

A Presentation on LOBBYING, ETHICS & CAMPAIGN FINANCE LAWS

**for the
North Carolina Professional
Lobbyists Association**

**by:
Larry Norton & Jim Kahl**



BRAVE NEW WORLD FOR LOBBYING COMMUNITY

Lobbying Disclosure Act



Lobbying
Community

FEC/FECA

House and
Senate
Ethics Rules

GAO/DOJ/
IRS

State
Lobbying
Laws

State Ethics
Laws

Government
Grants/Contracts

FEDERAL & STATE COMPLIANCE CHALLENGES

- New laws and regulations
- New registration obligations
- More disclosure
- Tougher sanctions
- Damage to reputation – lobbyist and client

AGENDA

- Jim Kahl
 - New federal lobbying rules
 - Who's a lobbyist
 - Bundling Rules
- Larry Norton
 - State Trends
 - Corporate Activity
 - Issue Advocacy
- Questions



CAMPAIGN '08: AND THE WINNER IS...



HONEST LEADERSHIP & OPEN GOVERNMENT ACT OF 2007

- Gift ban
- Gift rules apply to private sector
- More disclosure
- “Sarbanes-Oxley type” certification



NEW GIFT BAN

- New rule: lobbyists, and organizations that employ them, may not make a gift to or pay for travel of Congressional Members or Staffers.
- \$50 gifts no longer permitted
- Lobbyists must use Congressional gift rule exceptions

SEMIANNUAL CERTIFICATION

- Every organization that employs lobbyists, every registered lobbying firm & every lobbyist must certify
- Organization/lobbyist certifies:
 - “Read and familiar with” the gift rules
 - Has not violated gift rules

NEW DISCLOSURE

Political contributions \$200+ to:

- Candidates or Political Committees
- Leadership PACs
- Presidential libraries
- Inaugural committees

Payments for:

- Events honoring Member
- Entities designated by Member

DISCLOSURE BY ASSOCIATIONS

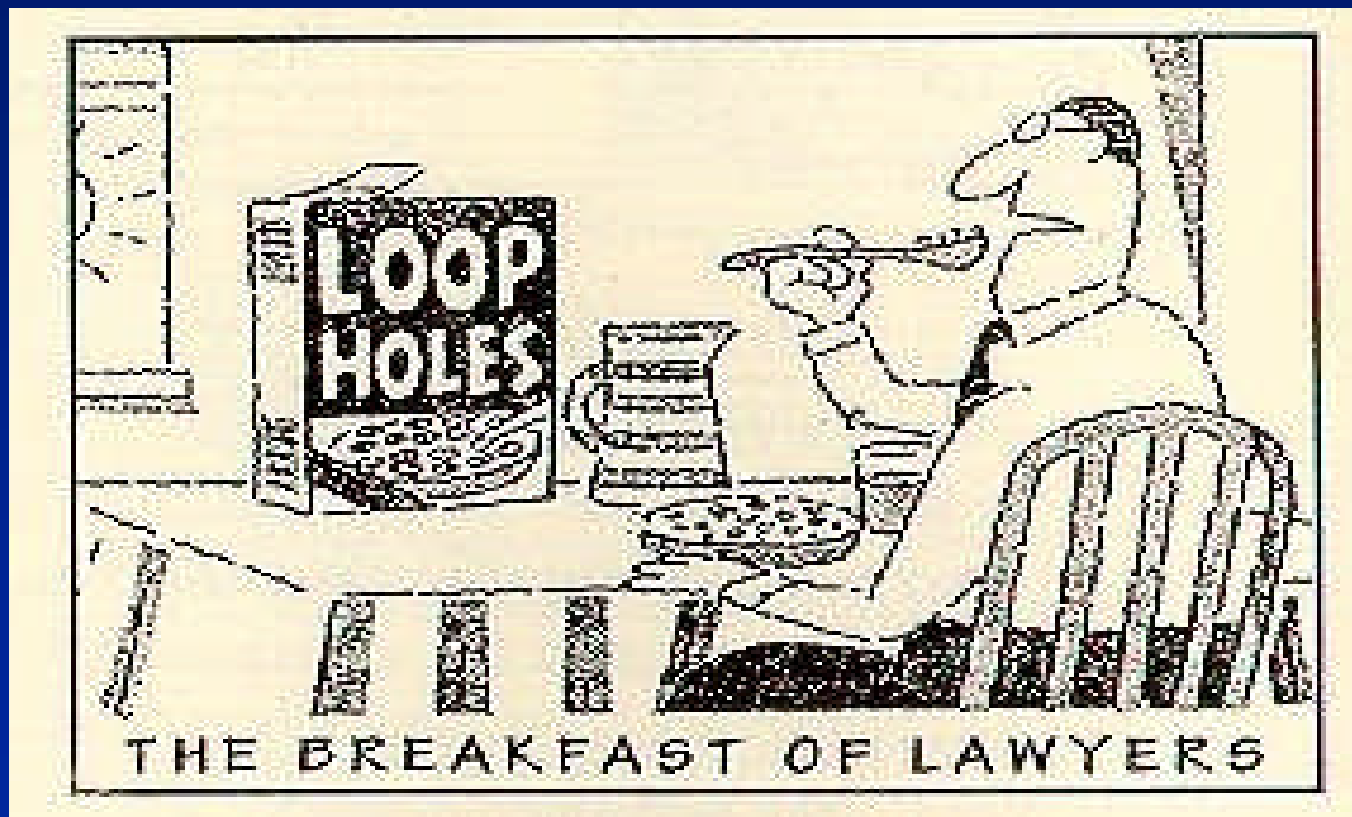
- Disclose organizations that “actively participate in the planning, supervision, or control” of lobbying contacts
- Contribute more than \$5000 to such activities
- Applies only if it employs a federal lobbyist
- NAM constitutional challenge

