

# West Virginia Enacts Changes to PAC Reporting Requirements and Contribution Limits

May 2019

West Virginia recently enacted a package of legislative changes to its campaign finance laws. Under the changes: (a) additional PAC registration and reporting requirements will apply, including to federal PACs, trade associations, and other nonprofit groups that make political contributions or expenditures in the state; (b) additional independent expenditure reports will be required; and (c) foreign nationals will now be prohibited from spending in connection with state elections. The changes are not all more restrictive however; contributors will now be allowed to give more to state candidates and party committees.

## PAC Registration and Reporting

Under the existing law, PACs that are registered with the Federal Election Commission are not required to additionally register and report in West Virginia if they make contributions to West Virginia state candidates and political party committees. (Federal PAC contributions to state PACs are generally prohibited, except to PACs of state affiliates.) The new law eliminates this exemption.

It is still not entirely clear, however, the extent to which federal PACs that make West Virginia state contributions will now be required also to register and report under the state's PAC requirements. Arguably, under the new law's revised PAC definition (discussed more below), if a federal PAC does not have "the primary purpose" of supporting or opposing West Virginia state candidates, it would still be exempt from state registration and reporting.

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However, in discussing the change for federal PACs in an op-ed explaining the new law, the West Virginia Secretary of State indicated that “all PACs” will now be required to register and report in the state. On the other hand, the Secretary of State’s general counsel also has publicly stated that “the primary purpose” standard in the new PAC definition will be subject to additional clarification through an agency rulemaking.

Therefore, it is possible that federal PACs could still be exempt if, for example, not more than 50% of the PAC’s spending is in connection with West Virginia state elections (a potential threshold the general counsel floated). Adding to the lack of clarity is in the preamble in the bill, which only specifies that federal PACs are no longer “exempt from requirement to file state-level [] reports,” but does not state that all federal PACs making any state contributions will be categorically required to register and report in the state.

Wiley Rein’s Election Law Group will be monitoring the Secretary of State’s rulemaking to determine how the new “primary purpose” standard in the PAC definition will be applied to federal PACs.

Relatedly, trade associations and other nonprofit groups that “support or oppose” the nomination or election of West Virginia state candidates will now be required to register and report as PACs if such activity is determined to be their “primary purpose.” Under the existing law, a group is regulated as a PAC if “supporting or opposing” state candidates is “the purpose” of the group. This language has been interpreted as meaning that a group is not regulated as a PAC unless supporting or opposing state candidates is its exclusive purpose. Thus, the effect of the new definition is to expand the scope of entities that may be regulated as PACs.

Lastly, the new law requires quarterly reporting for PACs for election as well as non-election years. Under the existing law, in non-election years, PACs are only required to file an annual report.

### **Independent Expenditure Reporting**

Under the existing law, independent expenditure (IE) reports are only required (within 24 hours) for expenditures totaling \$1,000 or more made within 15 days before an election. Under the new law, additional IE reports will be required (within 48 hours) for any expenditures totaling \$10,000 or more made at any time up to 15 days before an election. However, for the 24-hour reports required within 15 days before an election, the new law raises the threshold to \$5,000.

### **Foreign National Prohibition**

West Virginia law currently does not address spending by foreign nationals in connection with state elections. However, spending by foreign nationals in connection with state elections is already prohibited by federal law.

The foreign national ban under the new West Virginia law mirrors the foreign national ban under the federal law. However, the West Virginia ban specifically also applies to foreign national spending in connection with state ballot measures, as well as state electioneering communications.

Currently, there are still various states whose laws do not specifically address foreign national spending on state elections, and that rely on the ban under federal law. As concerns about foreign meddling with U.S. elections continue to reverberate, expect to see additional states enacting their own foreign national bans. Some of these state bans may be much more expansive than the federal ban and may impact domestic subsidiaries of foreign corporations, publicly traded companies with foreign shareholders, and trade associations that receive payments from such entities.

### **Contribution Limit Increases**

The new West Virginia law raises the limit on contributions to state candidates to \$2,800 for each primary or general election (up from the existing \$1,000 limit). Contributions to state party and legislative caucus committees also will increase from the current \$1,000 limit to \$10,000 per calendar year.

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All of these changes will go into effect on June 7.