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E-News from State and Federal Communications, Inc.

April 2010

## Have We Lost the Art of Compromise?

A recent development in my hometown of Akron, Ohio, reminded me of a larger issue our country is facing and one we must do something about. We seem to have lost the art – and even the desire – to compromise.

I see this in Washington, where the administration and Congress seem at an impasse. I see it in international situations, where people are becoming polarized. And I see it right here in Akron, where one of America's great newspapers, the Pulitzer prize-winning *Akron Beacon Journal*, had faced a possible strike by members of Newspaper Guild Local 1.

I am not taking sides in any of these issues. As I wrote to our mayor, county executive, and others – we simply need to have a daily newspaper in our large city of Akron, and I encouraged all these parties to find a way to come together and reach a compromise.

I am happy to report the *Beacon Journal* and Newspaper Guild Local 1 did just that, signing a new contract on March 5.

This is, I believe, an excellent example of the art of compromise. We need to have diverse viewpoints, but also the ability

to come to some agreement after vigorously discussing differences of opinion.

Our society seems to have lost that ability in some quarters.

As Edmund Burke, the Irish statesman and political theorist, said more than 200 years ago: "All government, indeed every human benefit and enjoyment, every virtue, and every prudent act, is founded on compromise and barter."

We need to find ways to work together, live together, and govern together. The world is a much smaller place than it was. And, it is getting smaller every day.

While the world shrinks, our ability to get along must correspondingly expand.

It's the only way – in Akron, in Washington, and everywhere. Until next month.

**Elizabeth Z. Bartz**  
President and CEO

## Rebecca South Joins WASRG Board of Directors

Rebecca F. South, a federal compliance associate with State and Federal Communications, Inc., has been elected to fill a three-year term on the Washington Area State Relations Group (WASRG) Board of Directors.

WASRG serves state government relations professionals and since the mid-1970s "has been providing its corporate, trade association and public sector members with a unique and valuable opportunity to interact with their peers, key state officials and public policy experts," according to the WASRG website.

In her new role, South will assist in coordinating a variety of programs and activities serving the unique needs of state-focused professionals in the Washington, D.C. area.

WASRG hosts monthly luncheons with a variety of guest speakers, special interest briefings, social events, and an annual summit covering legislative, political, and professional development issues.

"I look forward to serving on the WASRG board and helping to provide important opportunities to individuals whose primary focus is the distinctive world of state relations," South said.

For more information about WASRG, go to [www.WASRG.com](http://www.WASRG.com).



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## Legislation We Are Tracking

At any given time, more than 1,000 legislative bills, which can affect how you do business as a government affairs professional, are being discussed in federal, state, and local jurisdictions. These bills are summarized in the State and Federal Communications' digital encyclopedias for lobbying laws, political contributions, and procurement lobbying; this information is located on the client portion of the State and Federal Communications website.

Summaries of major bills are also included in monthly e-mail updates sent to all clients. The attached chart shows the number of bills we are tracking in regards to lobbying laws, political contributions, and procurement lobbying.

	Total Bills	Number of Jurisdictions	Passed	Died	Carried over to 2010
Lobbying Laws	267	38	2	1	0
Political Contributions	538	43	0	2	0
Procurement Lobbying	366	38	0	4	0

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## Summary of Changes UPDATE

### Note Recent Changes to Compliance Regulations

John Cozine, Esq.  
Research Manager

Government affairs professionals need to be aware of recent changes – and upcoming changes – in compliance laws for several jurisdictions, including:

**COLORADO:** The Colorado Supreme Court ruled 4 to 1 to uphold the decision of the Denver District Court that provisions of the voter-approved Amendment 54 were

unconstitutionally overbroad, vague, and violated equal protection. The court affirmed the district court's preliminary injunction, finding, despite the constitutionality of limited portions of Amendment 54, the unconstitutionality of the majority of the measure rendered those portions deemed constitutional incapable of standing alone without the stricken portions. Amendment 54 prohibited sole source government contractors with contracts over \$100,000 from directly or indirectly making, causing, or inducing contributions for the benefit of political parties or for the benefit of state and local candidates during the term of the sole source contract and for two years thereafter. The case has now been remanded to the district court for a final ruling consistent with the opinion.

