



# IN COMPLIANCE

HOLTZMAN VOGEL'S MONTHLY ROUND-UP



## ***Federal Trade Commission Acts to Prohibit Employee Noncompete Agreements***

On April 23, the Federal Trade Commission **voted** 3-2 to adopt a final rule banning noncompete agreements. The FTC defines a "non-compete clause" broadly as a term or condition of employment that prohibits a worker from, or penalizes a worker for, seeking or accepting work from a different employer or operating a business at the conclusion of current employment. Non-compete clauses have long been defended as a way to prevent employees from taking company trade secrets and intellectual property to competing firms; the FTC now says the provisions are a form of unfair competition that impermissibly limits employee job opportunities.

The new rule will go into effect 120 days after it is published in the Federal Register (likely going into effect in August). Business organizations, including the **U.S. Chamber of Commerce**, the Business Roundtable, and tax firm **Ryan LLC**, immediately filed lawsuits to block the FTC's rule on the grounds that it exceeds the agency's authority.

Under the new rule, all noncompete agreements in employment contracts will be banned going forward and most existing noncompete agreements will be void and unenforceable. The FTC rule contains one exception for existing noncompete clauses covering certain senior executives making more than \$151,164 who are in policymaking positions. This class of senior executives cannot, however, be bound by new noncompete agreements once the FTC's rule goes into effect.



Until now, regulation of noncompete clauses has existed only at the state level. Some states have prohibited the practice, while many others regulate their duration, geographic scope, or types of employees that may be subject to the clauses. The FTC's rule, if upheld, would impose a single, nationwide standard that mirrors the approach taken by only a small number of states.

If the FTC's rule goes into effect unchanged, many unanswered questions remain, including whether these rules apply to nonprofit organizations. We will continue to monitor these new rules as developments occur.

### ***D.C. Circuit Approves Charging Campaign Finance Reporting Violations Under Sarbanes-Oxley Act***

In a decision issued April 19, the D.C. Circuit held that prosecutors may charge certain federal campaign finance reporting crimes under either the Federal Election Campaign Act (FECA) or the Sarbanes-Oxley Act. In *US v. Benton*, Jesse Benton, a U.S. political consultant, received funds from a Russian national that he later contributed in his own name so the Russian contributor could attend a Trump fundraising event. The court explained that Benton's false statements about the source of the contribution caused the fundraising committee to file an incorrect disclosure report.

Benton was charged with several felonies, including "causing false records" in violation of the Sarbanes-Oxley Act. Benton argued that the Sarbanes-Oxley Act did not apply to election crimes that are subject to FECA. The D.C. Circuit disagreed. The Sarbanes-Oxley Act, which was adopted following the Enron scandal, prohibits causing "a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence" the administration "of any matter within the jurisdiction of any department or agency of the United States." The D.C. Circuit held that nothing prevented the Sarbanes-Oxley Act from being applied to false FEC reports and concluded that "the government had discretion to prosecute Benton's acts under either FECA or § 1519 of Sarbanes-Oxley" and "may charge false election filings under both statutes."

The D.C. Circuit is not the first court to hold that campaign finance violations involving false records may be prosecuted under the Sarbanes-Oxley Act. The Second and Sixth Circuits have previously upheld the use of Sarbanes-Oxley in this context.

## ***FEC Proposes Candidate Security Regulations***

The Federal Election Commission (FEC) published a **notice of proposed rulemaking** seeking public comment on new regulations that would codify a series of recent advisory opinions allowing candidates and officeholders to use campaign funds to pay for security upgrades to their personal residences and personal security services. For many years now, the FEC has treated these expenses as a permissible use of campaign funds due to their connection with campaign and officeholder activities, rather than an impermissible "personal use" of funds. Past advisory opinions have approved requests to spend campaign funds on gates, electronic security systems, external lighting, window film, and other similar measures. Comments on the thus far uncontroversial rulemaking must be filed by June 10.



## ***Government Accountability Office Releases Annual Report on Federal Lobbying Compliance***

The U.S. Government Accountability Office (GAO) released its **annual report** on Lobbying Disclosure Act (LDA) compliance in April. Each year, GAO assesses overall lobbyist compliance based on a random sampling of lobbyists and LDA reports. GAO also reports on civil and criminal noncompliance referrals to the U.S. Attorney's Office for the District of Columbia.

According to GAO, the U.S. Attorney received 3,622 LD-2 quarterly lobbying report referrals from the Secretary of the Senate and the Clerk of the House from 2014-2023. Of this total, only 26% have been closed, while 74% (or 2,666) of referrals remain pending. During the same period, the Secretary of the Senate and the Clerk of the House also issued 2,128 lobbying firm referrals, and 7,962 individual referrals, for LD-203 contribution report lapses.

