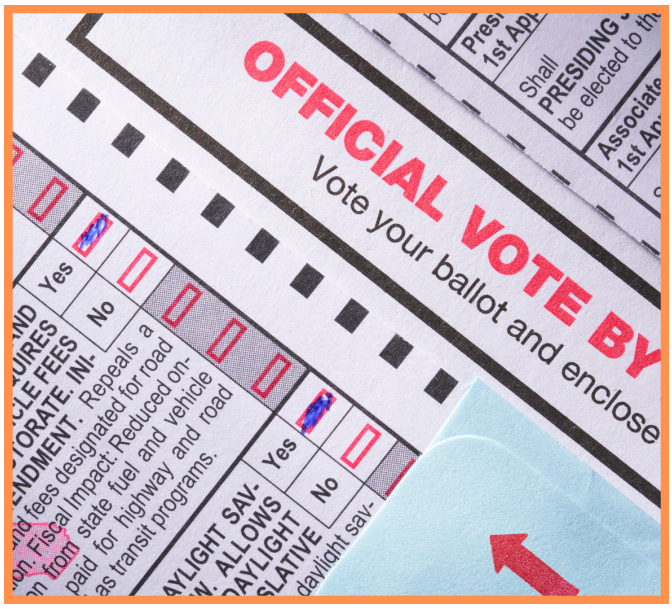
Next, the Memorandum instructs the Secretary to expand the scope of the information required to be reported, beginning in the 2025-2026 school year, to provide greater transparency. The precise scope of that data is to be determined by the Secretary. Finally, it orders the Secretary to increase accuracy checks for data submitted through IPEDS and take remedial action if institutions submit incorrect, inaccurate, or untimely data.

The Memorandum is consistent with previous policies and actions taken by the Trump Administration and will have immediate consequences. With the pushback from academia to both *SFFA* and the Trump Administration's actions, institutions of higher education can expect to be under a microscope regarding admissions data, and programs related to DEI. This Memorandum is one more step taken to ensure that institutions of higher education comply with *SFFA* and the Administration's actions.

Recommendation

University leadership and in-house counsel should work with outside counsel to monitor these regulatory developments and properly implement and adhere to forthcoming Education regulations. They should ensure that admissions officers and employees are not attempting to circumvent *SFFA* and administration policy regarding DEI, as it could subject the university to legal liability and government enforcement actions at the both the federal and state level.

Fifth Circuit Upholds Texas Mail-In Ballot Identification Number Requirement



Texas adopted the Election Protection and Integrity Act of 2021 in an effort to make mail-in balloting more secure and combat fraudulent votes. One of the law's provisions creates a process by which "early voting clerks" must verify the identities of voters who wish to vote by mail. Specifically, the law requires voters to provide their driver's license, social security, or other personal identification number on both their initial applications to vote by mail and their eventual mail-in ballots, which the early voting clerks must then compare to the numbers on their voter registration forms. If the numbers do not match, the mail-in ballot may not be counted.

The legality of this provision, however, has been in dispute since it went into effect. A group of plaintiffs—including advocacy organizations, individual voters, and the Biden administration—challenged the law within days of Governor Greg Abbott's signature, and the U.S. District Court for the Western District of Texas struck down the identification number requirement in 2023. The law was enforced during the 2024 election after the Fifth Circuit stayed the district court's injunction pending appeal.

According to the plaintiffs and the district court, Texas's identification number requirement violated the "materiality provision" of the Civil Rights Act of 1964. Under that provision, states may not deny someone the right to vote due to "an error or omission on any record or paper relating to any application, registration, or other act requisite to voting" when the error or omission is "not material" to determining whether the individual is actually eligible to vote. In their view, Texas's law violated this provision because whether a voter has an official personal identification number is not itself "material" to the voter's eligibility.