TOUGHER SANCTIONS

- Violators can go to Jail – 5 years
- Civil penalties up to \$200,000
- Random Audits



23 GIFT “EXCEPTIONS”



GIFT/FOOD EXCEPTIONS

- Widely Attended Industry Events
- Receptions – Food & drink of nominal value
- Site Visits & in-state events
- Regularly scheduled events (e.g. “fly-ins”)

OTHER EXCEPTIONS

- Caps, T-shirts & other nominal items
- Special awards & plaques
- One-day event trips
- Pay FMV



SO WHO IS A FEDERAL LOBBYIST ANYWAY?



LOBBYING DISCLOSURE ACT OF 1995

- Lobbying firms & other organizations employing 1 or more “lobbyists” must register & file periodic reports
- In-house: single registration
- Firms: separate registration for each client

WHO IS A LOBBYIST?

- Employed or retained to make or actually makes more than one “lobbying contact”

AND

- 20% or more of person’s time for a client (corporation) is spent on “lobbying activity” within any three months

LOBBYING CONTACT

- Written or oral contact
- Members & staffers and senior executive branch officials
- Aimed at influencing legislation or a nomination or an order, regulation, or policy of an executive agency

LOBBYING ACTIVITY

- Lobbying contacts
- Efforts in support of contacts
 - Planning, research
 - Drafting documents
- Exclude: monitoring legislation or gathering information

DE MINIMIS RULE

- No registration required if --
- Lobbyist: Total income from client is less than \$2500 in a quarterly reporting period
- Organization: Total expenses in connection with “lobbying activity” do not exceed \$10,000 in a quarterly reporting period

BUNDLING



NEW CAMPAIGN FINANCE DISCLOSURE

- Recipients (candidates, parties, leadership PACs) report to FEC those contributions bundled by lobbyists
- Fundraising by lobbyists for candidate more easily identified by public

WHAT'S COVERED?

