IN COMPLIANCE

HOLTZMAN VOGEL'S MONTHLY ROUND-UP

Supreme Court Lifts Fifth Circuit's Corporate Transparency Act Injunction; Second District Court Enjoins Beneficial Ownership Reporting Rule and Requirements Remain Fluid

On January 23, 2025, the U.S. Supreme Court **granted the Department of Justice's application for stay** and lifted a Fifth Circuit Court of Appeals injunction that had blocked enforcement of the Corporate Transparency Act's beneficial ownership reporting requirement for nearly a month. However, on January 7, a second U.S. district court in Texas enjoined the reporting rule in **Smith v. U.S. Department of the Treasury**.

In response to the Supreme Court's order and the second district court injunction, U.S. Treasury's Financial Crimes Enforcement Network (FinCEN) **advised the public on January 24** that reporting is not currently required:

> On January 23, 2025, the Supreme Court granted the government's motion to stay a nationwide injunction issued by a federal judge in Texas (*Texas Top Cop Shop, Inc. v. McHenry*—formerly, *Texas Top Cop Shop v. Garland*). As a separate nationwide order issued by a different federal judge in Texas *(Smith v. U.S. Department of the Treasury*) still remains in place, reporting companies are not currently required to file beneficial ownership information with FinCEN despite the Supreme Court's action in Texas Top Cop Shop. Reporting companies also are not subject to liability if they fail to file this information while the Smith order remains in force. However, reporting companies may continue to voluntarily submit beneficial ownership information reports.

The Supreme Court's action stems from the Fifth Circuit's late-December **reinstatement** of a nationwide injunction blocking FinCEN from enforcing the ownership reporting rule. The status of the reporting rule changed several times during December. On December 3, a Texas federal district court issued a nationwide injunction blocking enforcement of the beneficial ownership reporting rule pending appeal of the district court decision. On December 23, a panel of judges on the Fifth Circuit stayed that injunction, temporarily reinstating the reporting requirement. However, three days later, on December 26, the Fifth Circuit vacated that stay and reinstated the nationwide injunction. On December 31, the U.S. Department of Justice **filed an application** with the Supreme Court to stay the Fifth Circuit's injunction. That application has now been granted.

Legislation has been introduced in the **House** and **Senate** to repeal the Corporate Transparency Act, and prior to the Supreme Court's January 23 order, the **Attorneys General of 25 states** filed an amicus brief urging the Court to block the Corporate Transparency Act.

We are continuing to monitor developments that may impact these reporting requirements.

Commissioner Cooksey Resigns From FEC

FEC Commissioner Sean J. Cooksey **announced his resignation** from the agency on January 13, to be effective January 20. Cooksey served as Chairman last year. He will serve in the new administration as counsel to Vice President J.D. Vance.

FEC Ends Case Against Former U.S. Rep Accused of Masterminding Straw-Donor Scheme

The Federal Election Commission is **no longer pursuing legal action against former U.S. Rep. David Rivera**, whom the FEC accused of orchestrating an illegal straw-donor scheme to steer over $75,000 to a primary candidate who was challenging Rivera's main rival in the 2012 congressional election. The FEC and Rivera's attorneys agreed to jointly dismiss the case following an appeals court decision overturning an earlier district court that ruled in favor of the FEC and assessed a $456,000 civil penalty against Rivera.

The appeals court held that the district court erred in granting summary judgment in favor of the FEC because there remained material facts still in dispute that needed to be resolved by a jury. In remanding the case back to the district court, the appeals court noted that Rivera consistently denied in his depositions and affidavits that he made contributions in the names of others. Rather than go to trial, the FEC decided, without explanation, to jointly dismiss the case.

The appeals court's ruling in this case, if adopted by other circuits, increases the likelihood that future FEC enforcement cases will go to trial rather than be resolved at the summary judgment. Because trials are resource-intensive, the outcome in the Rivera case may significantly impact the FEC's willingness to pursue enforcement cases in court going forward.

Two Democratic Senators Apparently Victimized by Treasurer Embezzlement

Virginia's U.S. Senators, Tim Kaine and Mark Warner, have alerted the Federal Election Commission and other law enforcement authorities that the treasurer for committees they control may have **embezzled hundreds of thousands of dollars** from the committees. A former Democratic House member from Florida, Stephanie Murphy, claims the same treasurer stole from her leadership PAC as well.

Instances of committee treasurers **misappropriating campaign funds** have multiplied in recent years. To protect against embezzlement, the FEC issued a statement of policy that sets forth recommended **internal controls,** including monthly bank statement reconciliation and dual approvals for large wire transfers.