The Fifth Circuit Court of Appeals disagreed. In an August 4, 2025 **decision** written by Judge James C. Ho, the Fifth Circuit reversed and held that Texas's law does not violate the materiality provision. The unanimous panel described this conclusion as straightforward: Texas's law was "obviously designed to confirm that every mail-in voter is indeed who he claims he is," which is "plainly material to determining whether an individual is qualified to vote."

Texas' mail-in voting identification number requirement will remain in effect going forward. Similar measures have been proposed in **Congress** and various **state legislatures**.

Third Circuit Strikes Down Pennsylvania Requirement that Undated or Misdated Mail-In Ballots Not Be Counted

On August 26, the Third Circuit Court of Appeals **invalidated Pennsylvania's requirement** that mail-in ballots must be properly dated in order to be counted. The requirement was part of the state's 2019 law adopting universal mail-in voting, known as Act 77. As the court explained, a mail-in ballot's "return envelope includes a declaration that the voter is qualified to vote and has not already voted, along with spaces for the voter to sign and date the declaration. As a voter's final step before mailing in the completed ballot, the voter must sign and date the declaration on the spaces provided on the return envelope. The date should represent the date on which the voter actually completed the declaration." Mail-in ballots must be received by a county election board by 8:00 p.m. on election day.

Under an earlier decision of the Supreme Court of Pennsylvania interpreting Act 77, county election boards are required to discard, and not count, ballots that arrive in a return envelope with a missing or incorrect date. The Third Circuit noted that, in 2022, this requirement resulted in over 10,000 discarded ballots. Likewise, in 2024, over 4,500 ballots—0.064% of the total votes cast—were not counted.

The Third Circuit determined that the date requirement was not subject to the "materiality provision" of the Civil Rights Act of 1964 (see Fifth Circuit decision above) "[b]ecause the date requirement is embedded in the act of casting a ballot." However, the court affirmed the district court's conclusion that the date requirement burdened the right to vote in violation of the First and Fourteenth Amendments.

To determine the constitutionality of Pennsylvania's date requirement, the Third Circuit applied the *Anderson-Burdick* standard, which "requires a weighing of the burden imposed on a voter's constitutional rights by a voting law or regulation against the State's legitimate interest in the law, thereby allowing a court to factor in both interests before reaching a final determination." The court concluded that the date requirement imposes only a "minimal burden on voting rights," but this minimal burden could not be justified by the state's asserted interests. The court concluded that the date requirement serves no apparent purpose given that a ballot's timeliness is tied to the date it is actually received by a county board. In addition, a voter's eligibility to cast a ballot has been determined earlier in the process and, the court concluded, "[t]he date requirement will not protect against the vast majority of attempts at voter fraud."

The Third Circuit concluded that Pennsylvania must count ballots that do not comply with the date requirement, although it may continue to include the date field on return envelopes.

California Law Requiring Online Platforms to Police Political "Deepfakes" Invalidated

On August 5, 2025, Senior U.S. District Judge John Mendez ruled from the bench that California's **Assembly Bill 2655**, a law designed to force online platforms to remove or include disclaimers on political "deepfakes," was invalid and preempted by Section 230 of the Communications Decency Act. The enforcement of California's law is stayed until Judge Mendez's written ruling.

Assembly Bill 2655, also known as Defending Democracy from Deepfake Deception Act of 2024, required large online platforms to "develop and implement procedures for the use of state-of-the-art techniques to identify and remove materially deceptive content" about candidates and elections that is posted during the 120-day period before an election. Under the law, a "deepfake" is an "audio or visual media that is digitally created or modified [to] falsely appear to a reasonable person to be an authentic record of the actual speech or conduct of the individual depicted in the media." While California lawmakers **claimed the law** was meant to protect voters from deceptive AI-generated content, critics argued it placed unconstitutional burdens on online platforms.

