



# Compliance Notes - Vol. 1, Issue 10

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## RECENT LOBBYING, ETHICS & CAMPAIGN FINANCE UPDATES

**We read the news, cut through the noise, and provide you the notes.**

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Welcome to Volume 1, Issue 10 of *Compliance Notes* from Nossaman's **Government Relations & Regulation Group** – a periodic digest of the headlines, statutory and regulatory changes, and court cases involving campaign finance, lobbying compliance, election law, and government ethics issues at the federal, state, and local level.

Your attorneys, policy advisors, and compliance consultants are available to discuss any questions or how specific issues may impact your business.

If there is a particular subject or jurisdiction you'd like to see covered, please let us know.

Until then, please enjoy this installment of ***Compliance Notes***. If you would like to have these updates delivered directly to your in-box, please click below to subscribe to our Government Relations & Regulation mailing list.

### **Campaign Finance & Lobbying Compliance**

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Jack Abramoff, a former Washington insider, has agreed to plead guilty to conspiracy and violating the federal Lobbying Disclosure Act and faces five years in prison in connection with illegally lobbying for a fraudulent cryptocurrency project. (Joel Rosenblatt, *Bloomberg*) Reminder: Abramoff was at the center of a corruption investigation in the early 2000s that resulted in his conviction and led to 21 other people either pleading guilty or being found guilty. He served 43 months in prison before he was released in 2010.

**Montana:** The Montana Republican Party and two minor party qualification committees violated state campaign finance laws in a successful effort to qualify the Green Party of Montana for the primary ballot without the Green Party's knowledge. The Montana GOP has acknowledged paying Advanced Micro Targeting \$100,000 to gather signatures to certify the Green Party for the ballot. The money was also listed as an in-kind contribution to a group called Montanans for Conservation, which didn't register as a minor party qualifying committee until after the Green Party was certified for the ballot on March 6. (Amy Beth Hanson, *AP News*)

## Elections

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**Alabama – Curbside Voting:** A federal appeals court denied Alabama state officials' request for an emergency stay of a judge's order allowing curbside voting and relaxing certain absentee voting requirements for people at risk of serious illness from COVID-19. With this, counties may establish curbside voting procedures that otherwise comply with state election law. (Mike Cason, *AL.com*)

**Arizona – Ballot Order:** A case challenging the constitutionality of Arizona's Ballot Order Statute, where the candidates of the political party that received the most votes in the most recent gubernatorial election in that county appear first in all races and on all ballots in that county, was dismissed for lack of standing. (United States District Court Order)

**New York – Ranked-Choice Voting:** The New York City Board of Elections missed a City Charter-mandated June 1 deadline to issue a report on how it will implement the new voter-approved ranked-choice voting system in 2021. Voters approved ranked-choice voting in a referendum last November. It takes effect for elections beginning in 2021 and will only apply to party primary and special elections for city government positions. (Ethan Geringer-Sameth, *Gotham Gazette*)

**Texas – Straight-Ticket Voting:** A federal judge dismissed the Texas Democratic Party's straight-ticket voting lawsuit for lack of standing. Most states don't allow for one-punch voting (where voters can mark their support for all of the candidates of either party in a general election by simply picking a straight-ticket option at the top of a ballot), but its elimination in Texas almost three years ago was met with intense opposition from Democrats who feared the change would be felt most among voters of color and lead to voter drop-off, particularly in blue urban counties that have the longest ballots in the state. (Alex Ura, *Texas Tribune*)

## Federal Election Commission

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Caroline Hunter resigned as Commissioner in a letter stating, "the American people deserve better." With Hunter's resignation, the Federal Election Commission (FEC) is again left without a quorum and will not be able to initiate audits, engage in rulemaking, vote on enforcement matters or even issue an advisory opinion or hold meetings until quorum is restored. The remaining members of the commission are Republican Chair Trainor, Democratic Commissioner Weintraub, and Independent Vice Chair Steven Walther. (Luke Barr and Soo Rin Kim, *ABC News*)

President Trump announced his intent to nominate Institute for Free Speech Legal Director Allen Dickerson to the FEC. Dickerson has led the Institute's litigation team since 2011. The Institute applauded the president's decision in a statement. Trump's announcement gave no indication of when a formal nomination would be sent to the Senate. (Institute for Free Speech, Press Release)

The FEC published a notice of availability in the Federal Register seeking public comment on a petition for rulemaking filed by Citizens United and Citizens United Foundation. The petition seeks an amendment to 11 CFR 113.2(c) to limit the amounts that an authorized committee of a federal candidate may transfer to a committee of a national political party. The petition proposes to limit these transfers so that a self-funded candidate cannot transfer funds derived from the candidate's personal funds to a national political party committee if the transferred funds would exceed the annual limit on an individual's contributions to a national party committee. Public comments on the petition are due by August 31, 2020.

