

House of Representatives Passes Sweeping Campaign Finance and Lobbying Registration and Reporting Changes

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The Democratic majority in the U.S. House of Representatives recently voted to pass H.R. 1, an omnibus package of election administration, campaign finance, lobbying, and ethics law changes. The bill is unlikely to pass the Senate, and President Trump has vowed to veto the bill if it were to pass Congress. Nonetheless, the bill is expected to set a benchmark for future Democratic legislative initiatives on these issues. The bill has several major provisions of relevance to *Election Law News* readers.

As originally introduced, the bill would have imposed sweeping new prohibitions on corporate political activity, including maintaining a corporate PAC, making corporate contributions in connection with state and local elections, communicating with eligible employees and stockholders about election-related issues, and even sponsoring nonpartisan get-out-the-vote and voter registration drives.

Foreign National Provisions. Specifically, the bill originally would have added several broad and vague criteria for when a corporation is regulated as a “foreign national.” These criteria included foreign ownership percentage thresholds and the presence of any foreign national having “the power to direct, dictate, or control” the corporation’s “decisionmaking process.” All (or substantially all) U.S. subsidiaries of foreign corporations would have been regulated as foreign nationals. Foreign nationals are prohibited under existing law from the election-related activities described above.

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In addition, H.R. 1 prohibits foreign nationals from making certain payments to organizations that have funded, or that are expected to fund, “campaign-related disbursements.” These include communications that “promote,” “attack,” “support,” or “oppose” the election of federal candidates and elected officials – a new category of regulated speech. Corporations that trigger the expanded foreign national provision would be prohibited in many instances from making donations and dues payments to nonprofit groups and trade associations that engage in such activities.

H.R. 1’s foreign national provision appeared to follow a proposal by opponents of the U.S. Supreme Court’s *Citizens United* decision to expand the foreign national prohibition under the federal campaign finance statute in order to broadly restrict corporate political activity. This far-reaching regulatory approach proved to be a bridge too far, however, and the foreign national provision was dropped from the bill after strong pushback from the business community.

Nonetheless, as passed by the House, H.R. 1 still requires a corporation’s CEO to certify annually to the Federal Election Commission (FEC) under penalty of perjury that no foreign national has “directly or indirectly” participated in the decision-making process related to the corporation’s political spending before the corporation may make disbursements in connection with federal elections during the calendar year. Similarly, H.R. 1 requires federal PACs to annually certify to the FEC that no foreign national participated in the PAC’s decision-making.

Shareholder Issues. In addition, as amended and passed by the House, H.R. 1 requires publicly traded corporations to have “assess[ed] the preferences” of their shareholders within the prior one-year period before making any “disbursement for a political purpose.” The assessment requires, among other things, asking shareholders whether the corporation’s disbursements “should be made in support of, or in opposition to, Republican, Democratic, Independent, or other political party candidates and political committees.”

Advocacy Disclosure. As noted above, H.R. 1 also regulates a new category of communications that “promote,” “attack,” “support,” or “oppose” (PASO) federal candidates and elected officials. PASO communications, along with express advocacy independent expenditures and “electioneering communications” – would be subject to new “campaign-related disbursement” reporting requirements under the bill.

Organizations such as Section 501(c)(4) advocacy groups and Section 501(c)(6) trade associations that spend more than \$10,000 on campaign-related disbursements during an election cycle would have to report their donors that gave \$10,000 or more to the organization. Under certain circumstances, donors that give to organizations sponsoring campaign-related disbursements also would have to file their own reports and report their own donors (if applicable). In addition, organizations that sponsor campaign-related disbursements also would have to identify their top donors in their advertising disclaimers.

Lobbying Disclosure Act (LDA) Expansion. H.R. 1 also expands the triggers for registration under the federal Lobbying Disclosure Act. The bill eliminates what has come to be known as the “Daschle exemption,” which is named after former Senate Majority Leader Tom Daschle, who provided government affairs counseling after

retiring from Congress but did not register as a lobbyist. The so-called “exemption” refers to the fact that, under current law, individuals who do not make direct lobbying contacts with government officials are not required to register. Under H.R. 1, any individual with “authority to direct or substantially influence a lobbying contact” made by others, and who provides paid “counseling services in support of preparation and planning” for lobbying activities, is treated as making lobbying contacts that could trigger the registration requirement.

In addition, under current law, individuals are not required to register if their lobbying activities constitute less than 20% of their paid services to an employer or client during a calendar quarter. As amended and passed, H.R. 1 lowers this threshold to 10%.

Wiley Rein’s Election Law Practice monitored H.R. 1’s movement through the House legislative process and counseled clients on the bill’s implications for their political programs. We will continue to closely monitor federal and state legislative developments on these issues.