



IN COMPLIANCE

HOLTZMAN VOGEL'S MONTHLY ROUND-UP



FEC UPDATE

FEC Declines to Impose New Restriction on Joint Fundraising Committee Television Solicitations

On October 10, the FEC considered whether joint fundraising committees may distribute television advertisements which support or oppose a federal candidate and include a solicitation of funds for the joint fundraising committee. **Advisory Opinion Request 2024-13** was submitted by the DSCC and the campaign committees of Senator Jon Tester and Representative Ruben Gallego. The request asked whether the joint fundraising committee could allocate the costs of such television advertisements according to the FEC's joint fundraising regulation which provides that fundraising expenses must be paid in proportion to the funds raised for each participating committee. Finally, the request asked whether the advertisement was required to display the full joint fundraising notice on screen during the ad, or whether the ad could display a QR code during the final four seconds that a viewer could follow to view the full notice online.

The DSCC's request was widely understood as an effort by the DSCC to impose new restrictions on the advertising practice after their opponents ran such ads in Senate battleground states. The day before the FEC considered the request, the DSCC spokesperson **told Roll Call** that they were asking the FEC to "issue clear guidance on the utilization of joint fundraising committees to air campaign style television ads because we believe the Republican activity is illegal." In their written submissions and in oral testimony before the FEC, attorneys for the DSCC and the two campaign committees argued their proposal was illegal and the FEC should reject it.

However, several comments filed in this matter—including separate **comments filed by Holtzman Vogel on behalf of the NRCC** and by **attorneys in Holtzman Vogel’s campaign finance practice group**—noted the proposed JFC solicitation activity is consistent with FEC regulations and previous advisory opinions and indistinguishable from routine joint fundraising solicitations which have been used by both political parties since at least 2016, including a joint fundraising committee for Vice President Harris this cycle.



At the FEC hearing, Republican Commissioners questioned whether the DSCC genuinely sought to run such advertising and whether a request intended to harm a political opponent was proper. Democratic Commissioners defended the DSCC’s request. The evenly divided FEC failed to approve an advisory opinion in response to the request. All three Republican Commissioners voted for a draft response that permitted the proposed activity to be conducted under the joint fundraising regulations and in a manner consistent with past practice, while the three Democrat Commissioners voted for a response that would have effectively ended the existing practice.

Shortly after the FEC declined the DSCC’s invitation to prohibit the practice, the DSCC placed its own joint fundraising television advertisements. On October 17, the DCCC, represented by the same law firm as the DSCC, **sued the FEC** over its failure to issue an advisory opinion and now asks a federal court to declare the advertising practice illegal. The lawsuit remains pending.

Meanwhile, **left wing interest groups have asked the FCC** to deny “lowest unit charge” rates for such advertising unless a candidate’s principal campaign committee pays for at least 50% of the ad. The 50% figure appears nowhere in the relevant statute or FCC regulations.

FEC Approves Candidate-Party Committee Hybrid Television Advertisements

After dividing on joint fundraising advertising, the FEC considered a second advisory opinion request regarding so-called “hybrid advertising.” In **Advisory Opinion 2024-14**, the FEC considered a request from the DSCC and Senator Rosen’s principal campaign committee to produce “hybrid advertisements” that “equally promote Senator Rosen’s candidacy for the U.S. Senate (either through advocacy for her or against her opponent) and generic candidates of the Democratic party (either through advocacy for generic Democratic candidates or against generic Republican candidates).”



First deployed in the 2004 presidential election, hybrid advertisements are paid for in part by a candidate and in part by a party committee and feature distinct candidate and party segments within the advertisement. The request also asked whether certain content in a hybrid ad would count as candidate advocacy that may be allocated to the candidate committee or as generic party advocacy that is allocable to the political party committee. The requestors acknowledged that hybrid ads have been run by both political parties “in every election cycle since 2004,” and comments submitted by **Holtzman Vogel on behalf of the NRCC** highlighted the extensive history of hybrid advertisements.

After first dividing 3-3 on **Draft C** (supported by the Republican Commissioners) and **Revised Draft B** (supported by the Democratic Commissioners), the Commissioners voted 5-0, with one Commissioner abstaining, to approve a pared-down **Draft D** authorizing party committees and federal candidates to produce and split the costs of hybrid television ads whose content is equally divided between a clearly identified federal candidate and generically referenced candidates of the political party. Despite such television advertisements existing for 20 years, this was the first time a majority of Commissioners agreed that such television ads are permissible. The FEC also determined that portions of a hybrid ad which feature a federal candidate or are narrated by the same federal candidate must be treated as candidate advocacy and allocated to the candidate’s principal campaign committee, no matter what topics are being discussed during the portions of the ad in which the candidate’s image or voice are used. No opinion was issued on two additional questions that divided the Commissioners. These questions probed whether certain content could be allocated to the party committee. Again, though, the FEC declined to impose new restrictions on advertising sought by the DSCC, and the split vote on those questions preserves the status quo.

