

Political Law Compliance and Investigations Update

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Campaign Finance Developments in Ohio and North Carolina

Ohio Adopts Sweeping Foreign National Ban, Covering Lawful Permanent Residents

On June 2, 2024, Ohio Gov. Mike DeWine signed into law H.B. 1, enacting a sweeping foreign national ban on political contributions and expenditures that goes well beyond the ban under federal law. In particular, the ban extends not only to individuals who are in the U.S. on a working visa but also to lawful permanent residents (*i.e.*, green card holders residing in the U.S.). By contrast, such permanent residents are not deemed to be foreign nationals under the federal election law ban. As a result, this Ohio law may result in prohibiting most federal political action committees (PACs) from contributing in Ohio elections. H.B. 1 will take effect on September 1, 2024.

State of the Law Prior to Adoption of HB 1

Under federal law, a foreign national is prohibited from making, or being solicited for, contributions or expenditures in connection with federal, state or local elections. The law defines “foreign national” as a foreign entity or an individual who is neither a U.S. citizen nor lawful permanent resident. Even before H.B. 1, Ohio has long had its own foreign national ban, which notably incorporates the federal definition of a “foreign national.”

Summary of HB 1

H.B. 1 adopts a new foreign national ban, on top of the state ban described above. The new ban, which prohibits a foreign national from making, or being solicited for, Ohio state or local contributions, goes beyond both the federal ban and the foregoing state ban in the following respects.

- **The ban covers lawful permanent residents, impacting federal PACs.** While the original version of H.B. 1 used the federal definition of a “foreign national,” a surprise amendment was inserted into the bill on May 30, 2024, to extend the definition to also cover lawful permanent residents. This ban not only covers foreign national contributions to Ohio state and local candidates and political committees, as well as certain outside groups (as described below), but also “separate segregated funds” (SSFs), which is defined under existing Ohio campaign finance law to cover all federal SSFs.

Read in a vacuum, the ban, based on its plain language, reads as if it would cover all federal SSFs, regardless of whether the SSF is active in Ohio. However, the state campaign finance law only covers activity in connection with Ohio state and local elections, which would mean the ban does not extend to a federal SSF that does not contribute in the state. Federal SSFs giving in Ohio (known as “FSL PACs”), however, would be covered under the plain language of this ban. We are working with Ohio to determine how they will be applying this law to FSL PACs.

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- **The ban covers ballot measure spending.** H.B. 1 expressly covers contributions to a Ohio state or local ballot issue committee and contributions, expenditures and independent expenditures in support of or in opposition to statewide ballot issues. H.B. 1 thus goes beyond the federal foreign national ban, which, based on the Federal Election Commission's (FEC's) interpretation, does not cover ballot measure spending. H.B. 1 also goes beyond Ohio's original foreign national ban, which, based on the Ohio Elections Commission's interpretation, is more limited (for example, the original ban only covers contributions made to ballot measure committees registered as a PAC or political contributing entity (PCE) and not to other entities engaged in ballot measure activity, such as 501(c)(4)s and 501(c)(6) organizations engaged in such activity that are not registered as PACs or PCEs).

Additionally, H.B. 1 prohibits foreign national contributions "to the maximum extent permitted by law and the [U.S. and Ohio] constitutions" to continuing associations, which are defined as entities whose primary purpose is not to engage in political activity and can include 501(c)(3), 501(c)(4) and 501(c)(6) organizations. It is notable that this provision is limited to political contributions, and thus its plain language suggests that it only covers donations to outside groups, such as 501(c)(4)s and 501(c)(6)s, made in connection with Ohio elections.

Possible Legal Challenges

Gov. DeWine, when signing H.B. 1 into law, said that he expects legal challenges to the law. Also, House Majority Leader Bill Seitz, who sponsored H.B. 1 but criticized the amendment expanding the law to cover lawful permanent residents, warned in a floor speech against the amendment that it will put H.B. 1 in legal jeopardy.

H.B. 1 may be vulnerable to a First Amendment challenge on the grounds that lawful permanent residents have a First Amendment right to make political contributions in the U.S. Indeed, in *Bluman v. FEC* (2012), the D.C. Circuit case upholding the constitutionality of the federal foreign national ban (which Leader Seitz cited during his floor speech), then-Judge Brett Kavanaugh said that if the ban were to apply to lawful permanent residents, it would raise "substantial questions." H.B. 1 also may be vulnerable to preemption by the federal foreign national ban on implied preemption grounds (e.g., that this ban impermissibly conflicts with the aims of the federal foreign national ban).

North Carolina Legislature Passes Campaign Finance Reform Bill

On June 11, 2024, the North Carolina Legislature passed H.B. 237, which includes significant campaign finance changes impacting federal PACs, federal super PACs and 527 political organizations. Although Gov. Roy Cooper, a Democrat, is expected to veto the bill (which passed with only Republican support), Republicans have veto-proof supermajorities in both chambers of the Legislature and likely would override his expected veto. The campaign finance provisions of the law would take effect immediately upon becoming law.

H.B. 237 would make the following changes affecting the use of a federal PAC in North Carolina.

- **PAC registration and reporting.** Under current law, a federal PAC giving in North Carolina must register and report with the State Board of Elections (SBOE) on state forms and file reports according to the state's filing schedule. Under H.B. 237, a federal PAC giving in the state would register with the SBOE by filing a copy of its FEC statement of organization within 10 calendar days after making a contribution in the state. Thereafter, in any federal reporting period in which the PAC makes a contribution in the state, it would be required to file a copy of its FEC report with the SBOE within 10 calendar days after filing with the FEC. The PAC would not otherwise need to make ongoing filings with the state.
- **In-state PAC assistant or deputy treasurer.** The bill would repeal the requirement that a federal PAC in North Carolina have an assistant or deputy treasurer who is a North Carolina resident.
- **Sessional ban.** North Carolina law prohibits a state lobbyist employer's PAC, among others, from making contributions to members of and candidates for the Council of State and the General Assembly, and their affiliated party committees, during the regular legislative session. The SBOE had previously interpreted this ban to apply to federal PACs. However, based on the plain language of H.B. 237, federal PACs would no longer be subject to the prohibition if the bill became law, which a memo on the bill prepared by the SBOE confirms.

H.B. 237 also would permit federal super PACs and 527 political organizations, such as the Republican and Democratic Governors Associations, to contribute to North Carolina party committees from a segregated account that does not contain corporate and union funds.

Please contact us with any questions.

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