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# ELECTION LAW NEWS

Developments in All Aspects of Political Law | September 2015

## Largest Settlement Reached for Lobbying Disclosure Act Violation

By Carol A. Laham and Eric Wang

Federal prosecutors recently obtained the largest settlement ever reached for a violation of the federal Lobbying Disclosure Act (LDA). The $125,000 civil penalty, which was agreed to between the U.S. Attorney's Office for the District of Columbia and the Carmen Group, settled allegations that the lobbying firm had failed repeatedly to file lobbying disclosure reports in a timely fashion over several years. According to media reports, the firm's amended reports also disclosed receiving hundreds of thousands of dollars in lobbying fees that previously had not been reported.

Although such fines are relatively rare—the latest settlement was only the fourth such settlement since 2013—the matter nonetheless serves as a reminder of the important requirements for lobbyists and their employers to properly register and report their lobbying activities. Failure to do so may result in unwanted inquiries from federal prosecutors, potentially severe civil and criminal penalties, and reputational harm.

Under the LDA, lobbyists, their firms, and employers of in-house lobbyists are required to register with the Secretary of the U.S. Senate and the Clerk of the U.S. House of Representatives if an individual lobbyist makes more than one lobbying contact and lobbying activities and compensation for lobbying exceed certain thresholds during a quarterly period. Lobbying firms and employers of lobbyists are required to file quarterly reports on behalf of themselves and their lobbyists, detailing the dollar amount spent or billed on lobbying activities and the specific legislation or issues that were the subject of lobbying contacts, among other information. Lobbying firms, employers, and individual lobbyists also must separately file semiannual reports detailing certain political contributions that they or their PACs made, as well as certain other payments to benefit entities or events associated with or honoring covered officials.

The Secretary of the Senate and Clerk of the House refer suspected violations of the lobbying reporting requirements to the U.S. Attorney's Office for the District of Columbia for enforcement. According to the latest annual report on LDA compliance required to be compiled by the U.S. Government Accountability Office (GAO), the U.S. Attorney's Office currently has six attorneys working on LDA enforcement issues.

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## Lobbying for Federal Contract Leads to Byrd Amendment $4.8 Million Penalty

By D. Mark Renaud and Stephen J. Kenny

On August 21, the U.S. Department of Justice (DOJ) announced that it had reached an agreement with Sandia Corporation to settle allegations that the company violated the Byrd Amendment and the False Claims Act by using federal funds to lobby Congress and federal agencies over a four-year period. Sandia, a wholly-owned subsidiary of Lockheed Martin, agreed to pay nearly $4.8 million to resolve the allegations.

The Byrd Amendment prohibits using federal funds to lobby Congress or a federal agency to award or renew a federal contract, grant, loan, or cooperative agreement. The Byrd Amendment also requires that applicants for the above federal programs certify that they have not used

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# Criminal Charges Brought for False Statements to the Office of Congressional Ethics

By Jan Witld Baran and Robert L. Walker

On September 3, 2015, Paul O'Donnell—principal in O'Donnell & Associates, a high profile Washington, DC-area political and corporate strategic communications firm— pled guilty in Federal District Court in the Middle District of Georgia to a Criminal Information charging him with one count of violating Title 18 U.S. Code Section 1001 (False Statements statute), a felony. According to the "Factual Basis for Guilty Plea," filed in connection with the Information to which Mr. O'Donnell pled guilty, Mr. O'Donnell entered his plea in connection with statements he made to the Office of Congressional Ethics (OCE) when he was interviewed by the OCE in June 2014 as part of its inquiry into allegations that now former Congressman Paul Broun (named only as "Congressman A" in the Information) improperly used appropriated congressional funds to pay Mr. O'Donnell for campaign-related services.

