



IN COMPLIANCE

HOLTZMAN VOGEL'S MONTHLY ROUND-UP



William J. McGinley, Partner at Holtzman Vogel, to Serve as Next White House Counsel



William J. McGinley, a partner at Holtzman Vogel, was **selected** by President Trump to serve as White House Counsel. McGinley served as White House Cabinet secretary during President Trump's first term.

In an interview with *Law360*, firm founder and managing partner Jill Holtzman Vogel said that "no one works harder, or is more dedicated or more loyal" than Bill McGinley. Vogel continued, "I think those are all things that make him so worthy of this position with this president. His highest priority will be executing exactly what it is that the president wishes to accomplish."

McGinley was profiled by **CNN**, **POLITICO**, **USA Today**, the **New York Times**, and **Bloomberg**, among others.

Jessica Furst Johnson: Pennsylvania Senator Bob Casey wants to win with illegal votes

Holtzman Vogel partner Jessica Furst Johnson writes in the ***Pittsburgh Post-Gazette*** on the state of the U.S. Senate race in Pennsylvania and Senator Casey's refusal to concede. She notes that "at least four counties are now including undated and unsigned ballots" in their vote tallies, in open defiance of the Pennsylvania Supreme Court.



On November 18, the Pennsylvania Supreme Court **issued a ruling** ordering Pennsylvania's dissenting county election boards to comply with the Court's earlier decision on which mail ballots may be counted. The Court directed that "[a]ll Respondents, including the Boards of Elections in Bucks County, Montgomery County, and Philadelphia County, SHALL COMPLY with the prior rulings of this Court in which we have clarified that mail-in and absentee ballots that fail to comply with the requirements of the Pennsylvania Election Code ... SHALL NOT BE COUNTED for purposes of the election held on November 5, 2024."

Pennsylvania counties began an **automatic recount of ballots** on November 20. That count must be completed by November 26, and results reported to the Secretary of State on November 27 by noon. However, on November 21, after the recount began, Senator Casey **conceded** when it became clear that the approximately 16,500 vote margin would not be reversed by a recount.

Harris Appearance on Saturday Night Live Triggered FCC Equal Time Rule

Three days before the 2024 presidential election, Saturday Night Live hosted Vice President Kamala Harris for a one-and-a-half minute opening segment. FCC Commissioner Brendan Carr immediately released a **public statement** calling the appearance "a clear and blatant effort to evade the FCC's Equal Time rule . . . [u]nless the broadcaster offered Equal Time to other qualifying campaigns." Within days, at least **70 complaints** were filed with the FCC making the same argument.

Following Saturday Night Live's airing, FCC Commissioner Brendan Carr **wrote on X** (formerly Twitter), "REMINDER re: NBC / SNL candidate appearances... The federal Equal Time rule requires broadcast stations to afford *all legally qualified candidates* rights to use airtime / facilities. RFK Jr, Jill Stein, Hung Cao, and all other qualified campaigns should take note."

NBC quickly filed **an equal-time notice** with the FCC acknowledging that they provided one-and-a-half minutes of airtime to Harris "without charge." The evening following the Saturday Night Live broadcast, a **one-and-a-half minute video** styled as "a special message from Donald J. Trump" was aired by NBC during a NASCAR race.



The same Saturday Night Live broadcast also included a segment featuring Senator Tim Kaine that **triggered equal time opportunities** for his opponent, Hung Cao. Cao received two minutes of airtime that his campaign used to run ads during NBC programming. Cao was represented by Holtzman Vogel partner Steve Roberts, who **said** NBC understood "they had no choice in the matter" and "worked with us very swiftly to resolve it."

Candidates should always monitor the media appearances of their political opponents and remain alert for potential violations of the Equal Time Rule. If a broadcaster provides free airtime to an opponent that falls outside the news reporting exemptions, the candidate should immediately consult with counsel to seek equivalent airtime.

OSC Files Hatch Act Complaint Against Biden Administration Official Neera Tanden

The U.S. Office of Special Counsel ("OSC") filed a "**complaint for disciplinary action**" this month alleging that President Biden's director of the U.S. Domestic Policy Council, Neera Tanden, violated the Hatch Act for months, including after receiving notice from the agency that her social media posts violated the law by soliciting donations for Democratic candidates.

