



IN COMPLIANCE

HOLTZMAN VOGEL'S MONTHLY ROUND-UP



DOJ Declines to Defend Party Coordinated Expenditure Limits Before Supreme Court, Urges Court to Invalidate Limits

On May 19, 2025, the U.S. Department of Justice (DOJ) **responded** to the petition for writ of certiorari filed in the Supreme Court by the NRSC, NRCC, and (now) Vice President Vance. In an unusual move, DOJ has sided with the petitioners and urges the Supreme Court to take the case and hold that the Federal Election Campaign Act's limits on "party coordinated expenditures" (i.e., spending by political party committees in coordination with their candidates) is unconstitutional.

In an **earlier decision**, the Sixth Circuit Court of Appeals upheld FECA's limits on the basis of existing Supreme Court precedent, but several judges argued that the legal landscape had changed significantly since the Supreme Court last considered the issue. In its brief, DOJ argues that the Supreme Court's decision in *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) (known as "Colorado II"), which upheld the party coordinated expenditure limits, "has been severely undermined, if not superseded by, intervening legal, factual and statutory developments."

The FEC was represented by its general counsel in the earlier proceedings and the agency defended the constitutionality of the statutory spending limits. However, when a case reaches the Supreme Court, the FEC is represented by the Department of Justice through the Solicitor General. Following this change in counsel, the government will no longer defend the limits and urges the Supreme Court to "appoint an amicus curiae to defend the judgment below." The Supreme Court is widely expected to grant certiorari and hear the case.

Trump Executive Order Addresses “Overcriminalization in Federal Regulations”



On May 9, President Trump issued an executive order to address “**overcriminalization in federal regulations**” by “eas[ing] the regulatory burden on everyday Americans and ensur[ing] no American is transformed into a criminal for violating a regulation they have no reason to know exists.”

The executive order announces that “criminal enforcement of criminal regulatory offenses is disfavored” and should be reserved for cases where a person knows what is prohibited and willfully chooses to violate the law, “thereby causing or risking substantial public harm.”

The order seeks to steer “strict liability offenses,” which are offenses for which liability exists regardless of intent, knowledge, or mental state, toward civil or administrative enforcement, rather than criminal enforcement.

The order directs agencies that create regulations that may be subject to criminal enforcement to “explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to those offenses.”

Finally, in an attempt to catalog existing criminal regulatory offenses, the order directs each agency to compile “a list of all criminal regulatory offenses enforceable by the agency or the Department of Justice,” along with the range of penalties and applicable mens rea (state of mind) standard required for each identified offense. Lists are to be submitted to the Director of the Office of Management and Budget within one year and posted on the agency’s website. Agencies must update their lists at least annually. Any notice of proposed rulemaking or final rule published in the Federal Register must explicitly identify any criminal regulatory offenses included in the rulemaking.

U.S. House Reactivates the Office of Congressional Conduct

On May 13, appointments to the **Office of Congressional Conduct** (OCC) were announced, allowing the panel to get back to work. Known as the Office of Congressional Ethics when it was created in 2008, the OCC receives ethics complaints from the public and is empowered to investigate and refer matters to the House Ethics Committee.

The OCC's board includes chair Karen Haas, a former House clerk, co-chair Bill Luther, a former Minnesota Democratic Representative, Lynn Westmoreland, a former Georgia Republican Representative, and Lorraine Miller, also a former House clerk. Former Representative Westmoreland is the only new member of the board. Haas and Luther were first appointed in 2021, and Miller was appointed in 2023.



Department of Labor Revises Standard Used to Distinguish Employees and Independent Contractors

Since taking office, the Trump Administration has reversed course on many actions taken by the Biden Administration. In one example, the U.S. Department of Labor's Wage and Hour Division ("DOL") announced that it would no longer follow a 2024 rule approved by the Biden Administration revising the standards for distinguishing between an independent contractor and employee under the Fair Labor Standards Act ("FLSA"). As a result, employers will need to reevaluate the "economic realities" of their relationships with contractors and employees to determine whether they are properly classified as one or the other.

Specifically, on May 1, 2025, the DOL **announced** that it would no longer apply the Biden Administration's 2024 rule, which is also subject to ongoing litigation. Instead, the DOL indicated that it will revert to the standard articulated in its **Fact Sheet #13**, which sets forth a seven-factor test to evaluate worker status. These seven, non-exhaustive factors, which are to be examined under the totality of the circumstances, are: (1) integral nature of the work; (2) permanency; (3) worker's investment; (4) degree of control; (5) opportunity for profit or loss; (6) skill and initiative; and (7) independent business organization.

