



IN COMPLIANCE

HOLTZMAN VOGEL'S MONTHLY ROUND-UP



Supreme Court Holds Federal Anti-Corruption Law Prohibits State and Local Officials from Accepting Bribes, But Not Gratuities

In **Synder v. US**, the Supreme Court held, in a 6-3 vote, that a federal statute that makes it a crime for state or local officials to "corruptly" solicit or demand anything of value from any person "intending to be influenced or rewarded in connection with any business, transaction, or series of transactions" prohibits bribery but not gratuities. The Court majority explained that "bribes are payments made or agreed to *before* an official act in order to influence the official with respect to that future official act," while "gratuities are typically payments made to an official *after* an official act as a token of appreciation."

The case arose after federal prosecutors secured the conviction of a former Indiana mayor who accepted \$13,000 from a trucking company after the city awarded the company two contracts worth over \$1 million. The former mayor said the \$13,000 was for consulting services he performed for the company; the federal government argued the money was an illegal gratuity. The mayor was not charged with bribery or gift rule violations by state or local prosecutors.

The Court explained that the statute at issue, 18 U.S.C. § 666, prohibits a state or local official from accepting an "up-front payment for a future official act," or from agreeing to "a future reward for a future official act." "But a state or local official does not violate § 666 if the official has taken the official act before any reward is agreed to, much less given." Such gratuities, however, may still be regulated by other federal, state, or local gift and ethics laws.



In recent years, the Supreme Court has taken a skeptical view of expansive readings of federal ethics charges brought against state officials by federal prosecutors. A unanimous Court threw out federal charges brought against aides to New York Governor **Andrew Cuomo** and New Jersey Governor **Chris Christie**, and also overturned the conviction of Virginia Governor **Bob McDonnell**.

Ethics Guidance Issued for the Presidential Nominating Conventions

The presidential nominating conventions are fast approaching. Republicans meet in Milwaukee from **July 15-18**, while Democrats convene in Chicago from **August 19-22**. Members of Congress and staff should be aware of applicable ethics rules, which are detailed by the **U.S. House Committee on Ethics** and the **U.S. Senate Select Committee on Ethics**. While campaign events may be held during the events, House and Senate Members may not participate in events held in their honor that are paid for by a federal lobbyist or by a private entity that retains or employs a federal lobbyist.



More details on guidance can be found [here](#).

FCC Proposal to Regulate Use of AI in Political Advertising Prompts Jurisdictional Dispute

In **May**, Federal Communications Commission Chair Jessica Rosenworcel **announced a proposal** to consider whether the FCC "should require disclosure of AI-generated content in political ads on radio and TV." Chair Rosenworcel's proposal included new disclaimer requirements in political and issue advertising on television and radio, as well as additional disclosures in broadcast stations' political file submissions, and she claimed the Bipartisan Campaign Reform Act of 2002 (also known as "BCRA" or "McCain-Feingold") "provides the [FCC] with authority regarding political advertising." Fellow FCC Commissioner Brendan Carr immediately **released a statement opposing the proposal** on several grounds, noting that "Congress has not given the FCC the type of freewheeling authority over these issues that would be necessary to turn this plan into law."



As expected, the FCC Chair's proposal prompted a jurisdictional dispute with the Federal Election Commission (FEC). FEC Chairman Sean Cooksey issued a **letter** to FCC Chair Rosenworcel expressing his "concern[] that parts of your proposal would fall within the exclusive jurisdiction of the Federal Election Commission ..., directly conflict with existing law and regulations, and sow chaos among political campaigns for the upcoming election." Chairman Cooksey explained that "[n]othing in BCRA empowers the FCC to impose its own affirmative disclaimer requirements on political communications." FEC Vice Chair Ellen Weintraub, on the other hand, **encouraged** the FCC Chair to pursue her proposal. The FEC is currently considering its own AI rulemaking.

Republican Senators John Thune, Mitch McConnell, Eric Schmitt, and Ted Cruz also submitted a **letter to the FCC Chair**, warning that the FCC "has no authority to police the content of political advertising and any attempt to do so raises serious statutory and constitutional concerns." The Senators explained that "the FEC is the sole authority empowered to regulate political disclaimers" and "any attempt to expand the authority provided [to the FCC] by BCRA is unlawful."

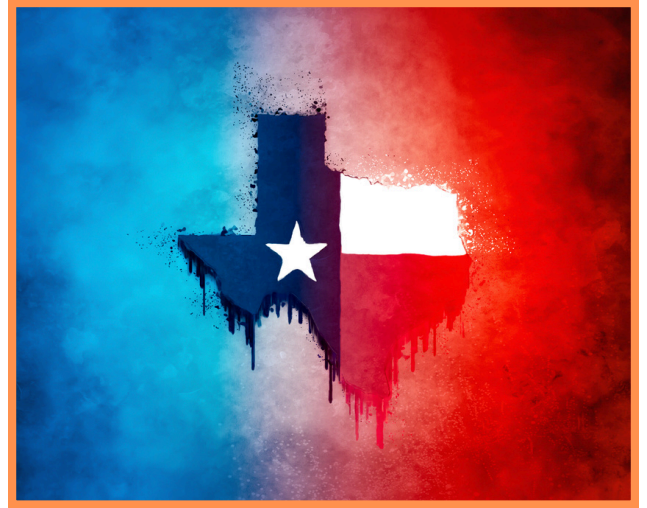
Meanwhile, Republican Senators Mike Lee, Cynthia Lummis, John Barrasso, and Ted Budd **introduced legislation** to "prohibit the use of federal funds to enforce any order issued as a result of the FCC's notice of proposed rulemaking, effectively stopping the Commission's overreach."

