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NEWSLETTER

Congress Preempts SEC and Federal Contractor Political Reporting Requirements

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For the past several years, activists have been urging the Securities and Exchange Commission (SEC) and the White House to adopt by regulation and executive order new requirements for publicly traded corporations and federal contractors to report their political spending. While the SEC and White House had not given any indication that they were coming any closer to adopting such measures this year, Congress conclusively preempted these measures in the omnibus appropriations bill that was signed into law in December, at least for the 2016 fiscal year.

Ever since the Supreme Court of the United States' 2010 *Citizens United v. FEC* decision permitted corporations to make independent expenditures to support and oppose candidates, activists have been urging the SEC to adopt rules requiring publicly traded corporations to file public reports of their political spending in addition to the existing reporting requirements under federal campaign finance laws. Although the SEC never introduced any formal proposal, the contemplated disclosures generally may have applied not only to the corporation's own direct spending on political activities, but also to contributions and dues paid to non-profit organizations and trade associations that may engage in political activities, as well as political contributions made by the corporation's officers, directors, and PAC.

While the SEC included corporate political reporting on its 2013 list of rulemaking priorities, the agency dropped the measure from its rulemaking priorities in subsequent years. Nonetheless, as part of the omnibus spending agreement, Congress and the White House

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agreed to bar the SEC from using any funds during the 2016 fiscal year to finalize, issue, or implement any rule requiring publicly traded corporations to publicly report any political contributions, contributions to tax exempt organizations, or dues paid to trade associations.

In the absence of an SEC rulemaking on this issue, activist groups and certain state and union pension fund investors have attempted to use shareholder meetings to force publicly traded corporations to adopt political reporting requirements. Groups such as the Center for Political Accountability also have been pressuring public corporations through rankings on the "CPA-Zicklin Index" to adopt their own voluntary political reporting and spending policies. Wiley Rein's Election Law practice has advised many clients on how to best address the CPA-Zicklin Index and shareholder resolutions on political spending.

Just as the SEC has been mulling for several years the corporate political reporting requirement, the White House first released a draft executive order in 2011 that would have required federal contractors to include information on their bids regarding certain contributions and expenditures made to or on behalf of federal candidates, political party committees, and third-party sponsors of independent expenditures or electioneering communications by the contractor, its officers and directors, and its affiliates and subsidiaries. (Direct federal contractor contributions to federal candidates, PACs, and political party committees already are prohibited under federal campaign finance law.)

While the White House never finalized the executive order, the omnibus spending bill preempts the administration from implementing its proposal for those seeking federal contracts during the 2016 fiscal year. The president may still act with respect to current contracts.

Notwithstanding the lack of a government contactor reporting requirement for political spending at the federal level, many states have substantially similar reporting requirements (in addition to contribution prohibitions and restrictions) state contractors, their employees, subsidiaries, affiliates, and PACs. Wiley Rein's Election Law practice routinely advises clients on these state "pay-to-play" laws.