FEC Approves Request to Use Campaign Funds to Pay Eldercare Expenses

In **Advisory Opinion 2024-09**, the FEC voted 4-2 to approve Congresswoman Nanette Barragán's request to use campaign funds to pay certain expenses related to caring for her elderly mother. In recent years, the FEC has approved the use of campaign funds to cover **candidates' childcare expenses** that arise directly from campaign activities. The FEC applied the same rule to eldercare expenses and concluded that “consistent with the Commission’s conclusions in [its previous] childcare advisory opinions ... Congresswoman Barragán may use campaign funds to pay the additional eldercare expenses that she incurs to the extent that the expenses are the direct result of campaign activities for her own campaign, because those expenses would not exist irrespective of her campaign.” The advisory opinion also authorizes the use of campaign funds to pay for “caregiving [expenses] that arise when Congresswoman Barragán travels for a CODEL [Congressional Member Delegation] or to cast votes in Congress” because such travel “is directly connected to her duties as a Federal officeholder.”

STATE ACTIVITY UPDATE

***Federal Judge Blocks California Artificial Intelligence Law
That Regulates Political Speech***

On September 17, California Governor Gavin Newsom **signed into law** new restrictions on the use of artificial intelligence (AI) in political advertising. Just over two weeks later, on October 2, a federal district court **granted a motion for preliminary injunction** and blocked the state from enforcing the law after finding "AB 2839 does not pass constitutional scrutiny because the law does not use the least restrictive means available for advancing the State's interest here."



California's law prohibits "a person, committee, or other entity from knowingly distributing an advertisement or other election communication" that contains "certain materially deceptive content" during specific periods surrounding an election. "Materially deceptive content" includes "audio or visual media that is intentionally digitally created or modified, which includes, but is not limited to, deepfakes, such that the content would falsely appear to a reasonable person to be an authentic record of the content depicted in the media." The restrictions apply to content that deceptively portrays "[a] candidate for any federal, state, or local elected office in California [] as doing or saying something that the candidate did not do or say if the content is reasonably likely to harm the reputation or electoral prospects of a candidate." The law also applies to materially deceptive content that depicts an election official "doing or saying something in connection with an election in California that the elected official did not do or say" if that "content is reasonably likely to falsely undermine confidence in the outcome of one or more election contests. "These content prohibitions apply during the period beginning 120 days for an election, and with respect to election officials, extend for another 60 days after an election.

The court found that the statute extended well beyond the bounds of defamatory speech and "implicat[es] vast amounts of political and constitutionally protected speech."The court was highly skeptical of California's attempt to regulate political speech, explaining that "[w]hen political speech and electoral politics are at issue, the First Amendment has almost unequivocally dictated that Courts allow speech to flourish rather than uphold the State's attempt to suffocate it."

States Adjust Voting Procedures Following Hurricane Helene



In North Carolina, **legislators adopted** a package of changes to facilitate voting in areas impacted by Helene. For example, voters in hard-hit western counties will be allowed extra time to request mail-in ballots, and may then deliver their ballots to any early voting site. Additionally, local officials were granted new flexibility to change voting hours and combine precincts. The legislative changes largely mirrored **emergency measures** adopted by the State Board of Elections to address issues in 13 western counties.

In Florida, Governor Desantis signed an **executive order**, after Hurricane Helene hit the state, authorizing local officials to make changes to voting locations. Rules for mail-in ballot requests were also relaxed so that people forced from their homes would be able to request ballots at their current location.

Following Hurricane Helene, a **state judge extended** South Carolina's voter registration deadlines roughly one week to October 14. Similar requests were denied by judges in **Florida and Georgia**.

Sixth Circuit Allows Ohio's Prohibition on Foreign National Contributions to State Ballot Measures to Take Effect

A panel of the Sixth Circuit Court of Appeals **issued a decision** allowing Ohio's prohibition on foreign national contributions in connection with state ballot measures to remain in effect pending appeal. Ohio's H.B. 1 applies to all foreign nationals, without any exception for lawfully admitted permanent residents, (i.e., green card holders), which makes it broader than the federal law that applies to federal, state, and local candidate elections. The law was adopted in response to concerns that wealthy foreign donors, including Swiss billionaire Hansjorg Wyss, had funneled money to organizations supporting state ballot measures championed by the left.

