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### State and Local Government

#### I-5 Government Transparency

##### Transparency Legislation in 2018

This article provides information about legislation related to transparency in elections, campaign finance, and elected officials in Kansas, other states, and in Congress. In 2017 and 2018, legislatures in several states and Congress introduced bills, resolutions, and constitutional amendments that concerned transparency in campaign finance, contribution limits, finance disclosure, lobbying, ethics, or limits on elected officials. (For information on election transparency and post-election audits, please see [I-4 Election Security](#) in this Briefing Book.)

##### Comprehensive Transparency Legislation

###### *Kansas*

The 2018 Kansas Legislature passed SB 394, effective July 1, 2018, which made changes to lobbying activities and requirements in Kansas.

The bill amended the definition of “lobbyist” to include independent contractors compensated by an executive agency for the purpose of evaluation, management, consulting, or acting as a liaison for the executive agency and who engages in lobbying. The bill includes in the definition of “lobbying” promoting or opposing any action or inaction of any executive agency on any executive administrative matter or judicial agency on any judicial administrative matter. Certain activities are exempted from the definition of “lobbying,” including communications between and among members of the Legislature or executive or judicial officials or employees and communications regarding a contract, lease, or agreement of \$5,000 or less.

The bill also amended the restrictions of gifts and meals provided by a lobbyist. The bill extends to members, member elects, and employees of the judicial branch the limitation that hospitality in the form of recreation having an aggregate value of \$40 or more or in the form of food and beverages shall not be given to influence the performance of official duties pertaining to a judicial administrative member. The bill extended to these judicial officials and employees the presumption that hospitality in the form of food and beverages

is not given to influence an official matter. The bill also increased the value of a meal that may be accepted by members of the Executive Branch from \$25 to \$40 per occurrence.

The bill also requires lobbyists to register and report certain activities. Lobbyists must register and provide the name of each executive and judicial agency and office as well as any agency, division, unit, department, institution, office, commission, board, or bureau they lobby. The lobbyist must also note if they will lobby the Legislative Branch. The bill also extended the requirement that lobbyists must disclose the aggregate value of gifts, entertainment, or hospitality provided when the lobbyist expends \$100 or more and the date the gift, entertainment, or hospitality was provided to legislators, members of the Judicial Branch, or legislative or judicial employees. The bill requires the lobbyist to disclose the full name of the legislator, Judicial Branch member, or legislative or judicial employee. This requirement extends to state officers, state officers-elect, state employees, members-elect of the Judicial Branch, and legislators-elect. Previously, lobbyists were only required to disclose when they expended \$100 or more for gifts, entertainment, or hospitality in any reporting period.

### **Missouri**

By means of an initiative petition, Missouri voters voted in the November 2018 general election on a ballot initiative that would amend the legislative process and legislator activities; the measure was adopted. Amendment 1, known as “Clean Missouri,” would amend the *Missouri Constitution*, as follows:

- Prohibit state legislators and their employees from serving or registering as a paid lobbyist or solicit prospective employees or clients to represent as paid lobbyists for two calendar years after the conclusion of the session the legislator or employee last served;
- Limit the value of gifts, service, or things of value that state legislators and their

employees may accept to no more than \$5 per occurrence;

- Reduce the amount of contribution that candidates for the state legislature may accept from any person in any one election to:
  - \$2,500 for candidates for the state Senate; and
  - \$2,000 for candidates for the state House of Representatives;
- Create the nonpartisan position of “Non-Partisan State Demographer” to develop procedures in preparation of the drawing of legislative redistricting maps on the basis of the federal census and present such information to the House Apportionment Commission and the Senatorial Apportionment Commission, and change the criteria for redrawing state legislative districts;
- Require legislative records to be public records and allow public access to these records and require that legislative proceedings (including committee proceedings) to be public meetings subject to recording by citizens, so long as these recordings do not materially disrupt the meetings; and
- Prohibit political fundraising activities and political fundraising events by any state legislators or candidates for state legislature on Missouri state property.

The Clean Missouri ballot initiative was challenged on constitutional grounds. Opponents to the initiative argued Clean Missouri violates the *Missouri Constitution* because it would amend more than one section of the *Missouri Constitution*. Attorneys representing Clean Missouri argued the initiative is constitutional because all provisions touch the Missouri General Assembly.

In September 2018, Cole County Circuit Judge Daniel Green ordered the Missouri Secretary of State to rescind Clean Missouri’s certification, removing it from the November 2018 ballot. The Western District of the Missouri Court of Appeals heard an appeal brought by attorneys

representing Clean Missouri on September 20, 2018. The Court of Appeals ruled the Circuit Court erred when it removed Clean Missouri from the ballot. By overturning the Circuit Court's decision, the Court of Appeals put Clean Missouri back on the November 2018 ballot. The Missouri Supreme Court denied an appeal.

