

February 19, 2019

The new Congress is already a noisy one on issues relating to campaign finance, voting and ethics reform, although it's unlikely that any legislation making substantive changes will be passed into law. The incoming Democratic majority in the House of Representatives promised to make such reform its number one priority, and introduced the "For the People Act of 2019" (H.R. 1) as its first bill of the 116th Congress. H.R. 1 as currently written incorporates aspects from a number of reform bills that were introduced in the last Congress, and the bill's rather dramatic efforts to reform the way national elections are conducted, including making Election Day a national holiday, are what have dominated the early headlines.

Speaker Pelosi has committed to moving the bill through committee hearings on an expedited schedule this month, and there have already been a number of House hearings since the initial drafting of this Alert. H.R. 1 will face fierce Republican opposition in both chambers, and while the House Democrats may pass the bill, it will likely be dead on arrival in the Senate and, most assuredly, the White House. However, some pieces of the legislation could be moved simultaneously in smaller bills that could generate bipartisan support from Republicans in the Senate.

Campaign finance

Democrats have been clamoring for campaign finance reform ever since the Supreme Court's 2010 landmark ruling in *Citizens United* which, among other things, spawned the creation of the "Super PAC" as a powerful political vehicle in both federal and non-federal elections, and paved the way for increased political activity by so-called "dark money" organizations—nonprofit entities that are not required to disclose their donors to the public under either IRS or Federal Election Commission (FEC) rules. Additionally, recent investigations into interference in the 2016 election by foreign actors has intensified the debate over how best to safeguard the country's election system and whether to demand increased transparency into the sponsors of online political advertisements. As a result, H.R. 1 includes a significant findings section that calls into question the *Citizens United* decision and asks for a constitutional amendment allowing Congress and the states to more stringently regulate corporate spending on elections. In a rather unexpected and decidedly partisan move, the bill also calls for a number of structural reforms to the FEC, including: reducing the number of sitting FEC commissioners from six to five; consolidating commission administrative power into the hands of the presidentially-appointed chair of the Commission; and empowering the FEC general counsel to initiate investigations and issue subpoenas without any commissioner sign-off or accountability.

From a textual perspective, H.R. 1 includes many components of the DISCLOSE Act, originally sponsored by Rep. David Cicilline (D-RI) and Senator Sheldon Whitehouse (D-RI), and the Honest Ads Act, introduced by Senators Amy Klobuchar (D-MN) and Mark Warner (D-VA). Under the DISCLOSE Act provisions, Super PACs and other nonprofit groups that make election-related disbursements totaling more than \$10,000 in an election cycle would have to comply with added disclosure obligations regarding the identity of beneficial owners of such entities. Additionally, corporate PACs of US subsidiaries of foreign corporations would have to make certain certifications to the FEC

regarding the non-involvement of foreign nationals before being allowed to make contributions. Under the Honest Ads Act provisions, companies such as Twitter and Facebook would, among other things, be required to maintain a public file of all political advertisements purchased on their platforms. This file would obligate both platforms to capture data regarding political speech that includes the identity of all commercial purchasers and related information about their target audiences, viewership and other, similar data points.

Ethics

With political ethics issues increasingly at the forefront of today's public policy debates, it's unsurprising to see that H.R. 1 also dedicates a significant portion of its content to addressing "anti-corruption" issues and attempting to remedy what Congressional Democrats view as several shortcomings in the Honest Leadership and Open Government Act (HLOGA) of 2007. Many of these proposed changes to the federal lobbying compliance framework are borrowed from the Curtailing Lobbyists and Empowering Americans for a New Politics (CLEAN Politics) Act, which Rep. John Sarbanes (D-MD) co-sponsored last year. Specifically, the ethics and lobbying provisions seek to curtail the "shadow lobbying" loophole of HLOGA by requiring former congressional members and staff who provide strategic advice in support of lobbying activities to register as lobbyists. Under the terms of the bill, any person who provides legislative, political or strategic counseling services in support of a lobbying contact made by another would have that contact imputed to him or her, thus qualifying many who currently only provide strategic advice but make no direct contacts on behalf of clients as "lobbyists" who would need to be listed in the Lobbying Disclosure Act database. It is worth noting that H.R. 1, at least in its current form, does not remove the Lobbying Disclosure Act (LDA) exception to the Foreign Agents Registration Act (FARA), which had been reported as a possibility in the lead-up to the bill's introduction.

As an additional "drain the swamp" effort, H.R. 1 attempts to increase the statutory cooling-off period for certain communications by former executive branch officials from one year to two years. This change effectively represents an attempt to codify the post-employment outreach restrictions found in former President Barack Obama's Executive Appointee Ethics Pledge, which doubled the statutory time restriction placed on certain former executive branch officials seeking to communicate with employees from their former agencies.

Voting

In addition to proposing substantial changes concerning the aforementioned public policy matters, the bill's Democratic sponsors have also dedicated a significant portion of the legislation to addressing perceived deficiencies in federal voting laws, especially those directly tied to the Supreme Court's 2013 *Shelby County* decision, which struck down portions of the Voting Rights Act as unconstitutional. As a counterbalance to that decision, H.R. 1 calls on Congress to recommit itself to full restoration of the Voting Rights Act, including its federal preclearance requirements. The bill also includes a number of provisions designed to consolidate federal authority over election operations in an unprecedented fashion. Specifically, the legislation seeks to address the impact of partisan gerrymandering on federal elections by mandating that states use independent, non-partisan redistricting commissions to draw legislative lines. The bill also seeks to prohibit the kind of state voter registration maintenance activities that Democrats view as intended to "purge" voter rolls, despite the mandatory nature of such activities under current federal election law and the Supreme Court's recent decision upholding such activities in the state of Ohio. H.R. 1 also seeks to impose on the states a national Automatic Voter Registration platform and encourages the proliferation of additional early voting and online registration measures. Finally, in the wake of increased threats to the security of state voting systems and voter databases, the legislation seeks to promote the use of additional security measures for such systems, a policy that could generate some bipartisan support as a standalone bill.

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