**ILLINOIS:** On February 12, 2010, Federal Judge Joan Gottschall issued a preliminary injunction, which will continue to put the 2009 Illinois law that raises lobbyist registration fees on hold. The law had raised registration fees from \$350 to \$1,000 for most lobbyists. The ACLU had brought suit against the secretary of state, arguing that such a substantial increase violated the First Amendment. Judge Gottschall said she needs the state to make more arguments before she reinstates the previous \$350 fee. She also said the door is still open for the Illinois General Assembly to approve a smaller

increase in fees. The secretary of state's office re-opened lobbyist registration on March 15, 2010. Any lobbyists and lobbying entities registering before March 31, 2010, will have their registrations automatically made retroactive to January 1, 2010. The registration fee has not been determined. Once it is, the secretary of state's office will notify those registered of the fee, at which point they will have 30 days to pay to avoid having their registration terminated. Expenditure reports are on hold until further notice.

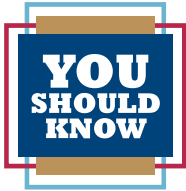
**FEDERAL:** On February 5, 2010, the Federal Election Commission (FEC) announced, due to the U.S. Supreme Court's decision in *Citizens United v. FEC*, it will no longer enforce statutory and regulatory provisions prohibiting corporations and labor unions from making either independent expenditures or electioneering communications. The FEC also listed several actions it is taking to fully implement the *Citizens United* decision. The FEC will:

- review all pending enforcement matters to determine which ones might be affected by the *Citizens United* decision, and it will no longer pursue claims involving violations of the invalidated provisions or pursue information requests or audit issues with respect to the invalidated provisions;
- consider the effect of the *Citizens United* decision on its ongoing litigation;
- review regulations affected by the invalidated provisions and will initiate a rulemaking to implement the *Citizens United* opinion;
- consider the effect of *Citizens United* on the ongoing coordinated communications rulemaking; and
- evaluate required revisions to reporting, forms, instructions, and the electronic software used.

**IOWA:** On February 10, 2010, the Governor of Iowa signed House File 2109 into law. This

bill, which was effective immediately, brought sweeping changes to the lobbyist reporting requirements, for both the executive and legislative branch. The biggest change brought on by the new law repealed the requirement for lobbyists to file monthly and quarterly reports. Lobbyists are now only required to file an annual registration statement and must register with each branch of government they will be lobbying. In this registration statement, the lobbyist must identify all of its clients, and provide an e-mail address of a contact person for each client. In addition, if there is a function during the legislative session where all 150 legislators are invited, a pre-function report must be e-filed five calendar days prior to the event. Twenty-eight days after the event, a function report must be e-filed and must disclose the amount spent on food, beverages, and entertainment. In this type of event, the three dollar limit on gifts of food, beverage, and entertainment does not apply. The lobbyist representing the primary sponsor of the function will be accountable for filing these pre-function registrations and function reports. All registrations, reports, and filings will be filed electronically under this newly enacted law.

**SAN DIEGO, CALIFORNIA:** Federal Judge Irma E. Gonzalez issued a preliminary injunction on February 16, 2010, preventing the enforcement of several of San Diego's campaign finance laws. The request for the injunction was a result of the pending lawsuit between the Republican Party of San Diego and the city over the laws. She enjoined several laws, including the provision which prevents candidates from spending their own money more than a year before the election and the provision prohibiting businesses, organizations, and political parties from contributing directly to campaigns. Until the judge issues her final judgment, these laws will not be enforced. However, the judge denied the request to enjoin the \$500 cap on individual donations and the prohibition on candidates from accepting contributions more than a year before the election.



## 'Plain and Simple' Methods to Ensure Federal Compliance

by Rebecca South  
Federal Compliance Associate

Not long ago, I was asked to explain political compliance to a group of 5th graders. As I was preparing my presentation, I struggled with how to present the issue so the students could grasp the concept in a meaningful way. Ideally, I had hopes of being like the poet Randall Jarrell whose language, many agree, was so direct, plain, and simple even dogs and cats could understand him.

As I progressed in my preparations, however, I was quickly reminded that nothing about political compliance – whether lobbying, campaign finance, or ethics – is particularly plain, simple, or direct.

The Federal compliance landscape has changed drastically since the passage of the Honest Leadership and Open Government Act in 2007 (HLOGA). Its passage required organizations to take a fresh look at existing compliance practices and implement new strategies and procedures for the future. Having completed the second full year of disclosure under HLOGA, it is understandable that many organizations feel comfortable about their proficiency in handling the increased disclosure requirements.