## Transparency in Presidential Campaigns

In recent years, California, Delaware, Maryland, and Massachusetts have all introduced legislation relating to transparency in national presidential elections.

California S 149 (2017), Delaware S 28 (2017), Maryland S 256 (2018), Maryland H 662 (2018) and Massachusetts S 365 (2017) would require the disclosure of the federal income tax returns of candidates for President of the United States.

The Massachusetts legislation would require the presidential candidate to disclose federal tax returns for the three most recent available years. Legislation in California, Delaware, and Maryland would require the candidate to disclose federal tax returns for the five most recent available years.

The legislation proposed in Delaware, Maryland, and Massachusetts would also require candidates for Vice President of the United States to disclose federal tax returns for a specified number of most recent available years.

Each bill would prevent the candidate for president's name from appearing on the ballot if the candidate does not submit their federal tax returns in a specified time before the election. California's bill would prevent the candidate's name from appearing on the primary election ballot, and Delaware, Maryland, and Massachusetts's bills would prevent the candidate's name from appearing on the general election ballot.

Of the bills introduced, only Delaware S 28 is still active. The bills in California, Maryland, and Massachusetts all either failed or were vetoed.

## Transparency in Campaign Contributions and Political Advertisements

During the 2018 session, bills were introduced in the states of Connecticut, Delaware, Georgia, Kansas, Maine, Massachusetts, New York, and Washington; the District of Columbia; and the U.S. Congress relating to campaign finance transparency. Of the 20 bills and resolutions dealing with campaign finance, 8 were enacted or adopted in 2018.

### *District of Columbia*

In 2018, the District of Columbia passed five emergency bills (DC B 155, DC B 486, DC B 487, DC B 862, and DC B 863) and one resolution (DC R 160) temporarily amending campaign finance law. Currently pending DC B 8, known as the "Campaign Finance Transparency and Accountability Amendment Act of 2017," would establish the changes made in the previous bills and resolution to create permanent law.

Among other things, the bill would require political action committees (PACs) to direct their contributions through regulated accounts designated for that purpose, clarify expenditures coordinated with a candidate or campaign are considered contributions to that candidate or campaign, require PACs and independent expenditure committees to certify the donations they have received have not been coordinated with any candidate or campaign, enhance disclosure of independent contributions, and prohibit unlimited contributions to a PAC in a year when the committee is not supporting candidates.

### *Maine*

In 2018, Maine enacted HP 1301, which, among other things, created reporting requirements for certain campaign contributions. The bill requires that contributions aggregating in excess of \$100,000 for the purpose of influencing a campaign for a *Maine Constitution* people's veto referendum or a direct initiative must be reported within five days of receipt. Such a report must disclose the name and purpose of the organization making the contribution, the amount and date

of each contribution, the five largest sources of income in the year prior to filing the report, and other information about the organization.

## **Transparency in Digital Information and Social Media**

Recently, both Congress and individual states have considered legislation regarding the use of digital technology in government. Of the legislation introduced, many bills and resolutions specifically include social media as a digital resource for elections and campaign finance. Introduced legislation also includes online resources as a way to connect lawmakers with the public.

### ***U.S. Congress***

During the 115th Congress (2017-2018), S. 1989 was introduced. Known as the “Honest Ads Act,” the purpose of the bill is to enhance transparency and accountability for online political advertisements by requiring those who purchase and publish these advertisements to disclose information about the advertisements to the public. The bill’s intent is to provide the public with the sources of funding for political advertisements so they can both make informed political choices and hold elected officials accountable. The bill touches on other campaign finance laws, including the prohibition on campaign spending by foreign nationals. The bill would require disclosure of sources of funding of political advertising, including certain Internet or digital communication.

Also during the 115th Congress, H. 4504 was introduced. Known as the “Transparency in Government Act of 2017,” the bill, if enacted, would

amend several acts relating to transparency, including the Ethics in Government Act and the Lobbying Disclosure Act. The bill would require committees to post online all public hearings, including transcripts and audio and video recordings.

### ***Maryland***

In 2018, Maryland enacted HB 981. Known as the “Online Electioneering Transparency and Accountability Act,” the bill amends campaign law to include digital information. The bill amends the definition of “campaign material” to include certain material disseminated and certain qualifying paid digital communications. The bill also alters the definition of “public communication” to include certain qualifying paid digital communications, which requires a person making independent expenditures of a certain amount to file an independent expenditure report with the State Board of Elections. The bill requires online platforms to retain a digital copy of each online political advertisement it distributes or transmits and maintain accounting records that include the name and address of each person who purchased an online political advertisement and the cost and method of payment for that online political advertisement.

### ***Michigan***

In 2018, Michigan introduced SR 135, a Senate Resolution urging Congress to regulate political advertisements on the Internet to encourage transparency. The resolution seeks to include in the current federal regulation of political advertisements those advertisements promoting political campaigns that are circulated on digital and social media pages.

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