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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.

Our 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.

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Campaign Finance & Lobbying Compliance

The U.S. Supreme Court heard arguments in a pair of cases that test the ability of public officials to block critics from their personal social media pages. The two cases, *Lindke v. Freed* and *O'Connor-Ratcliff v. Garnier*, are the first in a series of disputes this term arising out of the relationship between government and social media. In the first case, Kevin Lindke, a resident of Port Huron, Michigan, sued the city manager, James Freed, because Freed blocked Lindke from his personal Facebook page after Lindke left critical comments on Freed's page about his handling of the pandemic. The lower court ruled that Freed was not using his office to block Lindke because Freed's Facebook account was personal, and he did not use government authority to maintain it. The second case involved two school board members in Poway,

California, who argued that their social media pages were an extension of their campaign pages and thus were personal. The lower court disagreed, holding that when public officials have social media pages that are open to public comments, they cannot block annoying or repetitive comments. A decision by the U.S. Supreme Court is expected by summer of 2024. (Nina Totenberg, *NPR*)

California: A majority of the 9th U.S. Circuit Court of Appeals declined to rehear *en banc* a three-judge panel's ruling upholding a San Francisco law requiring political advertisements to identify their top financial donors. Nine judges argued in dissent that the law violates free speech. The law was part of Proposition F, approved by 77% of San Francisco voters in 2019. It requires committees financing local campaign advertisements to identify in political advertisements their top two contributors of \$5,000 or more. The lawsuit argued that the identification requirement would distract readers, listeners and viewers from the message of a campaign advertisement, making it nearly impossible for groups to communicate effectively with voters. The court said the law provides voters with information about ballot measures and does not unduly burden free expression. (Bob Egelko, *San Francisco Chronicle*)

Massachusetts: The Massachusetts Attorney General's office announced settlements with a Republican couple and others after investigators found evidence of campaign finance violations. The Office of Campaign and Political Finance looked at contributions funneled from Ryan Fattman's senate campaign committee through state and local Republican committees to Stephanie Fattman's register of probate committee during her 2020 reelection campaign. The contributions totaled more than \$160,000, far in excess of the legal limit of \$100 on contributions from one candidate to another. Under the settlement, Stephanie Fattman and the Stephanie Fattman Committee must pay \$137,000, the total amount of the impermissible contributions funneled through the Republican State Committee. Ryan Fattman must pay \$55,000, and Donald Fattman, the former treasurer of the Ryan Fattman Committee and Ryan Fattman's father, must pay \$10,000. (Steve Leblanc, *AP News*)

New York: Rep. George Santos (R-N.Y.) pleaded not guilty Friday to the additional federal charges accusing him of stealing his campaign donors' identities and racking up thousands of dollars in unauthorized charges on their credit cards. Santos entered a not-guilty plea to the superseding indictment, that alleges Santos "repeatedly without authorization" used the credit cards of campaign donors to benefit his campaign and himself personally. According to the U.S. attorney's office, his trial date has been set for September 9, 2024, which is 57 days before the November general election, but after the Republican primary. (Caitlin Yilek, *CBS News*)

Government Ethics & Transparency

Michigan: Michigan Democratic lawmakers introduced dueling bills to implement voter-approved financial disclosure requirements for politicians. This sets up a legislative battle between more modest and more expansive proposals as the end-of-year deadline to pass legislation looms. This is critical because if lawmakers miss the deadline for enacting legislation, any Michigan resident can sue the state Legislature and the governor in the Michigan Supreme Court to enforce the requirements of the constitutional amendment. Two-thirds of Michigan voters approved Proposal 1 in 2022, that created a constitutional requirement for some state politicians to file personal financial disclosures. However, members of the state legislature are required to craft financial disclosure reports and filing requirements for themselves and those holding top statewide offices by December 31, 2023. Bills introduced in the Senate would subject to disclosure the politicians that voters chose when they passed Proposal 1: state representatives, state senators, governor, lieutenant governor, secretary of state and attorney general. However, House

Democrats' proposal would expand that list to include members of the State Board of Education, Michigan State University's Board of Trustees, University of Michigan's Board of Regents and Wayne State University's Board of Governors. Further, the proposals diverge on disclosure requirements for spouses, penalties for incomplete and inaccurate reports and late filings. (Clara Hendrickson, *Detroit Free Press*)(subscription required)

New York: Gov. Kathy Hochul's office will not say who pledged to pay for the governor's recent visit to Israel, an arrangement the state's ethics board has not yet approved, despite her trip to the Middle East. Hochul spent October 24 and 25, 2023, on the ground in Israel amid its ongoing war with Hamas. Hochul's spokesperson said a New York-based nonprofit committed to covering the cost of the governor's portion of the trip, while Hochul said taxpayers are picking up the tab for the state police officers who provided security. State ethics rules allow third parties to pay for travel, lodging and food for New York officials, including elected officials, in certain circumstances if the travel is "part of their official duties." However, the rules set out specific conditions that prohibit third parties from paying for travel if it can be interpreted as an attempt to influence the official's actions or reward them for past actions. For statewide elected officials like Hochul, the state Commission on Ethics and Lobbying in Government ("COELIG") determines whether conditions are met. It is clear that COELIG did not approve the request before Hochul's travel since the trip had already occurred, and as of Tuesday, October 31, 2023, approval still had not been granted. (Jon Campbell, *Gothamist*)