Despite the large number of referrals, enforcement by the U.S. Attorney's Office remains rare. The U.S. Attorney's Office did not bring any lawsuits or reach settlements with any parties for non-compliance during the first half of 2023, nor did it impose any civil penalties against lobbyists from January - September 2023.

## *House Ethics Committee Issues Revised Legal Expense Fund Regulations*



The U.S. House of Representatives Committee on Ethics issued **revised regulations on member legal expense funds** on April 18. Beginning May 1, the new rules apply to all legal expense funds established for the benefit of a House Member, officer, or employee. The new rules create a new electronic filing requirement for quarterly reports and specify that reports must be filed even if the fund received no contributions and made no expenditures during the quarterly reporting period. The Ethics Committee also prohibited contributions to legal expense funds from foreign nationals.

## STATE UPDATES

### *Arizona Adopts More Frequent Campaign Finance Reporting for Statewide Candidates*

Arizona's Governor has signed into law a bipartisan bill that requires statewide candidates to file quarterly campaign finance reports throughout the four-year period preceding the candidate's general election once they qualify as candidates. The **new reporting schedule** became effective immediately and the first reports were due April 15. Previously, statewide candidates filed reports only during the one-year period preceding the general election. The legislation was lauded as a win for transparency and requires Governor Hobbs' campaign to disclose, for the first time, all contributions received and expenditures made since the end of 2022.



## Georgia Legislature Approves Election Integrity Laws



On March 28, 2024, the Georgia General Assembly passed a new suite of election law changes designated **SB189** and sent the bill to the Governor, who is expected to sign it. The package makes several changes to current law that are intended to enhance election security and integrity, including clarifying procedures for voter eligibility challenges and absentee ballot processing.

SB189 creates a non-exhaustive list of specific allegations that will constitute sufficient “probable cause” to challenge another voter’s registration, including claims that: (1) the voter is actually deceased; (2) the voter has voted, registered to vote, or obtained a homestead exemption in a different jurisdiction than the one in which their registration is being challenged; or (3) the voter is registered to vote at a nonresidential address. In addition to laying out a clear route for registration challenges, SB189 also imposes certain safeguards to protect voters by requiring that any allegations only be validated with data from official government sources (not unverified third-party databases) and by prohibiting challenges brought within 45 days of an election or runoff and delaying adjudication of the challenge until after certification of results.

The bill also makes clear that individuals who register to vote in other states, counties, or municipalities will be considered to have officially changed their residence for voting purposes, and that such persons will be required to update their voter registration if they move back to their original address. A P.O. Box will no longer function as sufficient proof that a voter resides within a particular jurisdiction.

SB189 also clarifies procedures surrounding absentee ballot processing, including a requirement that counties document every person who accesses absentee ballots received, record all individuals in the chain-of-custody in writing, and maintain absentee ballots in a sealed container or access-controlled room to prevent tampering. The bill should also speed the announcement of election results through a new requirement that counties tabulate and report the results of all absentee ballots that were accepted by the Monday preceding the election by no later than 8:00 PM on election night or one hour after poll closing (whichever is later).

Finally, SB189 eases presidential ballot access requirements by permitting any political party which has obtained presidential ballot access in at least 20 states or territories to qualify for access to the Georgia ballot.

Legal challenges to SB189 are certain, as the ACLU has already threatened to file a lawsuit if Governor Kemp signs the bill into law.

## ***Georgia Legislation Would Regulate Foreign Agents***

Holtzman Vogel detailed Georgia's new law prohibiting foreign campaign financing and instituting a broader, state-focused foreign agent disclosure system. The legislation aims to increase transparency of foreign influence in the political and election process and bears similarities to the federal Foreign Agents Registration Act (FARA). More information is available [here](#).



## ***Wisconsin Voters Approve Constitutional Amendment Prohibiting "Zuckerbucks"***



Wisconsin voters recently voted in favor of a ballot referendum amending the state constitution to prohibit election administrators from accepting funding from private sources. The referendum, which was supported by more than 54% of voters, makes Wisconsin the 28th state to prohibit or place limits on such funds.

Private donations to state and local election administrators have come under scrutiny in recent years following revelations that a foundation primarily funded by Facebook founder Mark Zuckerberg and his wife (the Center for Tech and Civic Life) has given more than \$350 million in grants to localities across the country. These donations—often referred to as “Zuckerbucks”—have been criticized by Republicans as being primarily intended to assist Democratic turnout in urban areas.