One of the "large online platforms" impacted by the law, social media platform X Corp. (formerly Twitter), filed a lawsuit arguing the law had serious First Amendment implications and was preempted by federal law. With respect to preemption, X Corp. argued that it is a service provider under the Communications Decency Act and is insulated from liability for any content posted by a third party. (Federal preemption stems from Article VI of the U.S. Constitution, which provides that federal law is "the supreme Law of the Land," meaning that conflicting state laws must give way.)

At the summary judgment hearing, Judge Mendez ruled in the plaintiff's favor, finding that federal law, namely the Communications Decency Act, preempted Assembly Bill 2655. He ruled that "No parts of this statute are severable because the whole statute is preempted…No parts of A.B. 2655 can be salvaged." While he did not rule on First Amendment grounds, Judge Mendez noted the chilling impact on speech where the state failed to prove that a less restrictive method to serve the state's interest in curbing deepfakes was not available.

While there have been growing calls to regulate the use of AI in political advertising over the past few years, efforts to prohibit or censor this type of speech have not fared well in court. Judge Mendez's ruling is a critical reminder that laws seeking to regulate online speech must respect federal protections and constitutional rights. Challenges to California's other laws addressing "deceptive" AI-generated political content remain pending.

New York Times Article Shines Light on Democratic Party's Past Voter Registration Practices

On August 20, the *New York Times* **published an article** detailing Democrats' recent voter registration woes. One paragraph midway through the article highlighted a key aspect of the Democrats' voter registration efforts. According to the article, "For years, the left has relied on a sprawling network of nonprofits — which solicit donations from people whose identities they need not disclose — to register Black, Latino and younger voters. Though the groups are technically nonpartisan, the underlying assumption has been that most new voters registering would vote Democratic. "While this has been widely known for years, it spotlights how Democrats have exploited ambiguities in the IRS requirements for nonprofit organizations conducting nonpartisan voter registration drives.

In general, voter registration activity may be undertaken by charitable organizations, also known as Section 501(c)(3) organizations, so long as it is "conducted in a non-partisan manner" that is not "biased" by "favor[ing] (or oppos[ing]) one or more candidates." IRS Rev. Rul. 2007-41. The following example accompanies the general rule that voter registration efforts must be "non-partisan" and not "biased":

> B, a section 501(c)(3) organization that promotes community involvement, sets up a booth at the state fair where citizens can register to vote. The signs and banners in and around the booth give only the name of the organization, the date of the next upcoming statewide election, and notice of the opportunity to register. No reference to any candidate or political party is made by the volunteers staffing the booth or in the materials available at the booth, other than the official voter registration forms which allow registrants to select a party affiliation. B is not engaged in political campaign intervention when it operates this voter registration booth.

While this example provides some guidance, it does not establish bright-line rules and the IRS still maintains that whether a particular voter registration effort is "non-partisan" is determined by reference to all the "facts and circumstances." However, a series of private letter rulings—individualized determinations made by the IRS after assessing a specific set of facts—provide more concrete examples of the rules surrounding voter registration activities, including how voter registration drives may be "targeted" in some circumstances.

In 1988, the IRS approved a voter registration effort that focused on many of the categories of potential voters mentioned in the *New York Times* article. The voter registration program at issue was described as follows: "You propose to conduct a voter registration program designed to increase participation in the democratic process [among] communities whose residents are under-registered in comparison with the voting-age population of the state or region. You expect that these communities will be largely composed of minorities, low-income people, recent immigrants, under-educated people, and young people. Your voter registration activities will include citizenship education such as educating prospective voters about the importance of participating in elections [and] about how they can inform themselves about the public issues important to them. Your activities will also include the identification and registration of voters. . . . You assert that all voter registration activities will be conducted on a nonpartisan basis. You will neither support nor oppose (including the making or publishing of statements) any candidate for local, state, or national office or any political party." IRS Private Letter Ruling 8822056 (Mar. 4, 1988).