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President Trump Rescinds Biden's Executive Branch Employee Ethics Pledge

Upon taking office on January 20, President Trump **rescinded** numerous executive orders issued by President Biden, including **the Biden Administration's ethics pledge for executive branch personnel**. One immediate effect of this rescission is to relieve former Biden Administration officials of their pledge to refrain from lobbying their former agency for two years after leaving government employment. (Under federal law, executive branch employees are generally prohibited from communicating to, or appearing before, their former agency for one year, unless the communication or appearance involves a particular matter over which the former employee had official responsibility, in which case the "switching sides" ban is two years, or in some cases, a former official's entire life.) The Biden pledge also barred former officials from "materially assisting" others in making lobbying communications that they themselves would be prohibited from making for a period of one year. This practice, sometimes referred to as "shadow lobbying," is not directly addressed in federal law.

Jill Holtzman Vogel **explained to *POLITICO*** that the new administration was "sweeping away all of those prior policies to adopt their own executive orders with respect to ethics." The Trump Administration has not announced whether it will adopt a new, comprehensive ethics pledge for executive branch officials, take a piecemeal approach to target specific issues, or simply take the position that federal law adequately addresses the matter.

President Trump adopted an **ethics pledge in 2017** that was very similar to his predecessors' pledges, but **revoked** it just before leaving office in 2021, making clear that "employees and former employees subject to the commitments in Executive Order 13770 will not be subject to those commitments after noon January 20, 2021."

Department of Justice Publishes Proposed FARA Regulation Amendments in Final Days of Biden Administration

In early January, the U.S. Department of Justice (DOJ) proposed the most significant overhaul of the agency's **Foreign Agents Registration Act (FARA) regulations** in decades. The proposed changes in the Notice of Proposed Rulemaking (NPRM) would narrow FARA's registration and reporting exemptions and give DOJ greater latitude to conclude that FARA applies to foreign entities and groups (such as nonprofits) that accept foreign donations. It is unclear if the Trump Administration will advance the proposed regulatory changes, which were published in the waning days of the Biden Administration. Notably, in its first week, the Trump Administration removed several long-serving staff members from DOJ's National Security Division, which enforces the foreign-influence law through the FARA Unit.

FARA requires individuals and entities acting as agents of foreign principals within the United States that engage in certain registrable activities on behalf of the foreign principals to register and file periodic reports with DOJ. Registrable activities include engaging in political activities (e.g., activities—such as lobbying—intended to influence U.S. governmental officials or a section of the public on domestic or foreign policies), acting as a public relations counsel or political consultant for the foreign principal, dispensing funds for the foreign principal, and representing the foreign principal before a U.S. government agency or official.

Perhaps the most significant proposed regulatory changes are to the "commercial activity" exemption, which allows foreign companies to engage in "private and nonpolitical activities in furtherance of the bona fide trade or commerce" of a foreign principal and "other activities not serving predominantly a foreign interest" without having to register under FARA. Under current regulations, to qualify for this exemption, the activities at issue must not be "directed by," nor "directly promote" the public or political interests of, a foreign government or a foreign political party.

The new proposal would significantly narrow the scope of this widely used exemption. Under the proposed draft rules, the exemption would be unavailable if the activities at issue fall within one of the following four exclusions:

- The intent or purpose of the activities is to benefit the political or public interest of a foreign government or political party.
- A foreign government or political party influences the activities.
- The principal beneficiary of the activities is a foreign government or political party.
- Activities on behalf of a state-owned enterprise promote the political or public interests of that foreign government or political party.

Even if none of these exclusions are triggered, DOJ could still determine that certain activities are not covered by the commercial exemption under a "totality of the circumstances" test that examines whether the activities predominantly serve a foreign or domestic interest. Taken together, the proposed exclusions and totality-of-the-circumstances test appear to severely limit the scope of the commercial exemption and would make it more, rather than less, difficult to make upfront determinations about whether certain activities are covered by the commercial exemption.

Other proposed changes include defining "informational materials" that must carry a disclaimer and be filed with DOJ to include any material that is intended to influence any agency or official of the U.S. government, or any section of the public within the U.S., with respect to formulating, adopting, or changing the domestic or foreign policies of the U.S., or with respect to the political or public interests, policies, or relations of a foreign government or political party.

