Corporate Political Activity in 2017: Legal Risks and Strategic Opportunities

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TODAY’S TOPICS

- Gift & Ethics Rules
- Political Contributions
- Pay-to-Play Laws
- Lobbying Rules
- Compliance Considerations
BUT FIRST. . . REMEMBER

- The same political activity may involve federal, state & local laws and rules
- Rules may differ significantly across jurisdictions
- Laws change rapidly – new laws and court decisions
- The organization and individuals may have liability for violations
- Federal & state prosecutors are very active
- Media loves political law violations
Altria’s Political Law & Ethics Compliance Program
Political Law Compliance Program
Built on Five Core Values

- Integrity
- Transparency
- Responsibility
- Proactivity
- Partnership
Political Compliance Program Scope

Program Covers:

- Lobbying
- Gifts to Government Officials
- Charitable Contributions
- Political Contributions
- Political Activities
- Ballot Measure Campaigns
Political Compliance Infrastructure

Organizational Components

• Law Department
• Regional Counsel
• Government Affairs Department
• Compliance & Integrity Department
• Corporate Audit Department
• Procurement Department

System Components

• Employee Code of Conduct
• Supplier Code of Conduct
• Political Law Compliance Policies
• Oversight & Monitoring
• Training Programs
• Recordkeeping
• Transparency
• Audits & Reviews
The use of company resources for political and public policy activities can be an important issue for shareholders. As such, Altria makes the following voluntary disclosures regarding these activities.

**Political Contributions**

In the United States, our companies may make corporate political contributions where permitted by law and company policy. In addition, since 1978 our companies’ political action committees (PACs), which now include AltriaPAC and Ste. Michelle Wine Estates PAC, have enabled employees and shareholders to pool their political contributions to support candidates who understand the legislative and regulatory issues important to our companies.

Since 2007, Altria has disclosed on this website information regarding political contributions made by each of its companies and its PACs. Altria discloses all PAC and corporate political contributions made to candidates, political parties, PACs, caucus committees, independent expenditure...
Disclosure of Lobbying Activities

State Lobbying Disclosures

Click on a state to access state lobbying disclosure websites.
Gifts to Government Officials
## Gifts to Government Officials

### Jurisdictions
- Federal
- State
- Local
- Agency/Department Rules

### Types
- Absolute ban (with exceptions)
- Dollar limits per occasion or per day
- Dollar limits per year
- No limits
- Prohibition if gifts “reasonably tend to influence”
Gifts to Government Officials

**Issues to Consider:**
- Who is covered?
- What is a gift?
- What are the exceptions?
- What are the limits?
- Special source limitations?
- Are limits different for different types of gifts?
- Are gifts reportable?
  - Aggregated?
  - Itemized?
- How do you value gifts?
- Do you have to notify government officials of the value of the gift?
- Can the official “buy down” the gift?
- Behested payments?
Virginia Gift Law

- Prior to July 2014: No limit
- January 2016 – July 2017: General $100 Gift Cap (with multiple exceptions)
- July 2017 - ??: Various Exceptions Narrowed & Expanded

Plus:
- Governor’s Executive Order ($100 limit with exceptions)
- Attorney General’s Policy ($100 limit)
- Local Gift Laws
- Virginia State & Local Conflicts of Interest Act
Virginia Gift Law

Current Law:

- General $100 Gift Cap with Multiple Exceptions + Inflation Adjustment
  - Itemization Threshold: $50
  - Covers Candidates too

- “Turkey Dinner Amendment”

- Exceptions:
  - Gifts less than $20 (such gifts are unlimited);
  - Food, beverages, and entertainment provided at a “widely attended event”;
  - Gifts of food or beverages provided at an event where the individual was performing “official duties related to his public service”;
Virginia Gift Law

Current Law:

- Exceptions Continued:
  - Gifts of food or beverages, where the individual is the featured speaker or presenter at an event;
  - Travel provided to facilitate a legislator’s attendance at a meeting of the General Assembly, a legislative committee meeting, or a national conference where the legislator’s attendance was approved by the House or Senate Rules Committee;
  - Plaques, trophies, or similar items;
  - Gifts given on the basis of personal friendship; and
  - Travel, provided the Virginia Conflicts of Interest Council has provided a waiver.
Virginia Gift Law

July 1 Changes:

- New Reception Exception
- Narrowed Widely-Attending Event Exception
- Expanded Travel Exception to Permit Meals
- New Session Gift Notification Requirement for Lobbyists
  - Due 3 Weeks After Sine Die
  - Applies to Statewide Elected Officials; Cabinet; Legislators
- New Date for Annual Gift Notification for Lobbyists
  - January 10th (covering January 1 – December 31)
  - Previously December 15th
- Gift Cap Eliminated for Judges
Altria’s Gifts Policy

