



March 2004

Government Contracts Issue Update



Special Election Law Edition

Government contractors have been grabbing some unwanted headlines in the field of election law lately. Federal law specifically prohibits government contractors from making contributions in connection with federal elections. This ban is in addition to the prohibition on corporate contributions found in the Federal Election Campaign Act. However, government contractors are permitted to create a separate segregated fund, commonly known as a PAC. But, somebody needs to be watching the house, and not just a single person.

First, in a criminal action, the CEO of Science & Applied Technology used his government contracting company to make illegal corporate contributions to federal candidates. Moreover, the company apparently used the proceeds of its government contracts to lobby the federal government, activity prohibited by the Byrd Amendment.

Second, Lockheed Martin apparently recently learned of the embezzlement of perhaps hundreds of thousands of dollars of PAC contributions by their custodian of records. While the scope and number of violations have yet to be determined, given recent history, it is likely that this individual will also face criminal prosecution and jail time, in addition to having prevented Lockheed Martin from using the funds contributed by its employees to its PAC.

With the passage of the Bipartisan Campaign Reform Act and new sentencing guidelines for criminal violations of election laws, government contractors need to revisit their compliance programs to ensure that they are adhering to the letter of the law.

The Government Contracts Group works closely with attorneys from the Election Law and Government Ethics Group to track these developing issues of importance. We hope you'll find this Special Election Law Edition timely and relevant.

Rand Allen

Co-Chair, Government Contracts Group

Contractor Criminally Violates FECA

According to a February 11, 2004 press release, the head of a government contractor entered into a plea agreement with the U.S. Attorney for the Southern District of California for criminal violations of the Federal Election Campaign Act (FECA), as amended. The February agreement and a previous December agreement acknowledged violations of FECA as well as other federal statutes.

First, Parthasarathi Majumder violated the prohibition on contributions in the name of another by providing political donors with cash and check reimbursements for contributions, instructing the payroll department of his company, Science & Applied Technology, Inc. (S&AT), to award donors bonuses and instructing subcontractors to inflate labor time sheets to cover the amount of the contributions.

Second, because some of the reimbursements for contributions came from S&AT, the activities violated the prohibition on corporate contributions.

Third, the company violated the ban on contributions by government contractors with its reimbursements. This federal ban applies to all government contractors, whether or not they are incorporated.

Finally, other S&AT activities violated the Byrd Amendment, which prohibits persons from using federal funds to lobby members of Congress and the Executive Branch. Moreover, the company created false expenses to conceal the improper nature of the lobbying payments.

Pursuant to an earlier civil settlement, S&AT agreed to pay the United States more than \$3 million. The criminal sentences have yet to be determined. ♦

Also in This Issue

Manage Embezzlement Risk to Protect Those Precious PAC Dollars.....	2
Government Contractors Can Make Use of Corporate Partisan Communications	3

Manage Embezzlement Risk to Protect Those Precious PAC Dollars

A recent incident in the world of campaign finance illustrates the fact that government contractor PACs are not immune from embezzlement, reporting problems or audits. This incident serves as a timely reminder to government contractor counsel and PAC management that they need to work together to safeguard money raised by their PACs because, among other things, the money is all the more useful and necessary in a post-Bipartisan Campaign Reform Act of 2002 (BCRA) era.

In late December 2003, Lockheed Martin disclosed to the Federal Election Commission (FEC) that one of its employees, who also served as a PAC custodian, embezzled substantial funds from the company's federal PAC. (News accounts peg the amount of the embezzled funds in the hundreds of thousands of dollars.) Moreover, the same employee, according to the company, intercepted FEC communications to the PAC treasurer, failed to respond to FEC notices about reporting problems and falsified FEC reports—all in an effort to hide the embezzlement. According to Lockheed Martin's disclosure to the FEC, the combination of these activities and reporting errors triggered an audit of the Lockheed Martin PAC by the FEC.

No corporation, much less a government contractor, wants to lose the voluntary contributions of its employees and stockholders, and no corporation wants to suffer through and defend an FEC audit of its PAC. Fortunately, there are steps that a government contractor can take to reduce its risks in this regard.

First, every PAC should have an audit at least once at the end of every two-year election cycle (or yearly, for larger PACs). An audit will uncover any employee wrongdoing at an earlier stage, and will ensure that the PAC's legal reporting and accounting procedures are being followed.

Second, PACs may want to require that disbursements over a certain amount (say \$1,000) be signed by the treasurer and at least one other person, such as the chairman or secretary. This precautionary measure will reduce the possibility that one employee is able to have access to substantial PAC funds.