At the same time, DOL also reissued an opinion letter from the first Trump Administration (which the Biden Administration had withdrawn) that concluded that those who provide services through a virtual marketplace company ("VMC") constitute independent contractors. This newly reissued **Opinion Letter FLSA 2025-2** clarifies the Trump DOL's position that so-called "gig workers" are considered independent contractors under the test outlined in Fact Sheet #13.

Around the States

Cuomo and Adams Face Off with NYC's Campaign Finance Board



As New York City's 2025 mayoral race intensifies, two of its most high-profile contenders—former Governor Andrew M. Cuomo and Mayor Eric Adams—are entangled in separate battles with the New York City Campaign Finance Board (CFB) over the disbursement of public matching funds. In New York City, a candidate may apply for public matching by certifying their eligibility. The CFB requires financial disclosures and periodic audits to ensure compliance to qualify for public fund matching, but the Board retains broad discretionary authority to deny payment of public funds under Rule § 3-01(d)(i)(B).

Former Governor Andrew Cuomo has been denied nearly \$1.3 million in public matching funds after the CFB found “reason to believe” his campaign engaged in illegal coordination with a super PAC supporting his candidacy. CFB Rules give the Board broad discretion to declare candidates ineligible for public fund matching based on a finding of “reason to believe” the candidate violated the Board’s campaign finance rules, or even “if there is reason to believe that . . . the candidate has engaged in conduct detrimental to the [public funding] Program that is in violation of any other applicable law.”

The denial of Cuomo’s funds was preceded by a formal complaint filed by one of Cuomo’s opponent, State Senator Zellnor Myrie. Myrie’s complaint alleged that Cuomo’s campaign violated CFB rules governing independent and coordinated expenditures. Cuomo’s campaign website posted a publicly available “Message for Voters” that included information about Cuomo’s target demographic, video clips of Cuomo, and specific policy themes and talking points. Subsequently, a super PAC run by a longtime Cuomo ally released a television ad that appeared to utilize some of the Cuomo campaign’s publicly distributed content. Under federal law, the use of publicly available information – including information published on a candidate’s website – does not constitute “coordination,” and federal candidates routinely place information similar to Cuomo’s “Message for Voters” on their websites.

CFB Rule § 6-04(a) is aimed at a practice referred to by opponents as “redboxing” – named after the tactic of using a red box to highlight certain information on a webpage for use by third parties. Opponents of this practice typically call it “coordinating in the open,” while others maintain that the very idea of “coordination” based on publicly available information is nonsensical. Taking the former view, the CFB rule provides that an expenditure may be treated as “coordinated” if the person making the expenditure “has utilized strategic information or data that either is not from a publicly available source or otherwise available by subscription, or has been made publicly available by the candidate ... in a manner which the candidate ... knew or should have known would facilitate such utilization. This rule has not been subjected to judicial review but raises a host of First Amendment and other constitutional issues. It seeks to directly limit candidate speech, while its operation appears to rest on how information is publicly presented by a candidate and treats the use of information by a third party differently depending on where the information was found.

The CFB’s investigation is ongoing, and it has not made a final legal determination that any illegal coordination occurred. However, CFB Rules authorize the Board to withhold public matching payments while a formal investigation is pending. If the Board has “reason to believe” that a candidate has violated its Rules, payments made throughout the campaign can be delayed pending a final decision on the candidate’s conduct.



Though Cuomo’s campaign qualified for \$2.1 million in public matching funds, only \$1.5 million has been released. Cuomo’s legal team insists the website content was lawful, drawn from public polling, and reviewed by counsel.

Separately, Mayor Eric Adams **filed a lawsuit** on May 27 against the CFB for withholding \$3.4 million in matching funds from his campaign. The CFB initially denied Adams’ funding in December 2024, citing a now dismissed federal indictment and alleged non-cooperation with CFB requests. Adams’ legal team argues the board’s actions are legally baseless, politically motivated, and a violation of donor rights, and claims the board has made it “impossible for Mayor Adams to compete in the Democratic primary.” Adams’ lawsuit seeks the immediate release of the funds. The CFB has said it will revisit Adams’ eligibility in July.

These two high-profile cases demonstrate the CFB’s aggressive approach to campaign finance enforcement and administration of New York City’s public funding program. Neither Cuomo nor Adams has actually been found to be in violation of the laws cited by the CFB as the basis for its decisions, but the Board has nevertheless denied and withheld funds while its investigations continue.

New Maryland Law Requires Future Governors to Divest or Place Interests in Ethics Commission-Approved Blind Trusts

Maryland Governor Wes Moore **signed legislation** requiring future governors to place certain interests into a blind trust or divest interests that may pose a conflict of interest.