Requirements

- Law Department Pre-Approval—Non-GA Employees
  - Always Required

- Law Department Pre-Approval—GA Employees
  - Required for All Gifts, *Other Than* Meals & Beverages
    - Exception: Gifts to Members/Employees of U.S. Congress
      - Pre-Approval Required for Gifts to Members/Employees of U.S. Congress

- Presence Requirement
  - Employee must be Present when Gifts of Meals/Beverages or Entertainment Provided

- Prohibited Gifts
  - Cash & Loans
  - Items Valued more than $100
Prohibitions

You may not promise, make, or withhold a gift or engage in a pattern of giving gifts to government officials:

- In violation of applicable law
- In order to influence or reward the conduct of a government official
- In order to cause a government official to violate an official duty or fiduciary responsibility
- If doing so may create the appearance of corruption or impropriety
Altria’s Gifts Policy

Reporting of Personal Gifts

- Covers personal gifts, loans, and personal business transactions
  - All GA Directors and Above
  - All SVPs and Above

- Must report if:
  - Value is greater than $250
  - Aggregate of gifts in calendar year exceeds $250

- Reporting requirements do not apply to a personal business transaction if:
  - It is in the ordinary course of official’s private business;
  - Sold at fair market value; and
  - Transaction is without regard to official’s duties or responsibilities
Recordkeeping & Approval Tools

Expense Software Captures Gifts to Government Officials and Automatically Routes to Law Department for Final Approval
Recordkeeping & Approval Tools

Custom-Built Database & App to Track Gifts to Government Officials

Welcome to Government Officials Expenditure Tracking System

The purpose of the Government Officials Expenditure Tracking System is to provide a single source for the collection, modification and reporting of information related to expenditures incurred while engaging with government officials.
Tip: Don’t Expect Government Officials to Know the Law
Tip: Don’t Neglect Contractors

Securities and Insider Trading Laws
Suppliers must maintain a record of material, nonpublic information during the course of their work for us. They may not use or share that information to trade or enable others to trade in the securities of Altria or any other company.

Illegal Payments, Corruption and Bribery
Suppliers must not engage in illegal payments or corruption. A variety of laws, including U.S. anti-bribery laws and the Foreign Corrupt Practices Act, prohibit corruption, fraud, embezzlement, bribery and kickbacks. Suppliers must comply with all applicable prohibitions.

Anti-Trust and Competition Laws
Suppliers must avoid agreements or actions that illegally restrain trade or restrict competition. Suppliers may not offer our employees any confidential information about a competitor of an Altria company.

Fiscal Integrity
Suppliers must maintain accurate books and records in compliance with all applicable laws, regulations and contractual obligations.

Gift Giving
We strongly discourage gifts to our employees. Our policies place significant restrictions on the types of gifts and entertainment that our employees are permitted to accept. Suppliers must not offer any gift or entertainment that could be construed as an attempt to secure favorable treatment. We do not allow cash or cash equivalents (e.g., gift certificates) as gifts to our employees.

Gifts to Government Officials and Political Contributions
Suppliers must not provide any entertainment or gifts to any government official for or on behalf of an Altria company. Suppliers must not make any direct or indirect political contribution or expenditure for or on behalf of an Altria company.
POLITICAL CONTRIBUTIONS
GENERAL RULES FOR CORPORATE CONTRIBUTIONS

No federal corporate contributions
• To candidates, parties, or PACs
• But – direct and indirect *independent expenditures* permitted – *Citizens United v. FEC*

Corporate contribution rules vary by state
• Prohibited in about 20 states and most others impose limits
• Unlimited corporate contributions allowed in just a few states – AL, NE, UT, OR, and VA
• VA approach – no limits but extensive reporting
• Independent expenditure reports due within 24 hours of expenditure
VA PAC REPORTING

- Quarterly reports – April 15, July 15, October 15 and January 15
- Large dollar contribution report – for contribution of $10K or more; w/in 3 business days of receipt
- State Board can grant extensions for “good cause” – up to 5 days
- Late report $500 first time; $1000 thereafter
- Separate penalties for “incomplete” reports
SPECIAL RULES

- No contributions to incumbents while GA is in session – legislative & executive incumbents
- PACs may not use raffles as a fundraising tool
- If a corporation hosts a fundraiser, it must register and report as a political committee if it receives and spends in excess of $200
- But, if the corporation only provides the facility, food, and entertainment for an existing political committee, and all contributions are given directly to the existing committee, then the corporation has provided an in-kind contribution and registration and reporting not required
USING FEDERAL PAC

✓ Federal PAC files a statement of organization
✓ No state reporting requirements for federal PACs
✓ State Board provides a link from its website to the FEC campaign finance disclosure reports for federal PAC reporting
✓ Registered committees can be penalized for accepting contribution from unregistered federal PAC
USING OUT-OF-STATE PAC

- File statement of organization on or before making $10,000 in state contributions in year
- ID (1) each contributor of $2500 or more and (2) each state contribution since prior Jan 1
- Same information provided after each state contribution
- Any other political committee that has contributed $50K or more to PAC also has to register
- Registered committees can be penalized for accepting contribution from unregistered out-of-state PAC
FOREIGN NATIONAL ISSUES
FOREIGN NATIONAL CONTRIBUTIONS PROHIBITED

• Foreign nationals (individuals and entities) are prohibited from making contributions or expenditures in connection with any election – federal, state or local!