Third, government contractors may want to consider outsourcing PAC reporting because several outside firms will guarantee the accuracy and completeness of the reports. It is, then, in their interest to follow through on any notices from the FEC. The outsourcing also frees up corporate personnel to focus on other aspects of corporate political life, such as PAC fundraising.

Fourth, every company should ensure that its PAC's steering committee (or equivalent oversight board) is filled by persons with time and energy to take a hands-on approach to the operation of the PAC. The steering committee should keep a watchful eye on the status of PAC fundraising, disbursements and other PAC activities. Abdicating all control and oversight to one or two persons, such as the treasurer, increases the risk that anomalies will go unnoticed. A wide net of responsibility for the PAC also increases the personal involvement of senior management and, at the same time, increases their desire to make the PAC a success. Such top-level involvement is critical for successful fundraising.

These suggestions are just the beginning of what a PAC can do to protect its funds. Such actions do not guarantee safety or compliance, but do reduce the risk that systematic problems, a wayward employee or sloppy bookkeeping will tarnish the company's reputation. ♦

For more information, please contact Jan Witold Baran (202.719.7330 or jbaran@wrf.com) or Carol Laham (202.719.7301 or claham@wrf.com).

WRF Election Law Practice Group

Wiley Rein & Fielding LLP has the premier Election Law & Government Ethics Group in the country. Our diverse clientele includes many of the country's largest corporations, as well as Washington, DC-based trade associations, non-profit organizations, individuals and political committees. We counsel clients on a number of federal statutes, including the Federal Election Campaign Act, Ethics in Government Act, Lobbying Disclosure Act, Foreign Corrupt Practices Act, Internal Revenue Code and Municipal Securities Rulemaking Board Rule G-37, as well as analogous state

law and Congressional rules. These laws and rules pertain to political contributions, the operation of political action committees, the use of corporate facilities for political purposes and the activities of foreign nationals and overseas corporations in Washington, DC. Our litigation and First Amendment experience is second to none. ♦

For more information on the Election Law Practice Group, please contact Carol A. Laham (202.719.7301 or claham@wrf.com) or visit our website at www.wrf.com.

Government Contractors Can Make Limited Use of Corporate Partisan Communications

Despite the increased regulation of political action that has emanated from the Bipartisan Campaign Reform Act of 2002 (BCRA) and continues to pile up, at least one area of corporate political involvement remains unchanged: corporate partisan communications to *high-level employees, shareholders and their families* (the restricted class). Government contractors may use partisan communications to *their restricted class* to elect their preferred federal candidates this Fall.

The term “partisan communications” means communications on any topic. Indeed, under federal law, corporations, including government contractors, may communicate with their respective restricted classes about federal candidates, federal parties and federal elections. A corporation may urge members of its restricted class to vote for or against a particular federal candidate or to donate personal funds to selected federal candidates or committees. Such communications can take the form of emails, letters, phone banks and candidate appearances (See July 2003 *Election Law News*).

Corporations often urge members of their restricted classes to attend a fundraiser for a candidate or to register in order to vote for a particular candidate. Federal law and regulations proclaim communications may be on “any topic whatsoever,” so this is indeed a broad avenue of political action. Nevertheless, a corporation should research state law before discussing state or local candidates or ballot issues. (For example, California allows certain types of employee partisan communications, but San Diego County declares them to be “expenditures,” thus triggering reporting.) Federal partisan communications may even be coordinated with federal candidates.

Corporate partisan communications are the exceptions rather than the rule when it comes to corporations and federal elections. Generally, corporations and government contractors are prohibited from contributing to or making expenditures on behalf of a candidate for public office. Given this paradigm, there are at least five main limitations on corporate partisan communications. These limits are described in brief below:

1. Corporations may only send partisan communications to their respective “restricted classes.” For corporations, this includes certain salaried executive, administrative and professional employees and their families. A corporation’s restricted class also includes its stockholders and their families. Corporations, then, may not communicate with the public about federal candidates.

Such an activity would be a corporate contribution, which is prohibited.