OSC's complaint was filed on November 6, 2024 with the Merit Systems Protection Board ("MSPB"), which is responsible for adjudicating disciplinary action for federal employees. In the complaint, OSC identifies seven "representative examples" of Tanden's posts on X (formerly Twitter) between July and September that solicited funds for Democratic Congressional, Senatorial, and Presidential candidates in violation of the Hatch Act. When OSC notified Tanden through the White House Counsel that her posts violated the Hatch Act's prohibition against soliciting political contributions, she removed one post but continued to post messages soliciting donations to candidates. The MSPB has the authority to impose penalties ranging from suspending Tanden without pay to removing her from her White House post entirely as a result of her transgressions, although it is also possible that Tanden will face no repercussions.

The Hatch Act governs the political activity of federal executive branch employees, including White House employees. While some employees may participate in certain political activities so long as they are not on the clock, other employees are subject to stricter regulations – all aimed at keeping politics out of the federal workforce. All federal employees, including Tanden, are strictly prohibited from soliciting political contributions for candidates for partisan political office. In a political environment dominated by social media, White House and federal employees frequently come across partisan posts online – and should generally proceed with caution prior to engaging with such content in light of Hatch Act regulations. As **put by OSC Special Counsel Hampton Dallenger**, "Congress created a rule banning all federal employees from fundraising for political candidates... The Hatch Act contains no escape hatch for White House officials."

Senate Confirms David Huitema to Five-Year Term as Director of the Office of Government Ethics

On November 14, the Senate **confirmed** David Huitema to serve as the Director of the Office of Government Ethics (OGE). Mr. Huitema was confirmed 50-46 to a five-year term. OGE had been without a confirmed director since July 2023 when the previous director's term expired. OGE is tasked with responsibility for overseeing the Executive Branch's agency ethics programs.

Around the States

New York Court Strikes Down State Voting Rights Act of 2022; Appeal Filed



On November 7, 2024, Orange County Supreme Court Justice Maria S. Vazquez-Doles struck down New York’s state Voting Rights Act of 2022 in its entirety. Specifically, Justice Vazquez-Doles held that the state VRA violates the Equal Protection Clause of the 14th Amendment because it allows for members of different races to be treated differently without being narrowly tailored to serve a compelling state interest.

The Plaintiffs in this matter were challenging the Town of Newburgh’s at-large system for electing members of the town board. Black and Hispanic residents of the Town, the Plaintiffs argued, were unable to elect candidates of their choice under the Town’s at-large voting system.

On November 11, 2024, the Plaintiffs filed their **notice of appeal**. The Office of the New York State Attorney General has also provided notice of their intention to intervene in the appeal and defend the constitutionality of the state VRA. Plaintiffs-Appellants must file their briefs by November 25, 2024, and the Respondents are required to file their briefs by December 2, 2024.

Holtzman Vogel's Joe Burns told **National Review** that “[t]he decision to strike down the New York Voting Rights Act was certainly the right decision,” but the state “is likely to find a more favorable bench at the Appellate Division and the Court of Appeals.”

Maine Voters Approve Referendum Imposing Contribution Limits on Super PACs

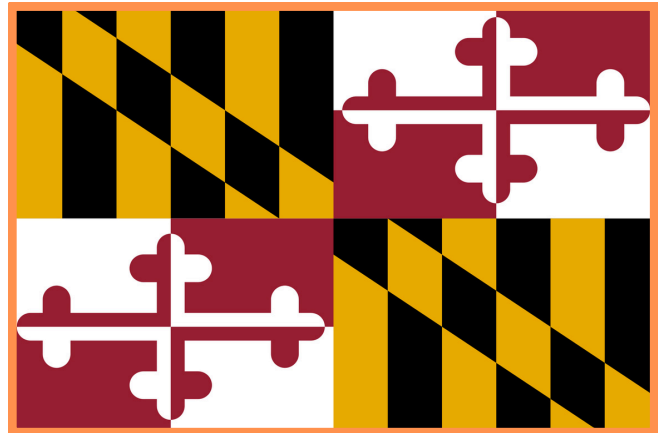
Maine voters **overwhelmingly approved** a referendum (Question 1) to impose a \$5,000 limit on contributions to political committees that make independent expenditures, also known as Super PACs. A legal challenge is certain, which is the goal of the referendum’s backers who hope the Supreme Court will ultimately hold that contributions to Super PACs may be limited on the ground that allowing such groups to accept unlimited contributions creates a risk of quid pro quo corruption.