Mr. O'Donnell's Plea Agreement, entered into with the U.S. Department of Justice (DOJ) through attorneys in its Public Integrity Section, includes provisions under which he could receive credit at sentencing for providing "substantial assistance" if he cooperates fully with the United States, including potentially through testimony before a grand jury. Based on these cooperation provisions—and on the fact that other witnesses before the OCE made statements similar to those which Mr. O'Donnell has now sworn were criminally false—it appears that DOJ's investigation of this matter is ongoing and that the filing of criminal charges, including potential conspiracy charges, against others is likely.

According to the "Factual Basis for Guilty Plea" in this matter, "in addition to services [Mr. O'Donnell] provided in support of Congressman A's official office and duties, [he] also provided substantial services to Congressman A's campaigns." The plea document states, in particular, that "during Congressman A's House reelection campaign in June and July 2012 and the Congressman's Senate race in 2013 and 2014, O'Donnell regularly assisted Congressman A with his campaign debate preparation," "also helped to draft the Congressman's opening and closing remarks for his campaign debates and provided the Congressman with campaign message advice." However, the plea document also states, "[d]espite the substantial work O'Donnell performed for Congressman A's political campaigns,"

> All of the [$43,400] O'Donnell received for his services to Congressman A was paid

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# New Lobbying Registration and Disclosure Requirements in Ireland

By Michael E. Toner and Karen E. Trainer

On September 1, 2015, Ireland's Regulation of Lobbying Act 2015 (Act) became effective. The Act requires lobbyists to register and file reports three times a year. Information provided on registrations and reports will be made publicly available through a new website. The Act also created a lobbying code of conduct and revolving door restrictions for some officials leaving the government.

Registration is required for certain professional lobbyists, lobbyist employers, representative and advocacy bodies, and persons communicating about zoning if communications are with a "designated public official" regarding a "relevant matter." Designated public officials include ministers, members of the National Parliament and European Parliament, certain civil servants, and certain local officials. Relevant matters include those relating to the initiation or development of a public program, the preparation or amendment of a law, and the award of any grant or contract.

Reports are due on May, September, and January 21. Each report must include information on the matters lobbied, individuals who carried out lobbying, and officials lobbied.

A database of registrations that have been filed since the September 1 effective date of the Act is available at https://www.lobbying.ie/. ■

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# California FPPC Amends Federal PAC and Top-10 Donor Disclosure Requirements

By Caleb P. Burns and Eric Wang

The California Fair Political Practices Commission (FPPC) recently amended its regulations to clarify the disclosure requirements for contributors to federal political action committees (PACs) that are active in California elections. The change was aimed at closing a potential "loophole" under which organizational donors may have been able to avoid disclosing their own donors if they gave to a federal PAC that then made political contributions or expenditures in California. At the same time, the FPPC also amended its regulations requiring certain ballot measure and independent expenditure committees to disclose their ten largest donors.

Federal and out-of-state PACs, trade and professional organizations, and other 501(c) non-profits are known as "multipurpose organizations" under California's campaign finance laws. Multipurpose organizations are required to register and report as "recipient committees" in California when they make political contributions or expenditures in connection with California state or local elections exceeding various dollar thresholds.

With the exception of Federal PACs, all multipurpose organizations that qualify as recipient committees must disclose on their recipient committee reports certain large donors whose contributions were used to fund the organizations' California political activity according to a last in, first out (LIFO) accounting method. Because federal PACs already are required to itemize on their federal reports all of their donors who have given more than $200 per year, the FPPC's regulations have exempted federal PACs filing recipient committee reports in California from the donor itemization requirement.

A multipurpose organization that qualifies as a recipient committee also is required to notify its donors that they may be required to register and file campaign finance reports in California if their funds have been used to pay for the multipurpose organization's California political activity, as determined by the LIFO accounting method. Under certain circumstances, an entity may have to disclose its own donors if the entity gave money to a multipurpose organization that made political contributions or expenditures in California. In other words, a multipurpose organization's political activity in California may trigger multiple layers of donor disclosure.

Since the implementation of this multi-layered donor disclosure requirement in 2014, it had not been entirely clear whether a federal PAC engaged in California political activity also would have to notify certain of its donors that they may have campaign finance registration and reporting obligations in California, since the federal PAC is otherwise exempt from identifying those donors on its recipient committee reports. Similarly, it has been less than clear whether the federal PAC's donors would, in fact, have their own California registration and reporting requirements.