Following passage of the Wisconsin referendum, a new section has been added to Article III of the Wisconsin constitution that reads: “No state agency or officer or employee in state government and no political subdivision of the state or officer or employee of a political subdivision may apply for, accept, expend, or use any moneys or equipment in connection with the conduct of any primary, election, or referendum if the moneys or equipment are donated or granted by an individual or nongovernmental entity.”

## Alabama House Approves Ethics Law Amendments

The Alabama State House passed a new ethics bill, **HB 227**, in a move intended to simplify the state's current ethics scheme. The bill sponsor, state Representative Matt Simpson, (R-Daphne), argued that the existing ethics framework was too complicated for even "legislators, with experts" to navigate.



Among other changes, the proposed legislation increases criminal penalties for a range of serious violations. For example, the new law would increase prison sentences for officials convicted of bribery. Opponents of the legislation, however, **suggest** that portions of the new law are too lax because it would render other violations currently treated as criminal matters subject only to civil penalties. The bill also raises the lobbyist gift limit to government officials.

If signed into law, HB 227 would become effective in June 2025. The legislation currently awaits action in the Senate.

## HV Making Its Rounds

- Jason Torchinsky quoted in **"Corporate Political Donations Poised to Spark Shareholder Lawsuits,"** *Bloomberg*.
- Jessica Furst Johnson spoke at the AAPC Pollie Conference on "Navigating Voting Laws."
- Steve Roberts and Oliver Roberts byline a weekly article for *The Federalist*: **"Last Week in Lawfare Land: What to Know About Each Legal Crusade Against Trump."**
- Jason Torchinsky and Oliver Roberts bylined **"Politicians with Social Media Accounts. Litigation Is Around the Block for Them - Literally,"** *National Law Journal*.
- Steve Roberts quoted in **"Thousands of alleged lobbying violations languish at Justice Department,"** *The Hill*.
- Jan Baran spoke with **former Virginia Governor and OSCE Ambassador, James Gilmore**, on his *Early Returns* podcast.
- Steve Roberts, Tim Kronquist, Nicole Kelly and Merrill Weber bylined **"Georgia's Foreign Lobbying Bill Is Not A FARA Copycat,"** *Law360*.
- Mo Jazil spoke at the Florida Law Review 2024 Dunwoody Lecture on redistricting.
- Steve Roberts and Nicole Kelly bylined **"Election year opportunities — and pitfalls — for emerging energy companies,"** *Utility Dive*.
- Christine Fort spoke at the annual REEDS Conference on "Zen and the Art of Political Agency Maintenance: Building Businesses on the Right." Steve Roberts spoke on "AI Regulation and Its Impact on the 2024 Cycle."
- On May 9th, our Arizona team will host the RNLA CLE on "Challenges to the Elections Procedures Manual" followed by a reception. Andy Gould will be on the panel. **Register here.**

*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.*

Please reach out to one of the following compliance partners or your personal Holtzman Vogel contact with any questions.

Jan Baran - [jbaran@holtzmanvogel.com](mailto:jbaran@holtzmanvogel.com)  
Michael Bayes - [jmbayes@holtzmanvogel.com](mailto:jmbayes@holtzmanvogel.com)  
Christine Fort - [cfort@holtzmanvogel.com](mailto:cfort@holtzmanvogel.com)  
Andy Gould - [agould@holtzmanvogel.com](mailto:agould@holtzmanvogel.com)  
Jessica Furst Johnson - [jessica@holtzmanvogel.com](mailto:jessica@holtzmanvogel.com)  
Tom Josefiak - [tomj@holtzmanvogel.com](mailto:tomj@holtzmanvogel.com)  
Tim Kronquist - [tkronquist@holtzmanvogel.com](mailto:tkronquist@holtzmanvogel.com)  
Bill McGinley - [wjm@holtzmanvogel.com](mailto:wjm@holtzmanvogel.com)  
Matt Petersen - [mpetersen@holtzmanvogel.com](mailto:mpetersen@holtzmanvogel.com)  
Steve Roberts - [sroberts@holtzmanvogel.com](mailto:sroberts@holtzmanvogel.com)  
Jason Torchinsky - [jtorchinsky@holtzmanvogel.com](mailto:jtorchinsky@holtzmanvogel.com)  
Jill Vogel - [jh@holtzmanvogel.com](mailto:jh@holtzmanvogel.com)  
Robert Volpe - [rvolpe@holtzmanvogel.com](mailto:rvolpe@holtzmanvogel.com)

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