Critical to keep in mind, however, is preventing this comfort from evolving into complacency. Indeed, Webster tells us complacency is comfort coupled with an unawareness of impending danger or trouble. The last thing registrants want are to find themselves involved in a lobbying controversy on the front page of *The Washington Post* because they became complacent in their approach to compliance.

A consistent, pro-active approach is essential to developing a successful, long-term compliance program. As 2010 progresses, consider these important tips for maintaining a culture of compliance:

- Pay attention to the detail. Having moved from an environment emphasizing disclosure (pre-HLOGA) to one where process and methodology are important, there is a need to continually ensure people at all levels of an organization focus on the detail – the detail of individual expectations, the detail of organizational processes, the detail of the law, and the detail of reportable activities and expenditures.
- Encourage a culture of questioning. Even two years into the enactment of HLOGA, the House and Senate continue to provide new interpretations and guidance about various provisions of the law. In

addition, on some issues, the House and Senate interpret the law differently. Don't be afraid to ask questions about the application of the law even if you believe the question has already been answered. Any number of facts have a bearing on the conclusion.

- Keep abreast of the changing compliance landscape. For sure, the one thing consistent about compliance is that it changes – often. Whether you are active at the Federal, state, or municipal level, having a heads-up to impending modifications can be very helpful. Certainly, at the Federal level, the current Administration has not been hesitant about issuing guidelines concerning its approach to lobbying. State and Federal Communications, Inc. provides some excellent resources to our clients, including Special Alerts and our continuously updated online resources to help keep on top of the many changes.
- Review compliance requirements periodically. I can't emphasize enough the usefulness in review and re-examination. The serious approach to compliance contemplates that practitioners, management, and administration alike take the opportunity to be reminded about the rules and requirements to which they must adhere. As many times as we may have read the law, there is something to gain from repetition.
- Reassess processes and procedures. On a regular basis, review and evaluate which of your processes work and which don't. Make adjustments to your program accordingly. Learn to recognize areas of vulnerability and don't hang on to procedural practices not serving the best interests of the company. In addition, regularly review internal policies and expectations with your employees.
- Learn from audit experience. The audit process continues to develop and GAO's

approach will, no doubt, be changed as its process is honed. Implementing sound audit practices that include backup record retention, consistent application of reporting methodology, and clear policies and procedures will only enhance an organization's ability to respond successfully to an audit. If you have already participated in a GAO audit, learn from the experience and apply best practices going forward.

- When in doubt, ask an expert. If a question arises about whether a particular activity or contribution is reportable, don't hesitate to reach out to the State and Federal Communications team to discuss the issue. We have experience addressing myriad issues for our clients. In questions of compliance, thoughtful, deliberate responses are vital.

Now, last but not least, getting back to my group of 5th graders. In the end, I began my presentation by asking for several volunteers to come forward to play a game called Knox. Once I got the kids to the front of the room I simply said, "OK, play." Immediately after which a huge beach ball came flying in from the side of the room. (I worked that out ahead of time.) Instinct took over and the kids ducked or otherwise jumped out of the way to avoid the ball.

Of course, they all looked at me and were surprised and bewildered because I hadn't told them how to play the game or what the rules were. "Oh," I said, "would you like to know what the rules are before you play?" "Well, yeah, of course," I heard in response.

"This," I said, "is much like the world of political compliance. There are numerous rules that regulate contact with elected officials, and unless you know what the rules are and how they apply, you can get yourself in a lot of trouble."

And that is about as plain and simple as it gets.

### Sponsorship Benefits United Way

State and Federal Communications, Inc. joined with others to sponsor a raffle that raised almost \$3,000 to benefit the United Way of Summit County (Ohio).

The company joined with AirTran Airlines, CBS-TV, and Allstate Insurance to sponsor a special award involving the CBS-TV series, *CSI: NY*. One of the stars of the series is Akron native Melina Kanakaredes.

United Way recently held the drawing, won by Vicky Scott of suburban Akron. Scott will receive airfare for two, four nights at a Starwood Hotel, a tour of the show's set, and autographed memorabilia.

# ASK THE EXPERTS

## State and Federal Communications' Experts Answer Your Questions

Here is your chance to "Ask the Experts" at State and Federal Communications, Inc. You can directly submit questions for this feature, and we will select those most appropriate and answer them here. Send your questions to: [marketing@stateandfed.com](mailto:marketing@stateandfed.com). (Of course, we have always been available to answer questions from clients that are specific to your needs, and we encourage you to continue to call or e-mail us with questions about your particular company or organization. As always, we will confidentially and directly provide answers or information you need.) Our replies to your questions are not legal advice. Instead, these replies represent our analysis of laws, rules, and regulations.