The NPRM also includes new labeling rules that would require that "informational materials" not only include a statement disclosing the agent of the foreign principal sponsoring the materials but also where the foreign principal is located. Other disclaimer-related provisions in the NPRM include a requirement that informational materials that are broadcast must be introduced and conclude with a statement indicating that an agent of foreign principal is responsible for the materials.

The proposal would also clarify that the FARA's "legal representation" exemption covers not only representational activities undertaken before a court or federal agency but also the provision of information to others outside the proceeding, such as the press, provided these outside activities do not meet FARA's definition of "political activities."

Importantly, the NPRM does not propose to alter the existing "LDA exemption," which applies to persons who are not agents of foreign governments or foreign political parties and who register and report under the Lobbying Disclosure Act (LDA). Generally speaking, this means that agents of foreign companies or individuals that engage in federal lobbying activity may file under the LDA rather than FARA.Under the new proposal, this would not change.

Unless withdrawn by the new administration, the public has until March 3, 2025, to submit comments.

"Honest Gabe" Pleads Guilty to Filing False FEC Reports

Former Indiana congressional candidate, Gabriel Whitley, recently **admitted he included dozens of fabricated contributions** in reports filed with Federal Election Commission to create the false impression that he was receiving more financial support than he actually had. For instance, Whitley, whose campaign committee was named "Honest Gabe for Congress," falsely claimed the committee received more than $200,000 from 67 fictitious contributors on a single disclosure report. He did the same in other months as well and also falsified a $100,000 campaign loan. Whitley faces up to a maximum of five years in prison.

PAC Treasurer Plead Guilty in Fraudulent Donation Schemes

A treasurer for multiple political action committees (PACs) recently **pled guilty** to charges related to a scheme in which he solicited PAC donations using false and misleading statements. Richard Piaro, who pled guilty to wire fraud, was the PAC treasurer for Americans for the Cure of Breast Cancer, the Association for Emergency Responders & Firefighters, the US Veterans Assistance Foundation, and Standing By Veterans and raised funds by falsely claiming the proceeds would be used to push for specific legislation, provide lawmaker education, and conduct research. Piaro is scheduled to be sentenced in April and faces a maximum sentence of 25 years.

AZ Supreme Court to Review "Dark Money" Disclosure Law

The **Arizona Supreme Court agreed to hear a challenge** to ***Proposition 211, the "Voters' Right to Know Act,"*** which state voters approved in 2022. The proposition's stated purpose is to "stop 'dark money,' the practice of laundering political contributions, often through multiple intermediaries, hide the original source" and requires groups making independent expenditures of more than $50,000 on a statewide campaign to disclose the "original sources" of the money being spent.

The proposition is being challenged by Arizona's House Speaker and Senate President, who argue that it unconstitutionally limits the legislature's power and also challenge the rulemaking authority given to the Arizona Clean Elections Commission. A key question to be resolved is whether the two lawmakers have standing to challenge the proposition. The Arizona Supreme Court has not yet to set a date for oral arguments.

Maine Pauses Implementation of Super PAC Contribution Limits While Litigation Proceeds

Maine has announced it will **delay enforcement of a recently approved referendum** that imposes a $5,000 limit on contributions to Super PACs to allow time to resolve lawsuits challenging the referendum. The delay lasts until May 30 and was implemented after the state being **sued by the Institute for Free Speech**, which argues that the Super PAC limits are unconstitutional under the U.S. Supreme Court's Citizens United ruling.

The referendum's advocates hope the case will reach the Supreme Court and that the Justices will conclude that limits on contributions to Super PACs are constitutional and a legitimate tool for preventing quid pro quo corruption. However, every federal appeals court that has addressed this issue so far has rejected the advocates' view, concluding that Super PAC contribution limits violate the First Amendment. When weighing a similar challenge in 2013, the Second Circuit Court of Appeals noted that "[f]ew contested legal questions are answered so consistently by so many courts and judges."

New York State Court of Appeals Hears Challenge to Ethics Commission

On January 7, 2025, the New York State Court of Appeals heard oral arguments in one of the cases challenging the constitutionality of the Commission on Ethics and Lobbying in Government (COELIG). The challenge, which was filed by former Gov. Andrew Cuomo, argues that COELIG's structure violates the state constitution because the Governor is not able to appoint and remove members.

The trial court agreed with Cuomo's arguments that COELIG's structure and appointment process violated the state constitution.That decision was unanimously affirmed by the Appellate Division, 3rd Department.

The creation of COELIG was an initiative of Gov. Kathy Hochul's in 2022. It replaced the frequently criticized Joint Commission on Public Ethics, a creation of the administration of Hochul's predecessor, Andrew Cuomo.