2. Corporate partisan communications may entail reporting requirements. If a corporation or trade association spends more than \$2,000 in the aggregate for all primaries in an election year, or more than \$2,000 in the aggregate for all candidates for the general election, then the corporation or trade association must file reports with the Federal Election Commission (FEC) beginning with the first quarter during which the threshold is met and continuing for each quarter during which additional expenditures of any amount are made. The report is on FEC Form 7. There are also special reports due before general elections. The expenditures that are aggregated for the \$2,000 threshold are those directly attributable to partisan communications that expressly advocate the election or defeat of a federal candidate or solicit contributions for a candidate. (Expenditures for communications that are not primarily devoted to such messages are not aggregated.)
3. If a corporation’s partisan communications solicit money for federal candidates, the corporation or trade association should include a disclaimer stating that contributions are voluntary and that the individual has a right to refuse to contribute without reprisal. The disclaimer should also state that contributions are not tax deductible.
4. The corporation may not provide an envelope or postage in order to facilitate the employee’s contribution. Likewise, no corporate employee may collect the contributions. Solicitation letters should simply include the address of the campaign to which individuals can send contributions at their own expense.
5. Corporate partisan communications may not be republications or reproductions, in whole or in part, of any candidate or political committee campaign materials. Brief quotations are permitted in order to demonstrate a candidate’s position.

Within these clear limits, corporate partisan communications provide corporations, including government contractors, with an opportunity to participate in the political arena regardless of the changes wrought by the BCRA. ♦

For more information, please contact Jan Witold Baran (202.719.7330 or jbaran@wrf.com) or Carol Laham (202.719.7301 or claham@wrf.com).

Government Contracts Practice Group

Partners/Of Counsel

Rand L. Allen	202.719.7329	rallen@wrf.com
Kathryn Bucher	202.719.7530	kbucher@wrf.com
Philip J. Davis	202.719.7044	pdavis@wrf.com
Fred F. Fielding	202.719.7320	ffielding@wrf.com
Paul F. Khoury	202.719.7346	pkhoury@wrf.com
Kevin J. Maynard	202.719.3143	kmaynard@wrf.com
Scott M. McCaleb	202.719.3193	smccaleb@wrf.com
James T. McKinlay III *	202.719.7363	jmckinlay@wrf.com
Dorthula H. Powell-Woodson	202.719.7150	dpowell-woodson@wrf.com
William A. Roberts III	202.719.4955	wroberts@wrf.com
Matthew S. Simchak	202.719.7278	msimchak@wrf.com
Kay Tatum	202.719.7368	ktatum@wrf.com
Barbara "Biz" Van Gelder	202.719.7032	bvangeld@wrf.com

Associates

William J. Colwell Jr.	202.719.4465	wcolwell@wrf.com
Susan D. Drake	202.719.7155	sdrake@wrf.com
William J. Grimaldi	202.719.7416	wgrimaldi@wrf.com
J. Ladd Johnson	202.719.3558	ljohnson@wrf.com
Jonathan L. Kang	202.719.3585	jkang@wrf.com
Albert C. Lambert **	202.719.7419	alambert@wrf.com
Eric W. Leonard	703.905.2812	eleonard@wrf.com
Adam Rogers ***	202.719.7422	arogers@wrf.com
Timothy W. Staley	202.719.7560	tstaley@wrf.com
David B. Walker	202.719.3578	dwalker@wrf.com
Derek A. Yeo	202.719.7484	dyeo@wrf.com

Special Counsel/Consultants

Norman E. Duquette (accountant)	202.719.4931	nduquett@wrf.com
William S. Lieth (attorney)	202.719.7277	wlieth@wrf.com
John A. McCullough (attorney)	202.719.7254	jmccullo@wrf.com
Steven N. Tomanelli **** (attorney)	703.905.2837	stomanelli@wrf.com

* Member, Massachusetts Bar. District of Columbia Bar membership pending. Supervised by principals of the firm.

** Member, Virginia Bar. District of Columbia Bar membership pending. Supervised by principals of the firm.

*** Member, Florida Bar. District of Columbia Bar membership pending. Supervised by principals of the firm.

**** Member, New York and Florida Bars. Virginia Bar membership pending. Supervised by principals of the firm.

1776 K Street NW ♦ Washington, DC 20006 ♦ (ph) 202.719.7000 ♦ (fax) 202.719.7049
7925 Jones Branch Drive ♦ Suite 6200 ♦ McLean, VA 22102 ♦ (ph) 703.905.2800 ♦ (fax) 703.905.2820

For back issues of WRF Newsletters, please visit www.wrf.com/publications/newsletter.asp

You are receiving this newsletter because you are subscribed to WRF's *Government Contracts Issue Update*. To sign up to receive this newsletter by email or to change the address of your current subscription, please visit www.wrf.com/newsletters.asp. To unsubscribe from this list, please send an email to wrfnewsletters@wrf.com with "Remove: *Government Contracts Issue Update*" in the subject line. This is a publication of Wiley Rein & Fielding LLP providing general news about recent legal developments and should not be construed as providing legal advice or legal opinions. You should consult an attorney for any specific legal questions.