## Government Ethics & Pay-to-Play

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**California:** LA Councilman José Huizar was arrested and charged with racketeering last week after an FBI raid on his home and offices 18 months ago. (Jon Regardie, *Los Angeles Magazine*) In a 116-page affidavit, Huizar is accused of taking part in a pay-to-play scheme, whereby he received \$1.5 million in cash and other benefits from downtown developers in exchange for pushing their favored projects through the city's cumbersome approvals process. (Jon Regardie, *Los Angeles Magazine*) Just hours after his arrest, the Los Angeles City Council voted unanimously to immediately suspend Huizar from his post. (City News Service, *Los Angeles Daily News*) On Monday, June 29, 2020, Los Angeles City Controller Ron Galperin moved to have the city stop paying his nearly \$214,000 per year salary, saying it would be "unacceptable" for the councilman to continue receiving taxpayer funds while facing a felony charge in a federal corruption case. A Galperin spokesman said that the City Charter allows the city controller to stop salary payments when a council member is not "devoting his time to duties related to his office." (David Zahniser, *Los Angeles Times*)

## Political Speech & Campaign Advertisements

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Facebook will begin labeling all posts that include information about voting with a link funneling users to a voting information hub meant to provide facts from state authorities. Users will also be able to register to vote using this hub. (Kurt Wagner and Sarah Frier, *Bloomberg*)

## Redistricting

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Redistricting reform advocates in Arkansas, Nevada, North Dakota and Oregon are racing to gather thousands of petition signatures for proposed November ballot initiatives seeking to overhaul the way legislative voting districts are drawn for the next decade. All states must redraw their voting districts for the U.S. House and state legislative chambers based on the results of this year's census. In many states, that task will be done in 2021 by state lawmakers and governors. Reform advocates want to transfer that job to independent commissions to try to diminish the potential for elected officials to gerrymander districts to their political advantage. At least 17 states already have adopted measures that either shift the redistricting process to special commissions or establish other procedures intended to diminish the potential for partisan gerrymandering. Redistricting measures will also appear on the ballot this year in Virginia and Missouri after being placed there by state lawmakers. (David A. Lieb, *The Associated Press*)

**Michigan:** Applicants for a seat on Michigan's inaugural independent citizen redistricting commission include an 18-year-old Republican activist who has never voted, an 80-year-old pastor and a 50-year-old pharmaceutical saleswoman. They are among the 200 semi-finalists from 9,326 applications who are vying for 13 slots on the panel to rewrite Michigan's political future. Republican and Democratic state legislative leaders can strike five applicants each on behalf of their party and the final 13 commissioners—four Republicans, four Democrats and five who don't affiliate with a major party—will be chosen in August. The commission was born out of a 2018 ballot initiative changing Michigan's constitution and stripping

redistricting authority from the General Assembly. Last week the Sixth Circuit Court of Appeals denied a request by Republicans to rehear a challenge that the commission's selection process infringes upon U.S. constitutional rights by prohibiting voters related to or associated with public office holders from being commissioners. (Alex Ebert, *Bloomberg*)

## Signature Gathering

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**Ohio:** The U.S. Supreme Court refused to accommodate marijuana decriminalization advocates who failed to gather enough in-person petition signatures to get their referendum question on the November 3 ballot in several cities. The emergency application to stop Ohio from enforcing its ballot-access rules was referred to Justice Sonia Sotomayor, who referred the matter to the full Supreme Court, which then denied it on June 25th. Ohio requires that signatures "shall be affixed in ink," must be original (or 'wet') and personally witnessed. Ohio defended its ballot-initiative rules, arguing in a brief that any accommodations would have required officials to rush to put together a "half-baked" plan permitting online signature gathering. (Matthew Vadum, *The Epoch Times*)

## State & Local Ballot Measures

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**California:** Eight measures qualified for California's November ballot before the June 25 deadline, including the "Family Home Protection and Fairness in Property Tax Reassessments Act" backed by the California Association of Realtors. An effort to swap the Realtors' initiative with Assembly Constitutional Amendment 11 did not succeed by the deadline. Instead, the Realtors submitted a letter to Secretary of State Alex Padilla's office indicating that the removal of their initiative was conditional on the successful placement of ACA 11 on the November ballot and the Secretary of State's office agreed. On June 26, ACA 11 passed out of the Assembly and if Gov. Newsom signs Senate Bill 300 (extending the Legislature's deadline to place measures on the ballot), ACA 11 will be on the November ballot. However, Assembly Speaker Anthony Rendon insisted the Secretary of State could not accept the conditional offer to remove the original measure, writing, "At this point, you have no legal authority to remove Initiative #1864 from the November ballot... Our house will consider its legal options for challenging any removal of Initiative #1864 from the ballot, if that should occur." (Ben Christopher, *CalMatters*; John Myers, *Los Angeles Times*; Carla Marinucci and Jeremy B. White, *Politico*)