A federal district court issued a preliminary injunction just before the new law was scheduled to go into effect, finding it overbroad in large part because there was no carve-out for green card holders. On appeal, however, the Sixth Circuit disagreed with the district court's analysis and allowed the law to take effect after finding it likely to be upheld. As the court explained, "If the goal is to prevent foreign influence, extending the ban to all non-citizens (including lawful permanent residents) is the most effective means of advancing that goal."

Fifth Circuit Allows Texas to Enforce Ballot Harvesting Prohibition



On October 15, a panel of the Fifth Circuit Court of Appeals reversed a district court injunction and **allowed Texas's "ballot harvesting" prohibition to remain in effect**. The law at issue was enacted in 2021 and applies to paid "vote harvesting services" involving the collection and submission of ballots by third parties. In allowing the law to be enforced, the court noted that Texas counties have already started to mail absentee ballots and invoked the Supreme Court's "Purcell Principle," which generally instructs courts not to alter state election laws close to an election.

Updated New York Absentee Canvassing and Recount Processes in Place for First Presidential Election

New York State's new procedures for canvassing absentee ballots (as well as early mail, military, and special federal ballots) will be in effect for the first time in a presidential election in 2024 after being adopted in 2021. Under the new canvassing process, watchers may not object to the Board of Elections (BOE) decision to count a ballot, and candidates may not seek a judicial order to prevent the counting of an absentee ballot the BOE has determined should be counted. Candidates may still object to the BOE decision to not count an absentee ballot and may seek an order from a court requiring the BOE to count an absentee ballot the BOE determined to be invalid.

Under the new absentee canvassing process, absentee ballots are opened and prepared for canvassing as they arrive prior to Election Day. On the night of Election Day, absentee ballots are canvassed, and those results are reported on election night along with early voting and Election Day totals. Absentee ballots arriving after Election Day and affidavit ballots are canvassed after the election.

This is also the first presidential election in which the new automatic hand recount provision of the Election Law will be in effect. Under the new law, a hand recount is required when the margin of victory in a race is 20 votes or less, less than 0.5%, or less than 5,000 votes in an election where one million or votes are cast.

New York Court Finds New Law Moving Town and County Elections to Even Years Violates State Constitution

A New York State Supreme Court Justice in Syracuse **found** that the new state law moving town and county elections to even years violated the New York State Constitution. The constitutionality of this law, which was enacted last year with no Republican support in the New York State Legislature, was challenged by a number of county governments, including Onondaga, Nassau, and Dutchess. Justice Neri found that the timing of town and county elections were matters of "local concern," and the state constitution prohibited the state legislature from legislating on such matters. Holtzman Vogel's Joe Burns explains the decision **here**.



New York Attorney General Issues Election Advisory on Voter Intimidation

New York Attorney General Letitia James issued an **Election Advisory** on voter intimidation on October 22. The advisory lists out what the Attorney General deems voter intimidation, warns that members of the armed forces may not "try to prevent a voter from fully exercising their voting rights," and reminds voters that they "should never be required to show photo ID anywhere in the state of New York to vote."

New York City Campaign Finance Board Proposes New Regulations to Address Public Funding Abuses

New York City's Campaign Finance Board proposed **new rules** on a variety of subjects, including the awarding of public matching funds to candidates. Mayor Adams' previous campaign failed to submit certain required documents but received public matching funds anyway. The proposed rules would "distinguish between mandatory and discretionary bases for public funds ineligibility" and deem a candidate ineligible for funding if "the candidate fails to provide to the Board, upon its request, documents or records ... or other information that verifies campaign activity."

Washington, DC Ballot Initiative Would Adopt Open Primaries and Ranked-Choice Voting



Washington, DC voters have a chance to adopt major changes to the city's voting process. **Initiative 83**, which is on the November ballot, would allow the city's approximately 75,000 registered independents to vote in party primaries, and also adopt ranked-choice voting. The initiative is viewed by many as threatening the local Democratic Party's dominance over city politics and Mayor Bowser, the D.C. Council Chairman, and the local Democratic Party organization oppose the initiative. Over 75% of DC voters are registered Democrats. Several large cities already use ranked-choice voting for some or all elections, including New York City, Minneapolis, Oakland, San Francisco, and Santa Fe.