It appears increasingly unlikely that either the FCC or FEC will adopt new regulations regarding the use of AI in political advertising prior to November's general election.

IN THE STATES

Texas Ethics Commission Rule Requires Disclaimer on Paid Social Media Postings

The Texas Ethics Commission adopted a **new rule** to require a disclosure statement on paid social media and other internet postings. The rule is aimed at so-called “influencers” who are paid to post or promote certain political content, and follows **reports** of an organized effort to pay social media users to support Texas Attorney General Ken Paxton during his impeachment proceedings. Under the new rule, a disclosure statement is required on internet political advertising containing express advocacy if a post or re-post was made in return for consideration (i.e., was a paid posting).



Louisiana Gov. Landry Signs Bill Prohibiting the Use of Ranked-Choice Voting in Louisiana Elections

In late May, Louisiana Governor Jeff Landry signed **legislation that prohibits the use of ranked-choice voting in Louisiana elections**. Louisiana joins **nine other states** in banning the practice, with others poised to follow. Alabama Governor Kay Ivey signed **similar legislation** earlier in the month.

In a ranked-choice voting system, voters are asked to rank each candidate in order of preference rather than cast a single vote for each office. If no candidate wins a majority based on first-place votes, the candidate with the fewest first-choice votes (i.e., the candidate in last place) is eliminated. The second-choice votes on the eliminated candidate’s ballot are distributed among the other candidates. This process repeats until a candidate receives a majority of the vote.

Ranked-choice voting has been criticized as confusing for both voters and election officials. Following the November 2022 election, officials in Alameda County, California discovered they **miscounted the votes**, which changed the result in a school board election.

Vermont Establishes Uniform State and Local Ethics Requirements



On June 10, Vermont extended its state ethics rules to local officials, creating uniform municipal ethics standards for the state. Governor Phil Scott **allowed House Bill No. 875 to become law** without his signature. In a statement, the Governor expressed support for the measure, but criticized the legislation for failing to provide funding for new local government obligations, exempting certain officials such as school board members, and allowing some members of the State Ethics Commission to be appointed by legislators.

The **new law** extends the state ethics code to (nearly) all government officials and employees throughout the state with the creation of a “municipal code of ethics,” expands the powers of the State Ethics Commission to investigate and act on ethics complaints, and amends requirements related to state and local candidate and officeholder financial disclosure filings. The new law includes a basic gift prohibition for local officials and also provides that local governments may adopt additional ordinances, rules, and personnel policies regarding ethics as long as they do not conflict with the state’s new, baseline requirements.

Portions of Vermont’s new law go into effect on January 1, 2025.

HV Making the Rounds

- Holtzman Vogel has once again been **ranked among the top political law firms in the United States** in *Chambers USA's* 2024 guide. Jan Baran, Jill Vogel, Jason Torchinsky, Jessica Furst Johnson and Tom Josefiak were all ranked.
- Six of our Florida partners were named as **Florida Super Lawyers for 2024**. David Childs, Gary Hunter, Mo Jazil, Gary Perko, Kent Safriet and Robert Volpe were named in the areas of Environmental, Land Use and Litigation.
- 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."**
- Holtzman Vogel will sponsor the annual **RNLA Election Law Seminar**, where Jessica Furst Johnson will be a speaker.
- Jill Vogel was named a **top woman in leadership** by *Virginia Business* magazine.
- Jason Torchinsky was quoted in the New York Times article, **"How the Federal Election Commission Went from Deadlock to Deregulation."**
- Former Arizona Supreme Court Justice, Andy Gould, appeared on NewsNation and Fox News to discuss the border crisis, and more specifically in Arizona.
- Jonathan Fahey, Jonathan Lienhard and Oliver Roberts authored **"New DOJ Pilot Program Creates New Legal Risks for Startups"** for *Corporate Counsel Magazine*.
- Steve Roberts spoke on the **"PAC Raffles, Sweepstakes & Auctions"** webinar hosted by the Public Affairs Counsel.
- Oliver Roberts authored **"AI Is Old News, Get Ready for Quantum Computing"** for Law.com.
- Former Acting ICE Director and AUSA for EDVA, Jonathan Fahey, appeared on Fox News multiple times on the topics of the Hunter Biden trial and border crisis.
- Jill Vogel was appointed to the **College of William & Mary's Board of Visitors** by Virginia Governor Glenn Youngkin.
- Steve Roberts quoted in NY Daily News article **"Chinese agent didn't disclose meeting with top Adams advisers Winnie Greco, Ingrid Lewis-Martin."**
- As the election draws closer, stay tuned for announcements on timely webinars and other pertinent information.

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

Holtzman Vogel