

Sixth Circuit Upholds Kentucky Campaign Contribution and Gift Restrictions

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The U.S. Court of Appeals for the Sixth Circuit recently upheld the constitutionality of certain campaign finance and gift restrictions that Kentucky law imposes on state legislators, lobbyists, and lobbyist principals (i.e., employers and clients of lobbyists).

Specifically:

- Kentucky state legislators and legislative candidates may not accept any campaign contributions – at any time – from state lobbyists. Lobbyists also may not make such contributions.
- Kentucky state legislators and legislative candidates may not accept any campaign contributions during a regular legislative session from lobbyist principals and political action committees (PACs). Lobbyist principals also may not make such contributions.
- Kentucky state legislators and their spouses may not accept gifts from state lobbyists and lobbyist principals. Lobbyists and lobbyist principals also may not provide gifts to state legislators, legislative candidates, and their families.

A Kentucky state legislator and legislative candidate challenged these restrictions for violating their First Amendment rights to free speech and association. In 2017, a federal district court judge upheld the legislative session contribution ban, but struck down the year-round lobbyist contribution ban and lobbyist/lobbyist principal gift ban (*Election Law News*, July 2017). Both the plaintiffs and state defendants cross-appealed the district court's rulings.

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On appeal, the Sixth Circuit panel cited a corruption scandal in Kentucky's state legislature in the early 1990s involving the horse racing industry as justification for the challenged provisions. With respect to Kentucky's year-round lobbyist contribution ban, the judges pointed to a 2011 U.S. Court of Appeals for the Fourth Circuit decision upholding a similar ban in North Carolina. The Sixth Circuit rejected the Kentucky plaintiffs' argument that more recent instances of corruption are required to justify the state's ongoing ban on lobbyist contributions.

Regarding Kentucky's legislative session ban on lobbyist employer and PAC contributions, the Sixth Circuit held that the law was "closely drawn" to "target[] the time when the risk of quid pro quo corruption – especially its appearance – is highest." When legislators are "poised to cast a favorable (or unfavorable) vote on a pet bill," the judges reasoned, contributions by lobbyist principals and PACs "could cause Kentuckians to question whether the contribution motivated the vote."

Finally, regarding Kentucky's ban on gifts from lobbyists and lobbyist principals, the Sixth Circuit rejected the plaintiffs' First Amendment claims on the ground that the ban "does not prevent lobbyists and legislators from meeting" and "does not forbid any interaction ... between the two." Rather, the court reasoned, the Kentucky law only prohibits lobbyists and lobbyist principals from paying for beverages, meals, entertainment, and other items while meeting with state legislators.

Most states impose restrictions of some form on gifts to government officials and employees, especially on gifts from lobbyists, lobbyist principals, and state vendors. There are also typically exceptions to these gift restrictions with varying degrees of permissiveness. Like Kentucky, a number of states also restrict campaign contributions from lobbyists or during legislative sessions. Wiley Rein's Election Law Practice advises clients on state and local gift and campaign finance restrictions in all 50 states. An online 50-state lobbying and gift law summary also is available by subscription.