The question of whether contributions to Super PACs may be limited was not answered by the Supreme Court in its *Citizens United* decision. But the federal courts of appeals that have addressed this issue have, thus far, been unanimous in rejecting the position of the referendum's supporters, concluding instead that contribution limits on Super PACs are unconstitutional. Question 1 received the support of more than 70% of Maine's voters.

Maryland AG Tells Voting Group to Stop Sending Intimidating Mailers

The Maryland Attorney General (AG) recently **issued a cease-and-desist letter** to a non-profit voting assistance group that mailed out "Voter Report Cards" that many state voters felt were threatening and intimidating. The mailers, which included the voter's name, address, and recent voting history, said that the group would "be reviewing these records after the election to determine whether or not you joined your neighbors in voting."

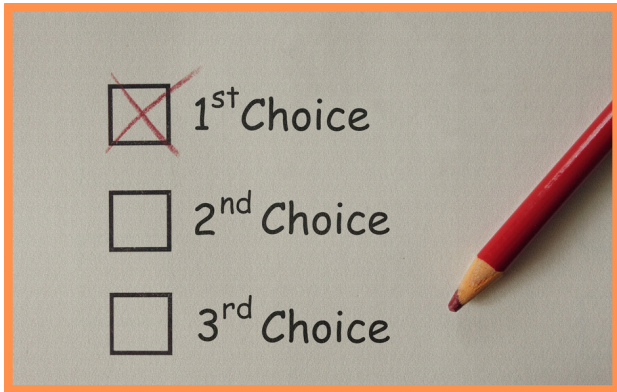


The AG's letter stated that the group's mailer may violate Maryland law, which prohibits any attempt to influence a person's voting behavior through threat or intimidation. The group behind the mailer (the Voting Participation Center) defended the communication, contending that its language is effective in getting people to vote. Other voting rights groups, like the League of Women Voters, criticized the mailers for using language that could be perceived as coercive.

Ohio Voters Reject Ballot Measure to Create Legislative Redistricting Commission

Buckeye State voters **defeated a proposed constitutional amendment** to create a 15-member "citizen redistricting commission" to draw lines for congressional and state legislative districts. Supporters of the proposed amendment, which was 26 pages long, significantly outspent the measure's opponents. But the amendment, which President-elect Trump opposed, still lost by a nearly 10-point margin. Following the amendment's rejection, Ohio's redistricting process will continue to be controlled by state lawmakers and a commission consisting of seven elected officials. The state's congressional map is scheduled to be redrawn next year.

Pending a Recount, Alaskan Voters Narrowly Defeat Referendum to Repeal Ranked Choice Voting



Ranked choice voting in Alaska **appears to have survived** a repeal referendum by a narrow margin, currently just 664 votes. **Ballot Measure 2** placed the state's open primary system and ranked choice voting method, both of which were adopted by ballot measure in 2020, before the voters. A recount is likely. If the result holds, the leader of the repeal effort **says** he will seek to place the question before voters again in 2026.

Elsewhere, voters in 2024 **rejected ranked choice voting** ballot measures in **Colorado, Idaho, Nevada,** and **Oregon,** while **Missouri voters** approved a measure to ban the practice. **Washington, DC voters** approved a measure to implement the voting method in local elections.

