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NEWSLETTER

Maine Enacts Corporate Contribution Ban

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Maine recently enacted a ban on contributions by corporations and labor unions to candidates for state and local office. The ban, which takes effect on January 1, 2023, does not appear to apply to contributions to Maine state PACs or political parties.

Previously, Maine had permitted corporations and unions to contribute to state and local candidates according to the same limits as contributions from individuals and PACs. With the new ban, Maine will join the slightly less than half of U.S. states that prohibit corporate contributions in some general form in connection with state and local elections. (Federal law prohibits corporate and union contributions to candidates for federal office.) A few other states, such as New Jersey, take a more targeted approach by banning contributions from corporations involved in certain regulated industries.

Of the states that ban corporate contributions generally, there are varying degrees of prohibitions. For example, like the new Maine law, Arizona prohibits corporate contributions to candidates, but permits corporate contributions to state PACs and political parties. Others, such as Texas, prohibit corporate contributions across the board. Some states, such as Ohio, that ban corporate contributions to political parties nonetheless may permit contributions to parties for certain overhead or administrative expenses. Under U.S. Supreme Court rulings, states must permit unlimited corporate contributions to ballot measure committees and super PACs (i.e., those that only make independent expenditures that are not coordinated with candidates or parties).

Note that, even in states that permit corporate contributions, there still may be campaign finance registration and reporting requirements associated with making such contributions. If a corporation is subject to lobbyist reporting requirements in a state, corporate contributions

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also may be separately covered by those reports. Additional restrictions, such as legislative session blackout periods, also may apply. Importantly, companies that hold or seek government contracts may be subject to separate "pay-to-play" contribution limits, bans, and/or reporting requirements.

Relatedly, a number of states have exemptions for corporate political activity as it relates to internal communications with their members, employees, or stockholders. The preexisting Maine law exempts from the definition of a campaign "expenditure" communications between membership organizations and their members, and between corporations and their stockholders. The new corporate contribution ban does not affect this preexisting exemption.

While independent corporate activity may not be prohibited or subject to expenditure limits under the U.S. Supreme Court's *Citizens United* decision, note that there may still be registration and/or reporting requirements. Those requirements may be triggered by making "independent expenditures" that expressly advocate for the election or defeat of candidates, or by "electioneering communications" that merely reference candidates within certain pre-election time windows.

Separately, Maine recently enacted changes to its PAC registration thresholds. However, those changes do not appear to impact the state's preexisting regulatory treatment of "out-of-state committees," which include federal PACs. Under the preexisting law, out-of-state committees are not required to additionally register and report in Maine for making contributions in connection with state or local elections so long as they do not solicit or accept contributions earmarked for such activity.