Other lawsuits challenging COELIG's constitutionality have also been filed, including one by former JCOPE Commissioner Gary Lavine and one by former State Sen. Jeff Klein.

New York State Senate Passes Election Bills As 2025 Legislative Session Begins

The New York State Senate began the year's legislative session by passing a number of election-related bills. Among the election proposals approved by the Senate on January 13, 2024 are:

- A bill (S.569) allowing local boards of elections, after receiving approval from the New York State Board of Elections, to establish county-wide poll sites. Under this proposal, any voter in a county, regardless of where the voter resides, would be able to vote at a county-wide poll site in an election.
- A bill (S.1030) requiring political committees with public facing web sites to place a "Paid for by" disclosure on such web site. Currently, political committees are required to place this disclosure on nearly all printed materials. This proposal passed the State Senate unanimously.
- A bill (S.1035) establishing new training requirements for county election commissioners and employees of local boards of elections. These trainings would be developed by the New York State Board of Elections and local BOE commissioners and staff would be required to participate in trainings for new commissioners and employees as well as annual trainings.
- A bill (S.1087) requiring county election commissioners outside the City of New York to be full-time county employees.

The Senate also defeated a proposal put forward by Sen. Mark Walczyk, the Ranking Minority Member of the Senate Elections Committee, to require voters to show a valid photo identification before voting.

Gov. Hochul Signs Bills Addressing County Board of Elections Employee Conflicts of Interest and New York City Party Committee Elections

On December 21, 2024, Gov. Kathy Hochul signed into law a bill prohibiting conflicts of interest by employees of county Boards of Elections.

The newly enacted law prohibits county Board of Elections (BoE) employees from having a financial interest in a company that provides services to candidates whose races are overseen by that BoE employee's office. Additionally, the new law prohibits BoE employees from having a direct financial interest in a company that sells election equipment such as voting machines or electronic poll books to the employee's BoE.

Finally, BoE employees, under the new law, are prohibited from being a candidate for office while employed at the Board. BoE employees who do become candidates for office are required to be on leave without pay from their BoE position for the duration of their candidacy for office. This provision does not apply to BoE employees who are candidates for unpaid party positions such as member of the state committee or judicial delegate.

The conflict of interest bill takes effect one year from the day it was signed into law by Gov. Hochul.

Governor Hochul also signed legislation requiring the New York City Board of Elections to provide notice to county party committee candidates that a designating petition has been filed on their behalf. The notice provided to these individuals must include information on how to decline a designation. This new law applies only within New York City. According to the sponsor's memo, this legislation was proposed because of a 2018 report from The New York Times on individuals being designated as candidates for county committee without their knowledge. Some individuals were then elected as county committee members without their knowledge or consent. This bill takes effect on June 19, 2025.

Pennsylvania Corporations Are Subject to Annual Reporting Requirements Beginning in 2025

Unlike most states, corporations and LLCs organized in Pennsylvania are not used to filing annual or biennial corporate reports. Until now, business entities filed a report every ten years, and nonprofit corporations only filed a report if their officers or directors changed. Beginning in January 2025, however, for-profit and non-profit Pennsylvania corporations **must file annual reports** by June 30 each year, while LLCs must file by September 30. Other types of organizations, including LLPs and trusts, must file by December 31.

"A" Versus "The" - Federal Court Narrows Kansas' Political Committee Definition

On January 3, 2025, a district court in Kansas issued a decision in ***Fresh Vision OP, Inc. v. Skoglund*** that narrows the state's definition of "political committee" and limits the types of organizations that may be required to register with the Kansas Governmental Ethics Commission.

Kansas law defines "political committee" as an organization that has "a major purpose … to expressly advocate" for or against a state or local candidate. The U.S. Supreme Court's 1976 decision in Buckley v. Valeo limited political committee status under federal law to organizations having "the major purpose" of working for the nomination or election of a candidate.

Fresh Vision is described in the court's opinion as "an issue advocacy group [that] educates voters and advocates for quality of life and tax issues in Overland Park" that also "supports political candidates when they support Fresh Vision's goals." After Fresh Vision supported a mayoral candidate in 2021, the Kansas Governmental Ethics Commission determined that Fresh Vision's express advocacy in support of the mayoral candidate made it a political committee under state law that was subject to registration and reporting requirements.