New York Law Allows Local Boards of Elections to Establish Absentee Ballot Drop Box Locations

On November 22, New York Governor Kathy Hochul **signed into law a bill** that authorizes local Boards of Elections (BOE) to establish absentee ballot drop box locations. Under the new law, county BOEs are not required to utilize absentee drop boxes, but upon the agreement of a county's BOE Commissioners, the county may establish absentee drop box locations. The law takes effect immediately, and the State Board of Elections is required to establish regulations for the use of absentee drop boxes by local BOEs. Governor Hochul issued an approval memorandum upon signing the bill. Gov. Hochul, in this approval memorandum, stated that she and the leaders of the state legislature reached an agreement to enact legislation in 2025 to clarify that early mail-in ballots may also be deposited in absentee drop boxes.

HV Making the Rounds

- Jason Torchinsky was named a top lawyer for Campaign and Election Law by *Washingtonian*.
- Oliver Roberts authored "AI-Fueled Alternative Dispute Resolution Is Law's Next Frontier" for *Bloomberg Law*.
- Joe Burns quoted by *National Review* article, "New York AG Unprecedented Control Over Election Rules."
- Best Law Firms, part of Best Lawyers, highly ranked six of Holtzman Vogel practices in Florida: Government Relations, Administrative & Regulatory Law, Commercial Litigation, Environmental, Environmental Litigation, and Land Use & Zoning
- Former Arizona Supreme Court Justice, Andy Gould, spoke to Fox News on President Trump's immigration policy.
- Spectrum News interviewed Joe Burns on Rep. Elise Stefanik's potential replacement process.
- Holtzman Vogel sponsored and attended the Federalist Society's National Lawyers Convention and Antonin Scalia Memorial Dinner.
- Bill McGinley's appointment to White House Counsel by President Trump was covered by *Law.com*, *Bloomberg Law*, *CNN*, *USA Today*, *Law360*, *POLITICO*, *NBC News* among others. Jan Baran, Jill Vogel and Jessica Furst Johnson were quoted in a number of these.
- Jonathan Fahey, former Acting ICE Director and EDVA federal prosecutor, spoke to Fox News on the topic of President Trump's picks regarding immigration, government spending, and DOJ.
- Andy Gould appeared in an ad to say No to Proposition 140 to preserve Arizona's election system. Arizona voters did indeed reject Prop 140.
- Joe Burns authored an *Albany Times Union* Op-Ed, "Stefanik is the right choice to represent the U.S. at the UN."
- Brennan Bowen presented to the Arizona State University Law School's chapter of the Republican National Lawyers Association on the topic of election day from a lawyer's perspective.
- Mark Pinkert's joining the firm from Weil Gotshal to spearhead Holtzman Vogel's South Florida expansion was covered by *Daily Business Review*, *Law360*, *POLITICO*, and *Attorney at Law Magazine*.
- Steve Roberts, Nicole Kelly, Andrew Pardue and David Brown were on election recount in Nevada.
- Joe Burns spoke to the Amherst Republican Women's group on election law.
- Jessica Furst Johnson authored an op-ed to the *Pittsburgh Post Gazette*: "Bob Casey wants to win with illegal votes." Jessica was also quoted in the *Pennsylvania Capital-Star* article, "Casey and McCormick are now fighting over provisional ballots in a dozen Pennsylvania counties."
- Erielle Davidson spoke on a Touro Talks panel entitled "Taking Hamas Funders to Court."
- In the *Washington Times* article, "Hung Cao strikes deal with NBC to air political ads in key time slots after Kaine appears on 'SNL'," Steve Roberts was quoted and listed as campaign counsel for Hung Cao, and had successfully assisted with this matter.

This update is for informational purposes only and should not be considered legal advice. Entities should confer with competent legal counsel concerning the specifics of their situation before taking any action.

Congratulations to our clients who have been selected by President Trump to serve in the administration or in key roles.

- **Sen. JD Vance** - Vice President-Elect
- **Sen. Marco Rubio** - Secretary of State
- **Gov. Kristi Noem** - Secretary of Homeland Security
- **Rep. Lee Zeldin** - Administrator of the EPA
- **Rep. Michael Waltz** - National Security Advisor
- **Rep. Elise Stefanik** - Ambassador to the United Nations
- **Gov. Mike Huckabee** - Ambassador to Israel
- **Vivek Ramaswamy** - Department of Government Efficiency



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