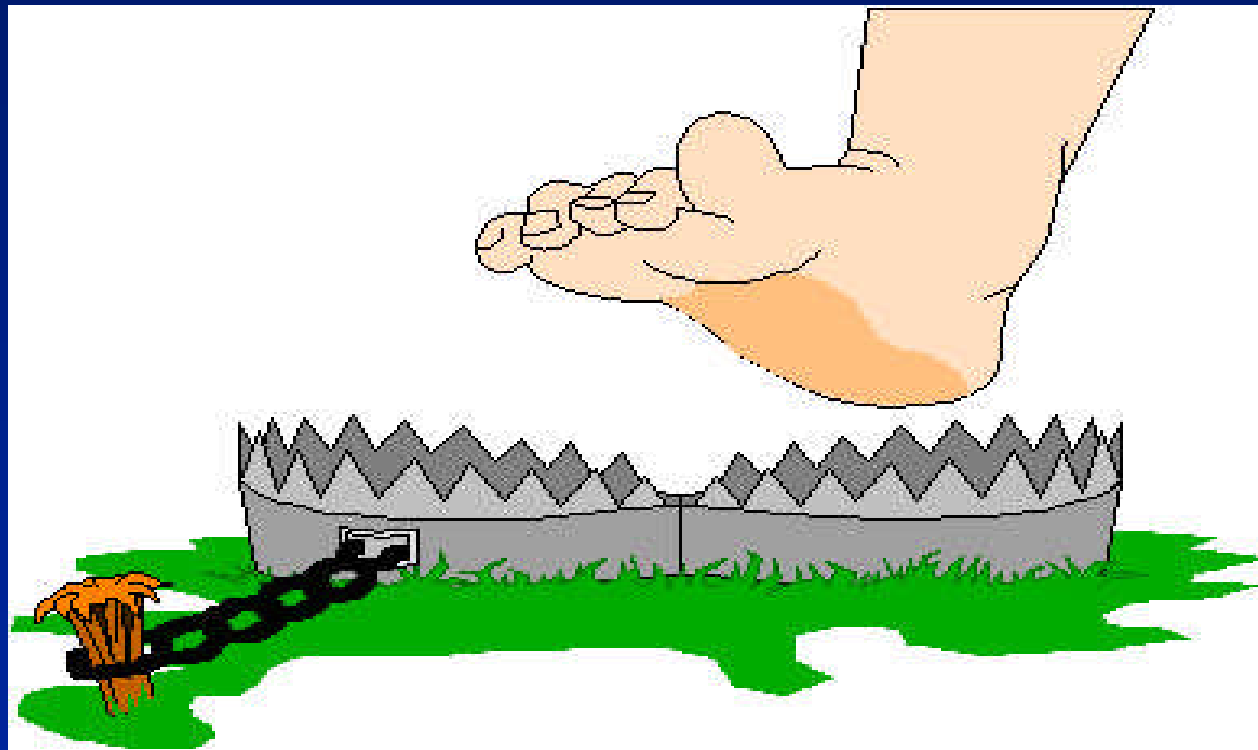
- Contributions physically forwarded by lobbyist and contributions facilitated by lobbyist and credited to lobbyist
- Threshold: more than \$15,000 in six-month period (and query how joint fundraising activities will be treated)

NO RULES YET

- No rules this election cycle
- FEC hearings in September 2008
- FEC aim: rules in early 2009



NEW DEVELOPMENTS & NEW RISKS



STATE LOBBYING AND GIFT LAWS



CHANGE

- About half the states have made substantive changes to their lobbying laws in just the last four years
- Localities increasingly regulating, too



MAJOR TRENDS

- Broader definition of “lobbying”
- Restrictions on providing meals, gifts, or travel to public officials
- Restrictions on campaign contributions and fundraising
- Bonuses/contingency fees
- Independent oversight bodies

FEWER THAN 10 STATES REGULATE ONLY LEGISLATIVE BRANCH CONTACTS

Lobbying may
not include
routine
contacts with
agencies,
boards,
commissions,
public
corporations



SPENDING MONEY ON PUBLIC OFFICIAL

- FL, IL, TX –
Attempt to obtain goodwill
- NC – “building of relationships . . . with intention of influencing current or future legislative or executive action, or both



LOBBYING ON STATE CONTRACTS

- Considered lobbying in majority of states
- FL, NY, IL, TX, NC
- Not CA – award of contract is not “administrative action”
- Response to requests for proposals exempt in some states (NY)