Under the new law, which goes into effect on October 1, 2025, a Maryland Governor, within six months of taking office, will be required to place certain assets into a certified blind trust approved by the State Ethics Commission or “divest any interest the Ethics Commission determines is necessary to resolve likely or potential conflicts of interest with the Governor’s public duties.” For any interest not included in the blind trust, the Governor must enter into a nonparticipation agreement with the Ethics Commission that prohibits the Governor from participating in any way in a public matter that involves that interest.



The law includes a series of exemptions, including common bank accounts, insurance policies, pensions, and mutual funds, and the Governor may seek additional exemptions from the State Ethics Commission.

Additionally, business entities seeking contracts, state grants, or awards must report any interests the Governor or restricted individuals have in those entities to the Ethics Commission. These conflicts of interest restrictions extend to the Governor’s immediate family and household members, except for employees.

West Virginia Adopts Voter ID Requirement

On May 1, 2025, West Virginia Governor Patrick Morrisey **signed legislation requiring voters to present photo identification** prior to voting.

Effective July 11, 2025, a voter must present one of the following acceptable forms of identification to the poll clerk:

- A valid West Virginia driver’s license or valid West Virginia identification card issued by the West Virginia Division of Motor Vehicles,
- A valid driver’s license issued by a state other than the State of West Virginia,
- A valid United States passport or passport card,
- A valid employee identification card with a photograph of the eligible voter issued by the United States Government or the State of West Virginia, or by any county, municipality, board, authority, or other political subdivision of West Virginia,

- A valid student identification card with a photograph of the eligible voter issued by an institution of higher education in West Virginia or a West Virginia high school,
- A valid military identification card issued by the United States with a photograph of the person desiring to vote. or
- A valid voter registration card that includes the voter's photograph issued by a county clerk in the State of West Virginia or the Secretary of State.

A voter without proper identification may cast a provisional ballot after executing an affidavit affirming the individual's identity. The provisional ballot may be counted if the election authority verifies the voter's identity through signature verification and determines that the individual was otherwise eligible to cast a ballot.

New York's Appellate Division, Fourth Department Upholds Even Year Election Law

New York's 2023 law moving most local elections in New York State to even years was unanimously upheld by the Appellate Division, Fourth Department. Under the provisions of the law, local officials, at their next election, will run for a term of one or three years if they would normally run for a term of two or four years, respectively. That shortened term would then be followed by elections for full length terms. Elections for city officials, judges, county clerks, county sheriffs, and district attorneys are exempted from the change.

The law was challenged by several local governments from across New York State. An earlier ruling found that the law violated the state constitution's provisions protecting local governments' ability to organize themselves. The full decision of the 4th Department can be accessed [here](#). The Court of Appeals, New York's highest court, will hear the case in September.

New York State Budget Makes Changes to Public Campaign Finance Program

As part of the recently approved state budget, the New York state legislature voted to make significant changes to the state's public campaign finance program. Among the changes made to the program in the budget are:

- A provision allowing the first \$250 of a qualifying donation for the primary and the general to be matchable as long as the donor does not contribute more than \$1,050 in the primary election or general election;
- A provision that specifically defines when a candidate participating in the program is opposed by a competitive candidate, allowing the participating candidate to receive the maximum allowable public campaign funds; and
- A provision requiring the Public Campaign Finance Board to develop training to allow individuals to become Certified Compliance Officers.



The public finance program was approved as part of the 2020 New York State budget. Candidates running for state legislature, Governor, Lt. Governor, Comptroller, and Attorney General are eligible to participate in the program. Candidates for state legislature could first participate in the program in the 2024 election, and candidates for statewide office will be able to participate in the program for the 2026 election.

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The public campaign finance program is administered by the **Public Campaign Finance Board**. The PCFB is comprised of the four commissioners of the **New York State Board of Elections**, one appointee of the Republican leaders of the state legislature, one appointee of the Democratic leaders of the state legislature, and one appointee of the Governor.

In addition to the changes made to the public campaign finance program, the state legislature, as part of the state budget, approved a change to Article 6 of the Election Law that requires candidates for Governor and Lt. Governor to now run as a ticket in the primary election. Prior to this change, candidates for Governor and Lt. Governor were nominated in separate primary elections but ran together as a ticket in the general election.

The 2025 state legislative session is scheduled to end in June.

Holtzman Vogel Launches State Attorneys General Practice Group, Tapping Deep Bench of Veterans as Go-To Firm for High-Stakes Matters

Holtzman Vogel announced the formal launch of its **State Attorneys General Practice Group**. The formal launch of the group reflects our firm's continued growth and its national expertise in state related policy, regulation, and investigatory matters.