Reminder: FinCEN Beneficial Ownership Information Reporting Deadline Is December 31

Qualifying companies that were created before January 1, 2024, have until December 31 to file their first **beneficial ownership report** with the Financial Crimes Enforcement Network ("FinCEN") of the U.S. Department of Treasury. Qualifying companies include corporations, LLCs, or any other entity created by filing a document with the secretary of state or similar office under the laws of the state. Also included are companies established under foreign law that are registered to do business with a state. This reporting requirement **does not apply** to tax exempt organizations such as Section 501(c)(3), 501(c)(4), and 501(c)(6) organizations, or political organizations, such as campaign committees, political party committees, and PACs. Also exempt are "large operating companies" with more than 20 full time employees and gross receipts in excess of \$5 million annually. More details are available [here](#).

Holtzman Vogel Launches Artificial Intelligence Practice Group

Knowledgeable in the fast-evolving field of Artificial Intelligence law, Holtzman Vogel's lawyers in the newly launched AI practice group guide clients through the legal complexities associated with AI governance, data privacy, intellectual property, and regulatory compliance, particularly as it applies to those operating in the political and advocacy space. The explosion of AI creates unprecedented opportunities and challenges for those in the marketplace, and the firm's expertise will ensure clients' interests are represented as a new regulatory and legal framework evolves. Read more about the practice [here](#).

HV Making the Rounds

- Joseph Burns was named in *City & State New York's* Upstate Power 100 list.
- Jessica Furst Johnson spoke to *POLITICO Pro* on the NRSC suit against a Super PAC.
- Jason Torchinsky spoke to Radio IQ/WVTF Public Radio about what happens after vote counting ends in Virginia.
- Jason Torchinsky and Joseph Burns offered their insights to *Fox News Media* on whether the U.S. Supreme Court would get involved in the 2024 presidential election.
- Steve Roberts and Jessica Furst Johnson spoke at the Election Symposium hosted by the *Harvard Journal on Law & Public Policy* and the Heritage Foundation.
- Joe Burns authored "Fusion Voting and Its Impact on the Upcoming Election" for the *New York Law Journal*.
- Andy Gould appeared on Fox News Phoenix as well as on other stations and panels to debate on Prop 140 which would create a single primary in Arizona for all political candidates. Brennan Bowen also debated.
- Launch of the firm's Artificial Intelligence Practice Group was picked up by *Bloomberg Law* and *Law360*.
- Joe Burns spoke on a webinar panel addressing post-election 2024 challenges and litigation which was hosted by The Judicial Institute.
- Jason Torchinsky, Drew Ensign, Ed Wenger, John Cycon and Erielle Davidson authored an amicus brief in support of a lawsuit against UNRWA on behalf of former senior government officials
- Dallin Holt spoke to Brigham Young law students on election law litigation.
- Andy Gould spoke on Arizona Judicial retention elections to Arizonians for an Independent Judiciary.
- Nicole Kelly spoke on a panel entitled "Election Day - How States Can Secure Their Elections" for George Mason University - Antonin Scalia Law School.
- Jared Bauman was quoted in the *Bloomberg Law* article, "Next Gen Lawyers Bring AI Chops to the Workplace."
- Jill Vogel was quoted in a *William & Mary Alumni Magazine* article discussing the strengthening of democracy.
- Nicole Kelly presented an election day operations CLE for the Nevada RNLA. Joe Burns also presented to the RNLA in New York.
- Steve Roberts was quoted in the *Bloomberg Government* article, "New Foreign Influence Probes Put Lobbyists, Politicians on Alert."
- We worked alongside the Honest Elections Project in filing an amicus brief urging the U.S. Supreme Court to allow Virginia to enforce law and remove noncitizens from its state voter rolls ahead of the 2024 election. Jason Torchinsky, Mark Pinkert, Drew Ensign, Jonathan Leinhard, Daniel Bruce, Dallin Holt and Brennan Bowen were on the team.
- Alex Vogel, Jonathan Fahey and Andy Gould continue to appear on Fox News regularly to discuss the political cycle and the issues.
- Joseph Burns appeared on Spectrum News to discuss Elon Musk's daily million-dollar giveaway to registered voters in swing states to sign a petition.
- Steve Roberts introduced Vivek Ramaswamy at the RNLA webinar "Countdown to Election Day."
- Andy Gould participated in a discussion at Arizona State University Law on ranked choice voting.

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.

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