• Individuals who may contribute to candidates, political parties, and PACs are:
  – U.S. citizens
  – Lawful permanent residents (i.e., green card holders)
ALSO PROHIBITED

✓ “Indirect” foreign national contributions through US intermediaries
✓ “Knowingly” soliciting or accepting foreign national contributions
✓ Providing substantial assistance in making or accepting foreign national contributions
✓ Contributions to political party entities and committees, and party building funds
VOLUNTEER ACTIVITY PERMITTED

General rule: foreign national individual may engage in uncompensated volunteer personal political activity - not treated as a “contribution”

Examples:
✓ Attend rallies, appearances and fundraisers
✓ Distribute literature, canvassing, telephone bank
✓ Solicit funds and give speeches for candidates
✓ Can even serve as paid campaign staff member
DOMESTIC SUBSIDIARY CONCERNS

U.S. domestic subsidiary may:

☑ Contribute in connection with a state or local elections (where legal) provided (1) activities are not finance by foreign parent and (2) foreign nationals do not participate in decision making

☑ Establish a PAC provided (1) the foreign parent does not finance PAC administration and (2) foreign nationals are not involved in PAC management
OTHER ISSUES TO CONSIDER
NO END RUNS ALLOWED

• Conduit contributions to hide the actual contributors thorough reimbursements and other arrangements

• DOJ/Office of Public Integrity has been actively prosecuting conduit schemes nationwide
USE OF CORPORATE FACILITIES

• Using corporate facilities or resources to assist with fundraising activities in support of officeholders or candidates
• Result: reportable in-kind contribution
• If a federal candidate: illegal contribution
• Civil & criminal sanctions
PUBLIC CONTRACTOR CONTRIBUTION RESTRICTIONS
STATE & LOCAL PAY-TO-PLAY LAWS

- Prohibit or restrict political contributions by state and local contractors and bidders

- Laws may apply to contributions by the company, its PAC, officers, directors, senior managers & even spouses and children

- Registration &/or reporting – may also apply
VIRGINIA’S PAY-TO-PLAY LAW

✓ Contracts of $5M or more – but not competitively bid
✓ Company, officer or director cannot make a political contribution or gift greater than $50
✓ Restricted recipients: Governor, his PAC, or the governor's secretaries, if the secretary is responsible for the agency awarding the contract
✓ Restriction applies between the submission of the bid and the award of the public contract
✓ Separate restrictions apply to grants or loans from the Commonwealth's Development Opportunity Fund and qualifying project under Public-Private Education Facilities and Infrastructure Act of 2002
WHAT’S AT STAKE?

✓ Penalty: Greater of $500 or up to twice the amount of gift or contribution
✓ Willful violation can result in Class 1 misdemeanor
✓ Bad press & damage to corporate reputation
✓ Compliance challenge for large companies
PAY-TO-PLAY LAWS

STATE LAWS
• California
• Connecticut
• Florida
• Georgia (licensees)
• Hawaii
• Indiana (lottery contracts)
• Illinois
• Kentucky
• Louisiana (hurricane contracts)
• Maryland
• Missouri
• Nebraska
• New Jersey
• New Mexico
• Ohio
• Pennsylvania
• Rhode Island
• South Carolina
• Vermont
• Virginia
• West Virginia

LOCAL LAWS
• Oakland, City and County of L.A., Culver City, San Francisco,
  County of San Diego, plus Cal State Teachers Retirement
  System, and Cal Public Employees Retirement System
• Chicago & Cook County
• Dallas, Houston & San Antonio, plus Teacher Retirement System
  of TX
• Denver
• Fort Lauderdale & Orange County
• New Jersey – in over 260 cities & towns
• New York City
• Philadelphia
CANDIDATE ADVOCACY:
INDEPENDENT EXPENDITURES
TRENDING: MORE DISCLOSURE

✓ Most corporate IE spending is through tax-exempt intermediaries -- associations, advocacy groups, etc.
✓ Intermediary must report the cost of communications it sponsors
✓ Great variety in federal & state rules on disclosure of persons/groups making payments to the intermediaries
✓ Many states are requiring disclosure of ultimate donors – e.g., California, New York, Minnesota
✓ Not required in Virginia, except in 990 Schedule B
DISCLAIMER – PRINT MEDIA

Required:
“Paid for by [name of person or PAC].”
AND
“Authorized by [name of candidate], candidate for [name of office].”
OR
“Not authorized by a candidate.”

