



Compliance Notes - Vol. 1, Issue 28

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RECENT LOBBYING, ETHICS & CAMPAIGN FINANCE UPDATES

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

Welcome to *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

On October 30, 2020, President Trump nominated Sean Cooksey and Shana Broussard to serve as members of the Federal Election Commission (FEC). Cooksey currently serves as general counsel to Sen. Josh Hawley (R-Mo.); Broussard currently serves as counsel to FEC Vice Chair Steven Walter, an independent. If the Senate approves these nominations and that of Allen Dickerson, who Trump nominated in September, the FEC would have a full six-member complement. (Maggie Miller, *The Hill*)

Citizens for Responsibility and Ethics in Washington filed a complaint with the FEC against President Trump's chief of staff, Mark Meadows, accusing him of spending tens of thousands of dollars of campaign funds on food and beverage, including gourmet cupcakes, jewelry and expenses at a Trump hotel. Meadows, a former congressman from North Carolina, announced last year that he would not run for reelection and converted his campaign committee into a multicandidate PAC. According to the allegations, these expenditures by his campaign committee and its successor PAC were personal in nature and, therefore, allegedly violated the prohibition against personal use of candidate campaign funds. (Mary Papenfuss, *HuffPost*)

GOP Senator Ted Cruz is calling on a federal court panel to strike down an FEC rule limiting the use of post-election donations to pay back money he loaned to his 2018 campaign. Cruz gave two loans, totaling \$260,000, to his Senate campaign during his last reelection, but a campaign finance law caps the amount of money a campaign committee can repay a candidate for personal loans at \$250,000. Cruz sued last year, accusing the FEC of limiting the First Amendment right to political speech for candidates, their campaign committees and donors by setting a time limit on donations and on a candidate's ability to spend personal funds for campaign speech. But the FEC pushed back, saying the regulation is necessary to prevent quid pro quo corruption. (Megan Mineiro, *Courthouse News Service*)

Colorado: A federal judge has denied a conservative advocacy group's request to halt campaign finance investigations against committees that advocate for or against ballot initiatives. Colorado law requires organizations whose major purpose is campaigning on ballot initiatives to register an issue committee if they have accepted or expended more than \$200. Committees that accept or spend more than \$5,000 in an election cycle must also disclose their donors and the nature of their spending. The Colorado Union of Taxpayers and the Colorado Stop the Wolf Coalition filed a federal complaint claiming the registration requirement was unconstitutional. (Michael Karlik, *Colorado Politics*)

Elections

A federal judge ordered the U.S. Postal Service to make every effort to deliver mail-in ballots in three crucial swing states (Pennsylvania, North Carolina and Minnesota) by Election Day, despite uncertainty over whether ballots that arrive after Election Day will be counted by those states. (Erik Larson, *Bloomberg*)

Minnesota: U.S. Supreme Court Justice Gorsuch denied a request from Tyler Kistner, a Minnesota Republican candidate, to delay voting in his congressional race to February after the death of a third-party candidate. Kistner is running against Democrat Angie Craig, the incumbent, in the November 3 race for Minnesota's competitive 2nd District, which stretches south from St. Paul's suburbs. The Craig-Kistner race was thrown into confusion after the September death of Legal Marijuana Now Party candidate Adam Weeks. Because that party has major status in Minnesota and because Weeks' death was sufficiently close to the election, it triggered a state law calling for a delay until February. But Craig won a lower-court ruling to block the delay and the election was moved back to November 3. An appeals court left that decision in place, saying there are strong reasons for a uniform date for federal elections, and there must be compelling circumstances for a state to be permitted to change the date. Kistner appealed to the Supreme Court for an emergency order putting on hold the lower court ruling. Kistner's case is still active in the appeals court, but arguments won't be heard there until after the election. (Associated Press)

Pennsylvania: Potentially thousands of mail-in ballots requested by Butler County voters appear to be lost and the U.S. Postal Service has been asked to immediately investigate what happened to them. Nearly

40,000 registered voters in the county requested mail-in ballots. So far, only 24% of them have been returned to the county, by far the lowest rate among the state's 67 counties. The county with the next-lowest return rate, Fayette, has received 50% of requested ballots. (Jamie Martines, *Pittsburgh Post-Gazette*)

Texas: The Texas Supreme Court ruled in favor of Republican Gov. Greg Abbott's order to limit mail-in ballot drop box locations to one site per county, a decision that largely affects the Houston and Austin areas. (Ashley Killough and Caroline Kelly, CNN)

Government Ethics

Colorado: According to the Colorado Court of Appeals, neither the Colorado Open Records Act nor the Colorado Open Meetings Law apply to the Colorado Independent Ethics Commission – the constitutionally created state commission that investigates allegations of ethical misconduct involving public officials – because it is not a state agency or a state public body subject to Colorado's open-government laws. (Jeffrey A. Roberts, Colorado Freedom of Information Coalition)

Hawaii: The state Ethics Commission levied a \$5,000 fine against Tian Xiao, a former top examiner for the Hawaii Department of Commerce and Consumer Affairs, for accepting about \$654 worth of meals from a vendor he oversaw and failing to file gift disclosure statements in connection with the meals. (*AP News*)

Political Speech & Campaign Advertisements

Montana: Former New Jersey Governor Chris Christie unwittingly became the star of a video attacking the Republican gubernatorial candidate in Montana. Like other former politicians such as Illinois ex-Governor Rod Blagojevich, Christie joined the service Cameo, which lets users pay celebrities to record short videos, typically for something like a surprise birthday gift for friends or family. But in one recent case, the user who requested a video was actually working for the Democratic gubernatorial candidate in Montana, Lieutenant Governor Mike Cooney. The campaign paid Christie \$200 to record a video asking a man named Greg – actually Republican candidate Greg Gianforte – to “come back” to New Jersey. Cooney then posted the short video on Twitter as a “special message” for Gianforte. Christie then took to Twitter to note that he actually supports Gianforte's campaign and joined Cameo to benefit a New Jersey charity that treats pregnant women with addiction problems. (Ryan Teague Beckwith, *Bloomberg News*)

Redistricting

Arizona: Democratic leaders of the Arizona Legislature say two of five independents selected as potential chairs of the Arizona Independent Redistricting Commission are not legally eligible for the post. In their lawsuit, House Minority Leader Charlene Fernandez and Senate Minority Leader David Bradley allege the State Commission on Appellate Court Appointments failed to do its duty under the state constitution to properly vet the candidates and they want the nominees replaced with qualified people. (Bob Christie, *AP News*) Maricopa County Superior Court Judge Janice Crawford, however, declined to delay the appointments while she hears arguments about whether two of the nominees are legally qualified to serve. (Howard Fischer, Capitol Media Services)

State & Local Ballot Measures

California: California officially has its first \$200 million ballot campaign: Proposition 22. Five gig economy companies (Uber, Lyft, Postmates, Instacart and DoorDash) have now invested \$203 million – over ten times

what the union-driven opposition campaign has pulled in – in their effort to exempt themselves from a new state law that could force them to treat app-summoned workers as employees rather than contractors. (Jeremy B. White, *Politico*)

Voting Rights Act

Georgia: The Eleventh Circuit upheld a lower court ruling that the redistricting of the Sumter County School Board election six years ago violated the Voting Rights Act of 1965 when it eliminated two board member seats and made two seats to be voted in at-large. The court found that the redistricting and changes violated section 2 of the Voting Rights Act by diluting the Black vote. The Sumter County School Board has yet to indicate whether it will appeal. (Becca Salamacha, *Jurist*)