Two years later, in 1990, the IRS explained that "focusing registration in a geographic area where a predominance of certain types of voters generally inclined to a common political view exist" is permissible, but "[s]uch registration becomes a violation of the political proscription when within that geographic area potential voters are asked questions about their political views in order to determine whether they should be encouraged to register." IRS Private Letter Ruling 9117001 (Sept. 5, 1990). In other words, a voter registration program may not survey potential voters' views as part of an effort to only register voters likely to support candidates of a specific party.

Taken together, these letter rulings indicate the IRS allows charities to focus their voter registration efforts on characteristics such as ethnicity, age, and gender, but individuals within these groups may not be queried to determine how they are likely to vote before they are offered the opportunity to register. While the IRS has allowed organizations to use politically neutral targeting in their registration programs, political operatives have long understood that these types of characteristics are reliable indicators of likely political support of one party or the other. As a result, left-leaning nonprofits have funded voter registration programs for years that effectively served the needs of one political party.

The Persistent Pitfalls of Taxpayer Funded Campaigns

Joe Burns writes in ***National Law Review*** about the growing scrutiny that New York State's experiment with public financing of state campaigns is facing. Burns highlights a fundamental vulnerability in all public campaign finance systems: they invite abuse and scandals become the norm.

Meet the New Boss of New York Politics

Joe Burns explains how the Working Families Party came to dominate Democratic Party politics in New York State in ***City Journal***.

Montana PAC Treasurer Accused of Wire Fraud Reaches Plea Agreement with Prosecutors

Abby Lee Cook, a campaign finance manager for multiple Montana Democratic political action committees, recently **pled guilty** to wire fraud charges and will be forced to repay the $253,000 that she embezzled from six different committees. Ms. Cook is scheduled to be sentenced in early September, with each charge carrying a maximum 20-year prison sentence and a fine of $250,000, although in the plea agreement the government agreed to recommend a "low-end guideline sentence."

All Committees Should Be Aware of FEC-Recommended Financial Controls

Instances of committee treasurers misappropriating campaign funds are a regular occurrence at both the state and federal level. In response to a "dramatic increase" in cases of treasurer embezzlement, the FEC issued a statement of policy in 2007 that included recommended **internal financial controls** for political committees. As an inducement to implement these controls, the FEC offers a "safe harbor" for political committees that experience embezzlement. The policy provides that "the Commission does not intend to seek civil penalties against a political committee for filing incorrect reports due to the misappropriation of committee funds if the committee has the specified safeguards in place."

The FEC's recommended internal controls are designed to prevent the misappropriation of funds in the first place. First, the Commission recommends that all bank accounts be opened in the name of the committee itself, rather than in the name of an individual, using the committee's employer identification number (EIN). Second, bank statements must be reviewed and reconciled with accounting records on a monthly basis, and with FEC disclosure reports before filing. The FEC specifies that these reconciliations must be performed by someone who does not sign the committee's and is not responsible for the committee's accounting. In other words, the FEC requires regular, independent review of committee financial records. Third, the FEC recommends that all checks for more than $1,000 be authorized in writing and/or signed by two individuals who are identified in the committee's written policies. Fourth, an individual who does not handle the committee's accounting or have banking authority should receive incoming contribution checks and monitor all receipts. The committee should keep a record of all incoming funds and checks should be endorsed with "for deposit only" instructions. Finally, the FEC recommends restrictions on petty cash funds, including a $500 limit.

Despite the known risk of embezzlement and the potential relief from liability for misreporting, many federal committees do not consistently implement all of the FEC's recommendations. While independent review of financial transactions and records may impose an additional expense, and dual approval for any spending over $1,000 can be unwieldy, dispensing with these best practices is a calculated risk to be weighed with full knowledge of the potential costs.

When issued in 2007, the internal financial control policy was coupled with the FEC's **sua sponte policy**, which encourages political committees to self-report violations in exchange for significant reductions in penalties and an expedited procedure for handling the report and conciliation process. Committees that suffer a misappropriation of funds and have not implemented all of the FEC's recommended financial controls, may still benefit from reduced civil penalties (generally a 50 – 75% reduction) if they self-report violations to the FEC and cooperate with agency staff.

