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National Political Parties Get a Christmas Bonus: Major Campaign Finance Provisions in Must-Pass Legislation

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Congressional appropriators released the details of the FY15 funding bill (the "Consolidated and Further Continuing Appropriations Act," or "Cromnibus") on December 9, 2014, funding the federal government at $1.013 trillion for the coming fiscal year. However, the biggest funding increase in the legislation might just be to national political parties, which would be able to raise funds of up to ten times current levels from eligible donors. Following this year's U.S. Supreme Court decision in *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014), which held that biennial aggregate contribution caps to political parties and federal candidates represented an unconstitutional limit on free speech, the balance of electoral power may now be shifting back to national and state party committees.

That provision is just one of three significant campaign finance changes contained in this year's legislation.

As mentioned above, the first major change would dramatically increase the amount that a national party committee may accept from any given donor. A permissible contribution source, such as an individual or multicandidate PAC (often a connected PAC or corporate PAC), would be allowed to make contributions to three separate funds established by the national parties that would be designated for:

- Presidential nominating conventions (national parties only, not congressional campaign committees);
- Building expenses, including construction, purchase, renovation, operation, or furnishing facilities (national parties and congressional campaign committees); and
- Recount and legal expenses, including the preparation for and conduct of election recounts and contests (national parties and congressional campaign committees).

Each of these accounts as permitted at each party committee could raise three times the current limit on contributions from a given source. This means that on top of the existing amount an individual may currently give—$32,400 to a national party committee per year—a single donor could fund each of these accounts at $97,200, or a maximum of $324,000 per year to a national party committee (or $226,800 to each national party congressional committee, since congressional committees would not be permitted to have separate convention fund accounts). Similarly, in addition to the current limits for a multicandidate PAC of $15,000 per national party committee per year, a multicandidate PAC would be able to fund each of these accounts at $45,000, or a maximum of $150,000 to a national party committee ($105,000 to a national party congressional committee).

Some of these secondary accounts may seem familiar—recall the "Building Funds" used as a way to accept so-called soft money in the days prior to the Bipartisan Campaign Reform Act, Pub. L. 107-155 (2002). But, importantly, no new funding sources are added as a result of this language. Corporations, federal contractors, and national banks, for instance, are all still prohibited from contributing to any of these funds.

The second major provision would prohibit any funds from being used to require (or even recommend) that an entity submitting a bid for a federal contract disclose federal political spending as part of that bid. The provision would prevent a potential contractor from being pressured into disclosing details about the contributions, expenditures, independent expenditures, or electioneering communications of the entity itself, as well as of its officers, directors, affiliates and subsidiaries.

This provision appears to be in response to President Barack Obama's draft executive order from 2011 requiring such disclosures. The White House had appeared to step away from the draft in light of significant opposition, but some reform groups had recently called on the president to reconsider issuing the executive order. However, the provision in the appropriations bill would not change the longstanding statute preventing an existing federal contractor from making federal political contributions (to a candidate, party, PAC, or "Super-PAC"), nor would it roll back federal pay-to-play laws in effect at certain agencies, such as the Securities and Exchange Commission and the Commodity Futures Trading Commission.

Finally, the appropriations bill would prohibit any funds from being used by the Executive Office of the President to request a determination from the Department of the Treasury or the Internal Revenue Service regarding the treatment of an organization for tax-exempt status. This is only the latest development in the ongoing controversy regarding heightened scrutiny that the Internal Revenue Service reportedly placed on certain organizations applying for tax-exempt status. For more information on that debate, see the K&L Gates alert, "Taxes and Politics Collide in New IRS Guidelines for 501(c)(4) Organizations," available here.

The appropriations bill is expected to pass the House and Senate without amendment by December 13; it would then go to the president for signature.

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