**Maine:** Maine Superior Court Judge Thomas Warren dismissed a court challenge to a pending ballot question opposing Central Maine Power's controversial hydropower corridor proposal, saying any ruling prior to the question being voted on in November would be preemptive. The question of constitutionality "must be reserved for future litigation if the proposed initiative is enacted," he wrote. Maine Secretary of State Matt Dunlap has said the question may be unconstitutional, but it should stay on the ballot to serve as an "advisory referendum." (Caitlin Andrews, *Bangor Daily News*)

**San Francisco:** A state appeals court ruled that Regional Measure 3, a toll increase measure that was on the local ballot in 2018 and approved by 55% of the voters, did not require the two-thirds majority needed for a tax increase. (Bob Egelko, *San Francisco Chronicle*)

**San Jose:** Next week, the San Jose City Council will consider asking 2020 voters to decide whether the mayor should have more power in city government and whether councilmembers should recuse themselves from votes that would affect special interest groups that contribute to their campaign coffers. The City Charter amendment proposal would also move the next mayoral election to 2024 to align with presidential

election years, extend the current mayor's term to December 31, 2024, and bar lobbyists representing special interest groups from providing gifts or contributing directly to a mayoral or council candidate's campaign. (Adam F. Hutton, *San Jose Spotlight*)

## Vote-By-Mail

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**Arkansas:** A lawsuit was filed in Pulaski Circuit Court seeking to require no-excuse absentee voting in the November election. Currently absentee ballots are allowed for military, people who are abroad and for people "unavoidably absent or unable to attend an election due to illness or physical disability." What "unavoidably absent" means is unclear, but voters can be prosecuted for perjury if found in violation of the rule. The suit asks for an injunction against requiring a voter to justify voting absentee and against prosecuting someone who states COVID-19 was a reason for "unavoidable absence." The court is also asked to order Secretary of State John Thurston to use more than \$4.7 million he received in federal COVID-19 relief money to pay for postage to deliver and return ballots and create drop boxes for absentee votes. (Max Brantley, *Arkansas Times*)

**Maine:** Older voters may be unable to cast a ballot without risking their health amid the COVID-19 pandemic, according to a lawsuit filed by the Alliance for Retired Americans and Vote.org. The suit asks a judge to issue an injunction that would allow voters to electronically submit a voter registration card and require the state to accept absentee ballots postmarked on Election Day, among other changes. The lawsuit argues that because many Maine voters are likely unfamiliar with the absentee ballot process and virus restrictions that might make it difficult for residents to leave homes to print documents or buy stamps, Maine's voter registration and absentee ballot requirements place an unconstitutional burden on the right to vote and are an unconstitutional poll tax. Plaintiffs say pre-paid postage should be provided for mail ballots, and voters should be able to choose another person to submit sealed ballots on their behalf, so long as they are postmarked by Election Day. (Jessica Piper, *Bangor Daily News*)

**Pennsylvania:** President Trump's reelection campaign filed a federal lawsuit in Pittsburgh to force changes in how Pennsylvania collects and counts mail-in ballots. A Pennsylvania law passed last year expanded mail-in ballot options to let anyone who wanted to vote by mail do so even if they did not have a reason they could not vote in person. Expanded mail-in balloting was part of a deal in which Democrats agreed to end straight-party ticket voting. The suit claims that practices and procedures by elections officials ran afoul of state law and the state and federal constitutions. The head of the Pennsylvania Democratic Party called the lawsuit an effort to suppress votes as a campaign tactic. (Mark Scoloro, *The Associated Press*)

**Tennessee:** The Tennessee Supreme Court refused to block a ruling that orders the state to comply with an order requiring it to make absentee voting available to every eligible voter for all elections in 2020 due to COVID-19. The earlier decision remains intact as the challenge awaits review by the state Supreme Court. (*Fox13 Memphis*)

## Voter Fraud

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**New Jersey:** A Paterson, New Jersey councilman and a councilman-elect in the same city, along with two other men, face voting fraud charges in connection with the May 12 special election. Councilmember Michael Jackson, who serves as the council's vice president, and councilman-elect Alex Mendez were among the four charged with criminal conduct involving mail-in ballots during May's mail-in election. (Jonathan Dienst, *NBC4 New York*)