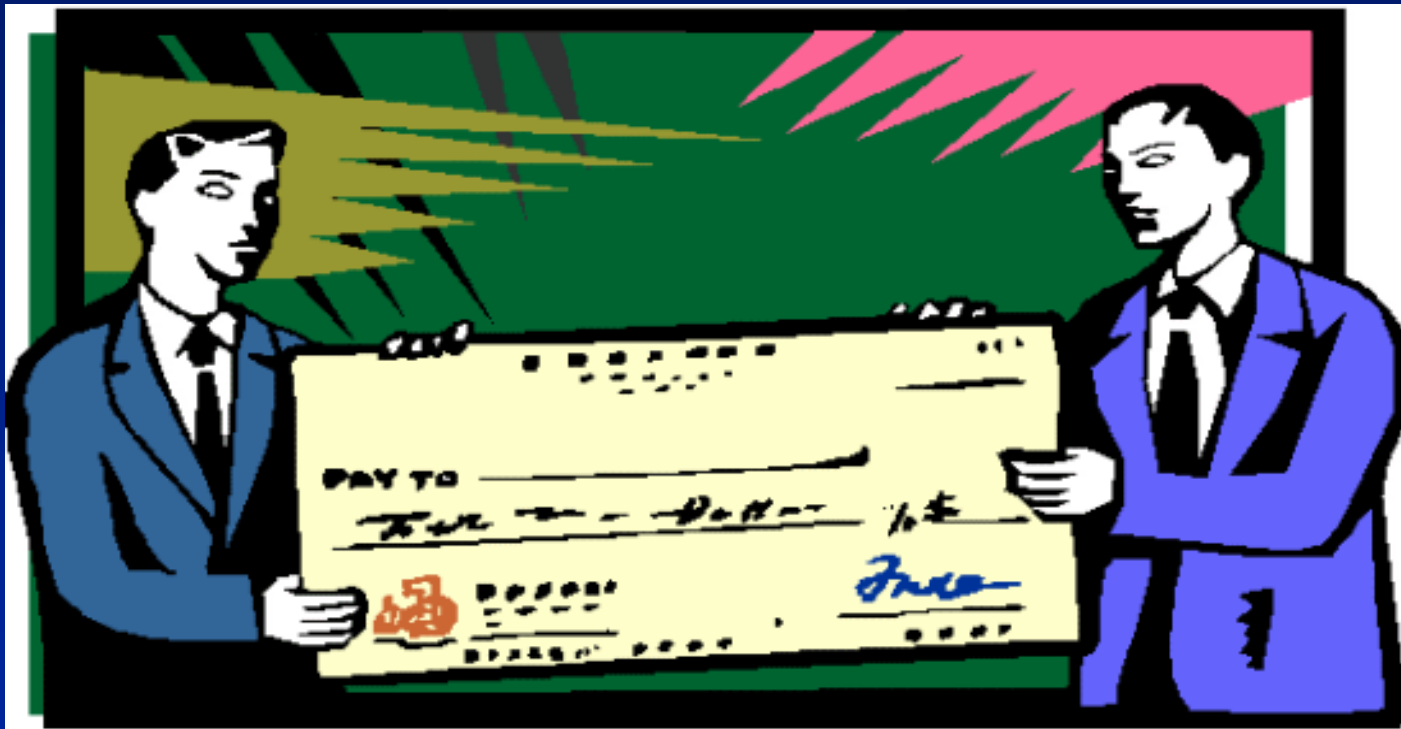


TOUGHER ENFORCEMENT

- Over half states have independent oversight bodies
- In almost half states, imprisonment is available remedy
- NY – May be debarred from procurement lobbying



STATE PAY-TO-PLAY LAWS

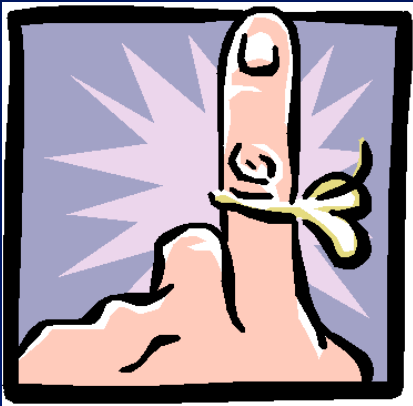


WHAT'S AT STAKE?

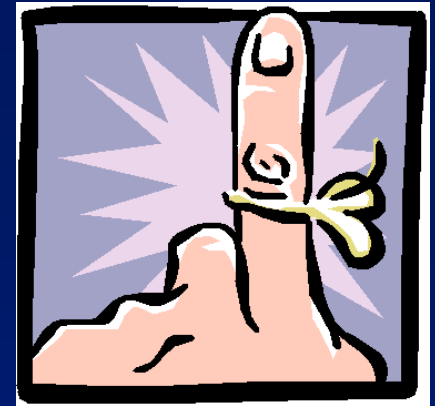
- Gov't contracts cancelled
- Debarred from future contracting
- Fines & Penalties
- Reporting Obligations

PAY-TO-PLAY STATES

CALIFORNIA,
CONNECTICUT, FLORIDA
HAWAII, ILLINOIS
INDIANA, KENTUCKY
LOUISIANA, MARYLAND, NEBRASKA
NEW JERSEY, NEW MEXICO
OHIO, PENNSYLVANIA
SOUTH CAROLINA, TEXAS
UTAH, VERMONT
WASHINGTON (STATE), WEST VIRGINIA



REMEMBER!