**Q. If I provide a gift to a covered official exceeding the gift limit in that jurisdiction, can the covered official reimburse my employer for the difference?**

**A.** This is a situation you never, ever want to be in, but sometimes it happens. Fortunately, most of the states allow for the covered official to reimburse the donor in order to rectify the situation.

One of the circumstances precluding reimbursement is when too much time has elapsed between providing the excessive gift and reimbursement by the official. If too much time has passed, the state considers the gift to have been "accepted" by the official, and reimbursement is not an option.

Also, even if the official reimburses the overage, sometimes the lobbyist, the official, or both must nonetheless report the total value of the gift. From a disclosure standpoint, this makes a precarious situation even more suspect.

Some examples of these rules include the following:

- In Connecticut, the gift limit is \$10. The official may not partially reimburse a more expensive gift to bring the final cost to the lobbyist below \$10, because the overall value of the item is still over \$10 [Advisory Opinion 1997-15].
- In the state of Washington, an official's name cannot be removed from a filed lobbying report, regardless of whether the official has fully reimbursed the lobbyist for the reported expenditure. In addition, an official cannot partially reimburse a lobbyist for an expense to bring the total cost below the \$50 reporting threshold. Even if a partial reimbursement occurs, both the lobbyist and the official must report the full amount. The only way an expenditure exceeding the threshold does not have to be reported is if the official fully reimburses the lobbyist prior to the lobbyist filing the lobbying report disclosing the expenditure.
- In New York, public officials and employees may completely reimburse the donor of a gift if the reimbursement is not removed or remote in time in order to comply with the gift ban [Advisory Opinion No. 97-03]. If an item, entertainment, or other benefit is received and payment of its market value is made prior to or simultaneously with receipt, there is no gift [Advisory Opinion No. 97-03].

## See Us in Person

Plan to say hello at future events where State and Federal Communications will be attending and/or speaking regarding compliance issues.

April 7-10, 2010	<b>NCSL Spring Forum</b> , Washington, D.C.
April 19, 2010	<b>American League of Lobbyists'</b> Lobbying Certificate Program Session on State Lobbying and the Regulatory Process, Washington, D.C.
April 28-30, 2010	<b>American Conference Institute's</b> National Advanced Forum on Corporate Lobbying and Political Activities, Washington, D.C.
May 3-6, 2010	<b>BIO</b> Annual Convention, Chicago, Illinois
May 6, 2010	<b>Women in Government Relations</b> Spring Soiree, Washington, D.C.
May 17-19, 2010	<b>U.S. Chamber of Commerce</b> Small Business Summit, Washington, D.C.
May 20-23, 2010	<b>The Council of State Governments'</b> 2010 Economic Summit of the States, New York City, New York
July 25-28, 2010	<b>NCSL</b> Legislative Summit, Booth #310, Louisville, Kentucky



The Mission of State and Federal Communications is to make sure that your organization can say, "I Comply." We are the leading authority and exclusive information source on legislation and regulations surrounding campaign finance and political contributions; state, federal, and municipal lobbying; and procurement lobbying.

Contact us to learn how conveniently our services will allow you to say "I Comply" for your compliance activities.  
<http://www.stateandfed.com/>

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## State and Federal Communications, Inc. Scrapbook



Elizabeth Bartz, State and Federal Communications, Inc.'s president and CEO, attended recent events and met with various public, corporate, and association officials. She was at a recent Cleveland Cavaliers game, and also at the Ohio Birthday Party on March 3 at The Library of Congress in Washington, D.C. Elizabeth met with, clockwise starting with the photo in the top left: Ben LaRocca of Procter & Gamble Co.; George Cook III of the Alliance of Automobile Manufacturers (at the Cavs game); Akron Mayor Donald L. Plusquellic; Emma Lieberth of the Brady Campaign to Prevent Gun Violence and John Green of the University of Akron; Don Zowader (left) of Takeda Pharmaceuticals Inc. and Rick Rebadow of the Greater Akron Chamber of Commerce; Paul Vincent, a former State and Federal Communications, Inc. intern, and now with the LNE Group; John Bailey of FirstEnergy Corp.; and David W. James, Superintendent of Akron Public Schools.