Holtzman Vogel Launches Formal Higher Education Compliance Practice

Holtzman Vogel's Higher Education Compliance Group advises colleges and universities on aligning policies with federal and state law—from proactive planning and internal reviews to defending against state and federal investigations. Our attorneys bring experience from the Department of Justice, state Attorneys General offices, and federal and state courts, offering deep knowledge at the intersection of constitutional, education, and regulatory law.

Read more about the practice and team.

HV Making the Rounds

- Elizabeth Price Foley, a constitutional law expert, joined the firm in our Miami and DC offices. Her joining was covered by *Law360, POLITICO, Daily Business Re*view and other publications.

- Jason Torchinsky was quoted in the *Free Beacon* article, "A DC Government Initiative Exclusively Hires HBCU Graduates. Legal Experts Say That's Likely Illegal."

- Joe Burns authored "The Persistent Pitfalls of Taxpayer Funded Campaigns" for the *National Law Review*.

- David Johnson and Mark Pinkert co-authored "Universities Face Stricter Data Reporting Requirements Under New Trump Policy."

- Oliver Roberts spoke on NPR Radio's *Politically Speaking Hour* on St. Louis on the Air to discuss artificial intelligence (AI) and regulation.

- Dallin Holt spoke on ethics in election law firms, and Drew Marvel spoke on mid-decade redistricting at the Republican National Lawyers Association's Election Law Seminar.

- Mark Pinkert and David Johnson co-authored "Trump Shines a Light on Discrimination in College Admissions" for the *National Law Review*.

- Holtzman Vogel's Florida presence in Tallahassee and Miami was profiled in the *Daily Business Review* article, "In Solidly Red Florida, these Republican-Leaning Firms Are Having a Moment." Mo Jazil and Mark Pinkert were quoted

- Mo Jazil and David Johnson co-author "A Cautionary Tale - State AGs Prevail with a Lump of Coal for Major Investment Firms."

- Holtzman Vogel was profiled and Jill Vogel quoted in *The National Law Journal* article, "These GOP-Aligned Law Firms, Lobbying Shops Are Growing in Market Share."

- Andy Gould was quoted in the *Arizona Capitol Times* article, "Legal challenges to elections manual go on and on and on."

- Jonathan Fahey authored "Immigration Crackdown Protects Americans from Murderers and Rapists" for *The Federalist.*

- Susan Greene spoke on the "Women Win with Winsome" roundtable to discuss the recent Title IX violations issued to five Northern Virginia school divisions.

- Jonathan Fahey discussed the Trump Administration's crackdown on the cartels with Todd Piro on Fox News TV.

- Kellen Dwyer, appeared on Newsmax to discuss the FBI raid of former National Security Advisor John Bolton with host, Greta Van Susteren.

UPCOMING EVENTS

- September 9-10 - Jill Vogel and Bill Klimon will be speaking at the PAC Government Affairs and Policy conference.

- September 10-12 - David Johnson, Mo Jazil, Brandon Smith and Mark Pinkert will be attending the RAGA fall meeting in Miami.

- September 12 - We are a proud sponsor of The Federalist Society's Tennessee Chapter Conference.

- September 16 - Oliver Roberts will present a CLE for the Nashville Bar Association on "Ethical Considerations for Lawyers Using AI."

- September 19 - Jill Vogel will be a panelist at the 2025 PLI Corporate Political Activities conference on the topic of "Hot Topics in Political and Election Law."

- September 20 - We will be attending River Swing, an annual event hosted by Harpeth Conservancy.

- October 1 - Our Phoenix Office will host "A Look Back and Ahead - What Will Influence Arizona Elections?"

This update is for informational purposes only and should not be considered legal advice. Entities should confer with competent legal counsel concerning the specifics of their situation before taking any action.

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