

Understanding H.R. 1 (Part 1): Corporate & Trade Association Campaign Activity

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Election and Political Law

With a [growing chorus](#) of support across the progressive landscape, the [For the People Act of 2021](#) has emerged as a key legislative priority for congressional Democrats in the 117th Congress. Envisioned as a “transformational anti-corruption and clean elections reform package,” the bill would enact sweeping changes to federal election laws along with important changes to federal campaign finance, lobbying, and government ethics laws. Taken together, these changes would have significant implications for private parties engaged in all manner of political activity.

After House Democrats relied on their slim majority to pass the For the People Act, the bill now faces more uncertain prospects in the evenly divided Senate. Nonetheless, Democratic leaders are sure to continue to press aggressively to move the bill through the upper chamber. Likewise, even absent passage of the entire package, Democrats may look for opportunities to pass key elements of the broader bill on a bipartisan basis.

To assist our clients in understanding how the For the People Act would affect their existing activity and compliance obligations, this is the first of [several alerts](#) that will provide insights into key elements of the bill and what they mean. This alert addresses the bill’s proposed changes to the campaign finance rules, the greatest impact of which is new disclosure obligations for politically active corporations (including non-profit entities and for-profit companies) and trade associations. As discussed below, the bill makes what should be only minor changes to the operation of most PACs, primarily in clarifying the bar on the participation of foreign nationals.

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For corporations and trade associations engaged in political activity, enactment of the For the People Act would bring expanded disclosure requirements, both through changes in law and by allowing federal regulators to adopt political disclosure rules. The bill would also impose tighter limits on the ability of foreign nationals to participate even indirectly in domestic political activity. The changes, along with their implications for our clients, are discussed in greater detail below.

Expanded Disclosure Requirements

A key element of the For the People Act is the Disclosure of Information on Spending on Campaigns Leads to Open and Secure Elections (DISCLOSE) Act. Originally introduced in the wake of the Supreme Court’s decision in *Citizens United v. Federal Election Commission*, the

DISCLOSE Act has been a longstanding Democratic priority. The current version of the bill incorporated into the For the People Act differs slightly from the version introduced nearly a decade ago.

As we explained in greater detail in a prior [alert](#), the DISCLOSE Act makes a number of major changes to federal campaign finance and lobbying disclosure laws. First, outside groups that fund political ads—including corporations, labor unions, 501(c)(4) social welfare organizations, 501(c)(6) trade associations, 527 groups, and Super PACs—would have to disclose their donors, irrespective of whether the donor contributed for the purpose of funding a particular ad, unless the ads were funded from a transparent, segregated fund. Coupled with an expanded definition of covered “independent expenditures,” including communications that promote or attack a candidate (even if they do not expressly advocate for or against their election) and expenditures in connection with judicial nominations, these new reporting requirements would make it more difficult to shield a corporation or trade association’s involvement in indirect political spending from disclosure.

An amendment adopted on the House floor would further require certain political committees to disclose, within 48 hours, any contributions of more than \$5,000 received within the 20 days before any federal election in which the recipient will make contributions or expenditures. Exempted from this additional disclosure requirement are candidate committees or party committees. As a result, this provision appears to be designed to apply most directly to super PACs, which are specifically called out and defined in the amendment, and so called *Carey* or hybrid PACs.

Outside groups funding political ads would need to include an oral “stand by your ad” disclaimer from their senior-most executive, along with a visual or (for audio ads) audio list of their largest donors. While the prospect of senior executives delivering candidate-style disclaimers may seem daunting, for-profit corporations rarely fund such communications directly. Nonetheless, the additional disclosure requirements may affect the spending decisions of politically active outside groups.

The For the People Act omits a requirement originally set out in the original DISCLOSE Act for outside groups to include information about spending on independent expenditures, electioneering communications, or transfers to entities that fund such ads to shareholders, members, or donors within 24 hours on the organization’s website, with this information required to remain available online for at least a year. Similarly, the DISCLOSE Act provision requiring lobbyists and entities registered under the Lobbying Disclosure Act to include on their semiannual reports (LD-203) independent expenditures and electioneering communications they funded, either directly or indirectly by giving over \$1,000 to an entity that made such expenditures, appears to have been excluded from the current bill.

Unleashing the Regulators

In addition to directly altering federal campaign finance statutes, the For the People Act would lift the existing statutory restrictions barring a number of executive branch agencies from adopting their own rules to require additional disclosure of political spending.

Specifically, the bill would repeal the existing prohibition on the Internal Revenue Service from adopting regulations—like those [proposed](#) during the Obama Administration—that would govern the ability of 501(c)(4) entities to engage in political activity. Similarly, the Securities and

Exchange Commission would no longer be barred from finalizing rules that would allow shareholders to insist on receiving more information on the political spending—including political contributions, contributions to tax-exempt organizations, and dues paid to trade associations—of publicly traded companies. As we have elsewhere [explored](#), freeing the Commission to issue such regulations may bring new life to the growing push for corporate political disclosure. Finally, in addition to these potentially broadly applicable rules, the bill would lift an existing bar on executive branch agencies requiring or otherwise recommending prospective government contractors to disclose their political spending.

Only Modest Changes for Corporate PACs

The For the People Act's only significant impact on most corporate PACs would be more stringent restrictions on the ability of foreign nationals to participate even indirectly in corporate political activity. Complying with these new rules may present unique compliance challenges for some multinational corporations and trade associations with foreign-owned member-companies. In addition, a late amendment on March 2nd added a section requiring the FEC to use corporate PAC registration statements (FEC Form 1) to collect data on the governance structure of those PACs, and specifically whether they have bylaws and a board of directors, and if so, the relationship of the board members to the corporation.

If enacted, the For the People Act would expand the existing statutory bar on foreign national involvement in corporate political activity. Because the bill would largely codify Federal Election Commission interpretations of the existing ban, this change should have little effect on those entities already complying with the Commission's guidance. For most corporations, the risk of non-compliance with these rules are often inadvertent: databases that can distinguish foreign nationals who have long resided in the United States on long-term work visas from those who have reached permanent resident status, and communicating with large, restricted class groups about PAC-related matters. Particularly for multinational corporations and other entities with significant ties overseas, passage of the For the People Act would serve as an important reminder of the necessity of ensuring that such individuals are not inadvertently involved in political decision-making or solicited for contributions.

While the bill would require federal political committees (including corporate PACs) to disclose contacts with foreign governments and adopt policies providing for such disclosure, these requirements will likely present only a minor administrative burden for most corporate PACs. However, these new rules may present new risks for PACs associated with entities with significant connections to foreign governments. There is also a provision requiring political committees to identify when a donor is also a registered federal lobbyist. Again, the regulatory burden of this provision on most corporate or trade association PACs would be minimal.

Finally, an amendment adopted just prior to final passage in the House would expand the statute of limitations for civil violations of FECA from five years to ten years and for criminal violations from five years to fifteen years. This extended limitations period could lead the agency to adjust its enforcement strategies to prioritize longer-term investigations involving conduct spanning multiple election cycles. The bill does not reconcile this longer statute of limitations with FECA's statutory recordkeeping obligation of three years after a report is filed.

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