Note: If opposing a candidate, must ID the candidate benefitted if coordinated
DISCLAIMER - TV

Required for PAC:
- Visual statement
  “Paid for by [name of person or PAC].”

- Spoken statement by CEO or Treasurer
  “The [name of PAC] sponsored this ad.”

- Full screen picture or video of person

- FCC sponsorship ID rules apply
DISCLAIMER - TV

Required for corporation/association:

- Statement spoken by CEO
  “[Name of sponsor] paid for this ad.”

- FCC sponsorship ID rules apply
DISCLAIMER - RADIO

Required for PAC:
- Statement by CEO or Treasurer
  “This ad was paid for by [name of PAC].”
- Must last at least 2 seconds

Required for corporation/association:
- Statement by CEO or Treasurer
  “[Name of sponsor] paid for this ad.”
- FCC sponsorship ID rules apply to both
DISCLAIMER - TELEPHONE

Required for PAC:
Full name of the PAC
Registration number, if registered

Required for corporation or association:
Name and address of person responsible for call

Note: Caller ID must include name of person or PAC paying for the call
LOBBYING LAWS
KEY LOBBYING TRENDS

- Expansion in definition of “lobbying”
- More disclosure about lobbying activities
- Registration/reporting triggers differ by jurisdiction – federal, state & local
- More political contribution and gift restrictions and disclosure obligations for lobbyists
- Stricter penalties at federal and state levels
- More collateral obligations, such as mandatory ethics training and wearing ID badges
WHAT IS LOBBYING?

Direct lobbying:
✓ Influencing or attempting to influence executive action or legislative action through oral or written communication with an executive or legislative branch official

Grassroots lobbying:
✓ Solicitation of others to influence executive or legislative action
**TYPE OF ACTIONS COVERED**

**Executive action:**
- Proposal, development, consideration, approval, rejection, etc. by an executive agency of legislation and executive orders by the Governor.

**Legislative action:**
- Proposal, development, consideration, approval, rejection, etc. of (1) a bill by the GA, (2) Governor’s approval, veto, or recommending changes to a bill, and (3) GA’s overriding or sustaining a veto, or confirming or rejecting appointees.
PROCUREMENT LOBBYING

- Influencing executive action includes influencing “procurement transactions” – new in 2016
- Term covers all functions pertaining to obtaining goods, services or construction – e.g., requirements, selection, award, administration
- Contract value must be $5M or more
- **Note:** ban on contingent lobbying applies
REGISTRATION

- Lobbyist registers prior to engaging in lobbying. (If outside of Richmond, within 15 days of lobbying.)
- Must register electronically – as of July 1, 2017
- Important exceptions:
  - Activity is limited to formal testimony
  - Employee’s job duties do not regularly include lobbying
  - Person receives $500 or less in compensation/year
  - Person/entity does not spend more than $500
OTHER COMPLIANCE ISSUES

✓ Lobbyist expenditure & gift report filed by July 1
✓ Principal reports if lobbyists are exempt
✓ Grassroots communication expenses are reported – including website costs
✓ Reports filed electronically
✓ Lobbyist or principal may terminate lobbyist’s employment – new as of July 1
✓ Preserve records for 2 years from date of report
✓ Financial penalties for non-filers
FEDERAL TAX ISSUES

✓ Lobbying and political expenditures are not deductible as a business expense

✓ Association must provide members with a “reasonable estimate” of the portion of dues related to lobbying or pay “proxy tax”

✓ Tax-exempts must provide a nondeductibility notice
FEDERAL GOVERNMENT & STATE GIFT LAWS

- Conviction overturned by Supreme Court in 2016
- Federal prosecution of state ethics violations
- Activist DOJ/Office of Public Integrity – will that continue?
- Importance of following gift limit and disclosure rules
- Takeaway from Supreme Court decision
COMPLIANCE TAKEAWAYS

✓ **Training** – educate key groups about the rules, especially if activity will trigger registration/reporting or ethics/gift rules

✓ **Advance Planning** – many opportunities for engagement, but need to work within the rules

✓ **Review** – periodically review scope of GA efforts to assess risks and compliance

✓ **Put Someone in Charge** – employees should know where to direct compliance questions in the organization

✓ **“Ask First” Culture** – encourage employees to get advice before acting
Tip: Evolve

- New Corporate Structures
- New Activities
- New Laws
- New Technologies
QUESTIONS?

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