Under the FPPC's amended regulations, a federal PAC making political contributions and expenditures in California will remain exempt from having to itemize donors on its California recipient committee report. However, the amended regulations now explicitly require the federal PAC to send notifications to certain of its donors and also clarify that those donors may, in fact, be required to register and report in California as well.

Relatedly, the FPPC also amended its donor disclosure regulations applicable to political committees primarily formed to support or oppose state ballot measures or to make independent expenditures for or against state candidates. Since 2014, such committees have been required to provide the FPPC with a list of their 10 largest donors if the committees have raised $1 million or more for an election. Under the amended regulations, if any of the committee's 10 largest donors are "recipient committees," the two largest donors who have given $50,000 or more to each of those recipient committees also must be included on the top-10 donor list. ■

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### *Largest Settlement Reached for Lobbying Disclosure Act Violation* *continued from page 1*

Per the GAO report, approximately 19 percent of lobbying disclosure reports were amended in 2014, and 10 percent of newly registered lobbyists, firms, and employers failed to file their first quarterly disclosure report. In addition, the GAO found that 4 percent of semiannual reports failed to properly report political contributions. The Secretary of the Senate and Clerk of the House have made more than 2,300 referrals in total to the U.S. Attorney's office over the last five years for failures to properly file quarterly reports, more than 1,500 referrals for lobbying firms and employers for failing to properly file semiannual reports, and more than 2,700 referrals for individual lobbyists for failing to properly file semiannual reports.

While the U.S. Attorney's Office offers LDA registrants opportunities to take corrective action, according to the GAO report, after four unsuccessful attempts have been made, prosecutors will consider taking "further action." Under the LDA, civil penalties of as much as $200,000 may be imposed for each violation, and up to five years' imprisonment may be sought for "knowing[] and corrupt[]" violations.

To avoid referrals to prosecutors, it is advisable for lobbying firms and companies employing in-house lobbyists to implement processes to ensure that they and their lobbyists are collecting all of the information required on lobbying disclosure reports, and that such reports are being filed on time and accurately. Routine internal audits are also recommended to verify that those compliance processes are effective.

Robust compliance and internal audit programs are especially important for firms and companies that lobby at multiple levels of government, since each jurisdiction may have its own unique registration and reporting thresholds, disclosure schedules, and requirements for what information must be reported. One's status as a registered lobbyist or lobbyist employer often also triggers additional restrictions on campaign contributions and gifts that may be given to covered officials.

Wiley Rein's Election Law practice routinely advises clients on federal and state lobbying and ethics laws, and how to set up internal audit and compliance programs to avoid inadvertently violating these complex laws. ■

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### *Criminal Charges Brought for False Statements to the Office of Congressional Ethics* *continued from page 2*

> from taxpayer money appropriated by the U.S. Congress to Congressman A's office. By law, and pursuant to House rules, those appropriated, congressional funds were to be used for the sole purpose of paying for strictly official congressional expenses and expenditures. By law, and pursuant to House rules, it was unlawful and improper to use appropriated, congressional funds, to pay for political campaign-related expenses and expenditures.

The plea documents in this matter also highlight the conduct of "Person A . . . Chief of Staff for Congressman A." It was Person A, according to these documents, who negotiated Mr. O'Donnell's contractual agreements regarding his work for the Congressman. In connection with the OCE inquiry into Mr. O'Donnell's work for the Congressman, Person A, according to the plea documents, "told O'Donnell that OCE could go 'f@@k themselves'" and told O'Donnell that he had been a "volunteer" for the campaign, by which "O'Donnell understood that Person A was telling [him] how he should characterize his role on Congressman A's political campaign in his interview with OCE."