Partners Kellen Dwyer (DC), Jonathan Fahey (DC), Andrew Gould (Arizona), Mohammad Jazil and Mark Pinkert (Florida), Jonathan Lienhard (Virginia), and Brandon Smith (Tennessee) lead the new practice group, bringing decades of experience advising and working alongside state attorneys general across the country. They are trusted counselors in high stakes matters involving government investigations, litigation, and agency action. Their insider knowledge and strategic counseling have earned them reputations as go-to advisors for businesses facing regulatory scrutiny or litigation risks at the state level.

The group's services include:

- **Regulatory Compliance and Strategic Advice:** Advising clients on state laws and regulations, helping them identify and address compliance issues to mitigate the risk of investigations or enforcement actions.
- **Investigation Defense:** Representing clients in investigations by state attorneys general, while offering big picture strategic advice to protect the clients' broader business interests, operations, and reputations.
- **Litigation and Dispute Resolution:** Defending clients in enforcement actions, drawing on the team's extensive trial and appellate experience and offering clients an insider's perspective into prosecutorial strategies.

The team's collective background includes serving as Assistant U.S. Attorneys, State Solicitors General, Chiefs of Staff to State Attorneys General, and senior litigators within state and federal government. With experience coordinating multi-state actions, defending against regulatory overreach, challenging agency rules and actions, and influencing policy across several industries, Holtzman Vogel's team brings a rare blend of political savvy, legal firepower, and national reach across a broad range of industries.

HV Making the Rounds

- Andy Gould was quoted in *The Hill* article, "Tariff court ruling throws another wrench into companies' trade strategies."
- Joe Burns authored "Letitia James's Campaign Is on the Ropes" for the *City Journal*.
- Jason Torchinsky, Ed Wenger and Erielle Davidson filed a Title VI Action on Behalf of Jewish Students Against George Washington University.
- Jan Baran, Erielle Davidson and Ed Wenger were recognized by Washington DC *Super Lawyers*.
- Jonathan Fahey was quoted in the *Washington Times* article, "Trump hammers illegal immigrants with full weight of law, criminal prosecutions up 45-fold."
- Daniel Bruce spoke on the topics of campaign finance and election law at the Virginia Federation of Republican Women's conference.
- Brandon Smith authored "Why the Private Sector Can't Ignore State AGs: Advice from a Former Insider" for *Corporate Counsel*.
- Jan Baran spoke with Oliver Roberts on the Early Returns podcast and covered "AI and the Law, and an Education."
- Jonathan Fahey and Andy Gould appeared on Fox News multiple times to discuss recent topics including antisemitism on college campuses, immigration, tariffs, and other SCOTUS topics of the day. Andy also appeared on NewsNation.
- Susan Greene authored the op-ed, "Hypocritical outrage over Trump's crackdown on universities" for *The Hill*.
- A number of our antisemitism matters were covered by the *New York Times*, *Free Beacon*, *The Free Press*, *Fox News*, and other outlets.
- Mark Pinkert introduced Judge Roy Altman as Hero of Justice honoree awarded by the Jewish National Fund - USA and Miami Lawyers for Israel.
- Joe Burns authored "Rewriting the Rules: What New York's Recent Campaign Finance Changes Mean for 2026" for Fordham Law's *Voting Rights and Democracy Project*.
- Jason Torchinsky was a speaker on a panel entitled "Legal Insights for Modern Campaigns" at the American Association of Political Consultants Pollie conference.
- Brandon Smith appeared on OANN's The Real Story with Riley Lewis to discuss the SCOTUS case, *State of Washington v. Trump*. He also authored "The Supreme Court can settle the question of nationwide injunctions," for *The Hill*.
- Andy Gould and Rebecca Layne presented "Uncertainty and the FEC" at the State Bar of Arizona CLE program, 2025 Arizona Election Law Refresher.
- *Bloomberg Law* included insights from Oliver Roberts in the report, "EU AI Act Guide for In-House Counsel."

UPCOMING EVENTS

- June 6 - A number of our attorneys will be attending the Republican National Lawyers Association's Policy Conference in DC.
- June 6 - Kellen Dwyer, Tim Kronquist, Drew Watkins and Jonathan Fahey will attend the Federalist Society's In-House Counsel conference in Chicago.
- June 11 - John Cycon and Jonathan Leinhard will present a CLE entitled "The Ins and Outs of eDiscovery in Civil and Criminal Cases" at the Virginia State Bar Annual Meeting.
- June 17 - Mark Pinkert, Andy Gould and Jonathan Fahey will present a Federalist Society webinar, "Litigation Update: President Trump's Anti-DEI Executive Orders and the Lawsuits Challenging Them."

This update is for informational purposes only and should not be considered legal advice. Entities should confer with competent legal counsel concerning the specifics of their situation before taking any action.

Please reach out to one of the following compliance partners or your personal Holtzman Vogel contact with any questions.

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