- Lot of new laws and new agencies: regulators likely to be looking for an example
- Threat to the brand
- Many laws apply to boards, commissions, public corporations, executive agencies

CORPORATE SUPPORT OF CANDIDATES



CORPORATE FACILITATION

- Corporation cannot use its resources & facilities to assist in raising contributions from individuals
- In-kind contribution
- Common corporate violation

RED FLAGS

- Enlisting subordinates “help”
- Use customer lists
- Use company envelopes/postage
- Collecting checks
- Paying for cabs to fundraisers
- Ask before you act!!!

VOLUNTEER ACTIVITY ON-SITE

Occasional, isolated or incidental use of facilities is OK

Safe Harbors:

- 1 hour/week or 4 hours/month
- Individual Internet activity

ON-SITE FUNDRAISERS

- Space must be paid for at usual and normal charge; or
- Free space or reduced price OK if usually made available to clubs & civic groups; and
- Advance payment for food, catering & company staff

ISSUE ADVOCACY



ELECTIONEERING COMMUNICATIONS

- Key Provision of McCain-Feingold law
- Attempt to curb “sham issue ads” (“Call Sen. Jones. Tell him to stop coddling big oil companies.”)
- Attempt to stop end-run around express advocacy test with so-called “sham issue ads”

ELECTIONEERING COMMUNICATIONS

No corporate or union funding if:

- Ad refers to a federal candidate
- Ad runs 60 days before general election; 30 days before primary
- Broadcast, cable, or satellite
- Targeted to 50,000 or more of candidate's potential voters

WHAT'S NOT COVERED?

- Print, Internet, Telephone, Billboards
- Federal candidate committees and PACs
- Mind the gaps – an unregulated period may open between the primary and general elections
- Grassroots lobbying

FEC v. WISCONSIN RIGHT TO LIFE

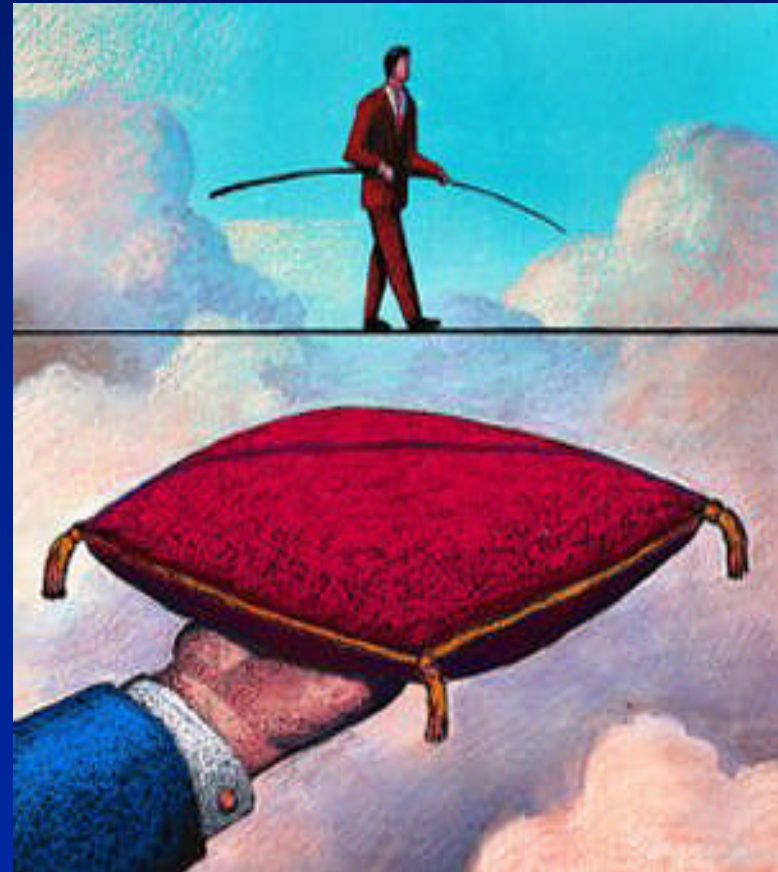


FEC v. WRTL DECISION

- Supreme Court effectively invalidated McCain-Feingold's EC provisions
- If only reasonable way to view ad is as an appeal to vote for or against a candidate, law may restrict corporate financing
- BUT: If there's a reasonable question about whether ad is appeal to vote or is an issue ad, the ban cannot be Constitutionally applied

RISK MANAGEMENT

- Compliance Should Involve Entire Company
- Written policies
- Ongoing process



COMPREHENSIVE COMPLIANCE PROGRAM

- One size does not fit all!
- System to track legal developments
- Regular training & materials updated
- PAC: Internal controls

TIME FOR YOUR QUESTIONS



OTHER QUESTIONS?

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