It appears that no date has been set for Mr. O'Donnell's sentencing, another indication that Mr. O'Donnell is likely cooperating actively in an ongoing investigation into whether other individuals knowingly and willfully provided false information to the OCE in connection with its inquiry concerning former Congressman Broun.

This matter is noteworthy for the fact that it appears to represent the first instance in which criminal charges have been brought by DOJ for providing false information to the OCE. But the more important, more general point underscored by this case may be the broad and comprehensive scope of the False Statement statute, 18 USC Section 1001, as applied in the legislative context. The proscriptions of the statute apply in any circumstance in which an individual or organization provides information—whether in oral or documentary form and whether or not pursuant to a sworn oath—in "any

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***Lobbying for Federal Contract Leads to Byrd Amendment $4.8 Million Penalty*** *continued from page 1*

appropriated funds to lobby in violation of the Amendment as well as file reports disclosing certain of the applicant's lobbying activities related to a contract, grant, loan, loan guarantee, or cooperative agreement (via Standard Form LLL).

Since 1993, Sandia has held a contract with the U.S. Department of Energy's (DOE) National Nuclear Security Administration to operate the Sandia National Laboratories. The DOJ alleged that, between 2008 and 2012, Sandia used federal funds to lobby Congress and other federal officials to obtain an extension of this contract without competitive bidding. The contract was worth approximately $2.4 billion per year. The DOE's Office of the Inspector General conducted an investigation and issued a report that concluded that appropriated funds were used to pay Sandia employees and outside consultants salaries and fees for developing a plan to influence federal officials in connection with the contract extension. The Inspector General's Report served as the basis for the DOJ's case.

Federal contractors need to be aware that Byrd Amendment violations are coming under increasing scrutiny. Although the Department of Justice has historically prosecuted few Byrd Amendment violations, the Department has in recent years shown a willingness to use the False Claims Act—under which treble damages are available as a remedy—to go after alleged violations. As the Sandia case demonstrates, even activities that would seem to be acceptable efforts to extend a federal contract may run afoul of the Byrd Amendment. The OIG Report indicates that Sandia believed its efforts were typical of any federal contractor seeking a contract extension. Sandia further believed its activities were allowed under applicable Federal Acquisition Regulations.

Wiley Rein maintains preeminent government ethics and government contracting practices. We are prepared to assist contractors in complying with all federal lobbying laws, including the Byrd Amendment. ■

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***Criminal Charges Brought for False Statements to the Office of Congressional Ethics*** *continued from page 4*

investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress . . .." But the statute applies as well in any "administrative matter" of the legislative branch, including, for example, in connection with the filing of reports by individuals and organizations under the Lobbying Disclosure Act. ■

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## Jan Baran Authors Sixth Edition of *The Election Law Primer for Corporations*

Earlier this month, the American Bar Association published the sixth edition of *The Election Law Primer for Corporations*, authored by Jan Witold Baran, founder of Wiley Rein's Election Law & Government Ethics Practice. The updated primer includes nine chapters that cover campaign finance rules, PACs, campaign communications and activities, lobbying laws, tax considerations, and enforcement.

The laws governing campaign finance and lobbying have changed significantly since the previous edition of the book was published seven years ago. Numerous court decisions and new laws have led to changes in the way corporations, super PACs, and independent advertisers operate. Contribution limits and aggregate limits on individuals have changed, while rules governing the formation and operation of PACs have remained largely unchanged for more than 40 years.

To order your copy of *The Election Law Primer for Corporations*, visit http://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=195282687. ■

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# SPEECHES/UPCOMING EVENTS

Corporate Lobbying, Gift and Campaign Finance Compliance
**Caleb P. Burns**, Speaker
George Washington University Graduate School of Political Management
October 14, 2015 | Washington, DC

FEC Interpretations of the Constitution and Supreme Court Rulings
**Michael E. Toner**, Speaker
William & Mary School of Law
November 12, 2015 | Williamsburg, VA

Latest Developments in Campaign Finance Law
**Michael E. Toner**, Speaker
George Washington University Graduate School of Political Management
November 19, 2015 | Washington, DC