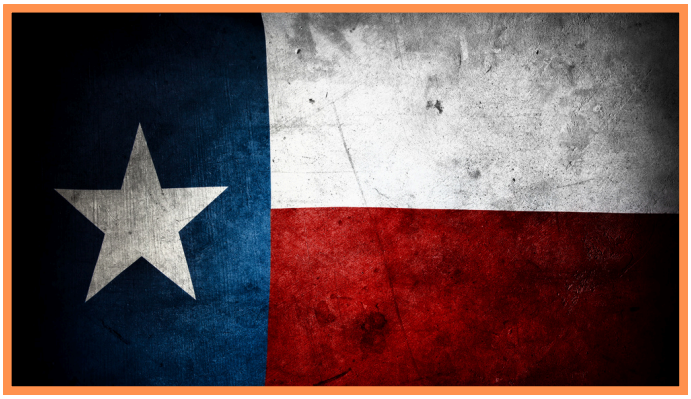
Following Tenth Circuit precedent, the district court determined that Kansas's political committee definition was impermissibly broad because the statute refers to "a major purpose" rather than "the major purpose. With respect to Fresh Vision, the court held that the Kansas Governmental Ethics Commission could not apply the state's political committee definition to the group "based on a determination that express advocacy is merely a major purpose."

The "a" versus "the" major purpose dispute raised in Fresh Vision OP reflects a longstanding disagreement among lower courts about how to apply *Buckley v. Valeo*. Some courts have accepted "a major purpose" as a valid standard, while others require electoral activity to be "the major purpose" of an organization. And some courts have determined that "major purpose," whether "a" or "the," is not constitutionally required at all. As a result, there are wide disparities in how states approach political committee status.

The Kansas Governmental Ethics Commission has until February 3 to appeal the ruling to the Tenth Circuit Court of Appeals.

Oliver Roberts on Texas AI Bill

Holtzman Vogel's Oliver Roberts authored **Overbroad Texas AI Bill Threatens Innovation and Economic Growth** for *Bloomberg Law*. Roberts explains how "[a] sweeping artificial intelligence regulation bill introduced in Texas last month would impose the US' strictest state-level restrictions on AI if enacted, threatening to stifle innovation and growth in the state."



HV Making the Rounds

- Drew Watkins was promoted to Partner.
- *Early Returns* with Jan Baran podcast published two episodes: Jan spoke with Vice Chair of the FEC Commission, Trey Trainor, and Virginia Attorney General Jason Miyares.
- Jill Vogel Quoted in *POLITICO* on Trump rescinding Biden's ethics pledge.
- Holtzman Vogel AI Expertise Part of Law School Education with Oliver Roberts heading up the program at Case Western Reserve University School of Law.
- Joe Burns appeared on a *South Shore Press* podcast to discuss the potential of Andrew Cuomo running for New York City mayor.
- Mark Pinkert authored "Shifting Battlegrounds in Administrative Law, from Biden to Trump" for the *Daily Business Review*.
- Jonathan Fahey was quoted in *The Hill* article, "Trump makes final stand in criminal cases as inauguration nears." He was also quoted in the *Washington Examiner*.
- Oliver Roberts authored "Overbroad Texas AI Bill Threatens Innovation and Economic Growth" for *Bloomberg Law*.
- Jonathan Fahey was a regular on Fox News, including on the Story with Martha McAllum, America Reports with John Roberts, Mornings with Maria, and others.
- Joe Burns, authored "Kathy Hochul's Highly Uncertain Future" for the *National Review*.
- In *The Center Square* article, "Petition seeks to limit role of State Bar of Arizona," Andy Gould is mentioned as an attorney who filed the petition.
- Oliver Roberts was quoted on AI in the *CCN.com* article, "Tech Trends 2025: Expert Predictions Under Donald Trump's Presidency."
- Firm's representation of UPenn professor, Amy Wax, in a First Amendment case was covered in *WSJ, Law.com, Law360*, and other national and Pennsylvania publications.
- Joe Burns offered the commentary article, "Biden must not finalize the Equal Rights Amendment" to the *Times Union*.

Welcome New Compliance Attorneys

- **Lori Low** (Of Counsel, Virginia), formerly in-house counsel to real estate and mortgage companies, will focus her practice on corporate, non-profit and election law compliance, and real estate.
- **Rebecca Layne** (Sr. Associate, Arizona), formerly with the IRS, DOJ, and US Tax Court, will focus her practice on tax-exempt organizations, non-profit and corporate governance, election law, tax strategy and litigation.
- **Drew Marvel** (Associate, DC), formerly Associate Counsel with NRCC, will focus his practice on political and election law compliance.

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.

Please reach out to one of the following compliance partners or your personal Holtzman Vogel contact with any questions.

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