

# Political Law: Elections, Campaign Finance, Lobbying, Ethics And A Great Deal More

The Editor interviews Stefan C. Passantino, McKenna Long & Aldridge LLP.

**Editor:** Mr. Passantino, would you tell our readers something about your professional experience?

**Passantino:** Following law school at Emory in Atlanta and a clerkship with a federal judge in Baltimore, I spent several years with a firm in New York before returning to Atlanta. Once there, one of my partners, Randy Evans, and I put together a team of eight or nine lawyers to handle two rather distinct practices, one a litigation practice and the other engaged in the political arena. In the late 1990s, our group was brought in to assist House Speaker Newt Gingrich in what were called the "ethics wars" to assist him in responding to a variety of issues concerning his relations with his current law firm. Randy and I were successful in guiding him through the ethics investigation process, and Speaker Gingrich kept us on as his counsel. That was the origin of our political law practice. I continue to be Gingrich's general counsel today.

In the years following the "ethics wars," when Gingrich decided to resign from Congress to return to private life, we helped him transition from a political to a business model. That included helping him set up a consulting firm, negotiate speaking contracts, book and television deals and so on. During this time, J. Dennis Hastert was elected Speaker of the House and Newt recommended to him that we be retained as the Speaker's ethics and campaign finance counsel. Speaker Hastert ultimately kept us on throughout his tenure in this position, and we continue to be his personal counsel in the ethics and campaign finance areas.

Throughout this period we also became involved with certain members of the senior leadership of the House of Representatives, including J.C. Watts of Oklahoma, who was elected Chairman of the House Republican Conference in 1998, and Roy Blunt of Missouri, currently the House Republican Whip. We have also been able to create a unique client niche consisting of celebrity politicians who wish to have an impact on the private sector through consulting, public speaking and writing.

**Editor:** Are you confined to one side of the aisle, or can you move back and forth?

**Passantino:** Our team is active on both sides of the aisle. With respect to our practice representing politicians – and I hasten to point out that the advice we render is almost completely non-partisan – there is a required element of strategic confidentiality that entails any individual lawyer being either Republican or Democrat to be in some of the meetings we attend. In discussing compliance issues, we are privy to a variety of strategic political decisions, and that, in turn, means that we must work to sustain a certain comfort level to insure that what is going on in the room stays there. Others in our firm, such as former Ambassador to Canada Gordon Giffin and former White House Director of Government Affairs Marsha Hale, were very active in the



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Clinton White House and interact largely with Democratic politicians. As a firm and as the political law team we are very bipartisan. We have committed Democrats and committed Republicans on the team, but we all meet in the middle to represent the private sector.

**Editor:** I understand you have also represented corporations in this practice.

**Passantino:** The 110th Congress passed a number of ethics reform initiatives which have shifted a variety of lobbying and ethics compliance obligations from the members of Congress to the private sector. This is a result largely of the public reaction to the scandals involving Jack Abramoff and others. The federal legislation has had the effect of imposing on the corporate world an obligation to know the rules, to comply with the rules and to disclose all of their activities. While this legislation happens to be at the federal level, the scandals giving rise to it have encouraged an astonishing amount of legislation at the state level concerning ethics, the scope of reportable "lobbying activity" and disclosure. There are any number of variations in what is covered from state to state. New York, for example imposes an absolute ban on *any* gift to a government employee, including a cup of coffee. Other states focus more on disclosure. Some states have enacted challenging "pay to play" legislation which prohibits government procurement officials from receiving campaign contributions from companies or, indeed, anyone bidding for government contracts. Many of the states which impose this restriction make any procurement contract made after any such improper contribution voidable. That can be a very punitive trap for corporations unaware of the new restrictions.

Needless to say, all of this activity has had a tremendous impact on our practice. A company interacting with government at the federal or state level now requires a comprehensive compliance program to avoid running afoul of what is an absolute patchwork of obligations and restrictions. Any company that retains a lobbyist is subject to much stricter rules. The growth in this area has been nothing short of astonishing, and for a practice such as ours it is the equivalent of the Sarbanes-Oxley compliance requirements of other areas of law.

**Editor:** How is the representation of political entities and organizations different from the representation of individual political figures?

**Passantino:** In the last few election cycles, people have become more familiar with what are called §527 political organizations. Swift Boats Veterans for Truth and MoveOn.org are prime examples of these kinds of groups. We got heavily involved in the campaign finance arena in 2004 when Speaker Hastert requested us to file an amicus brief with the U.S. Supreme Court challenging the constitutionality of the McCain-Feingold Campaign Finance Law. To my knowledge, this was the first time a sitting Speaker has ever filed a Supreme Court challenge to the constitutionality of a statute passed on his watch. When the law was upheld, we went on to help establish one of the first §527 groups, the Leadership Forum, to get heavily involved in the election process and then to successfully defend its conduct before the FEC. Most recently, we have established a §527 organization called American Solutions for Winning the Future for Newt Gingrich. It is a nonpartisan organization meant to engage people at the grassroots level in the process and in attempting to influence the debate.

**Editor:** How is the practice organized?

**Passantino:** The political law team that I head has lawyers in a number of firm offices, but its primary base is Washington, DC. There is really a continuum of needs when you are engaged in compliance with government, and our team reflects that. Those needs can range from corporate to tax to public relations. When white collar expertise is required, we are fortunate to have Josh Hochberg, formerly one of the senior people at the Justice Department's Public Integrity and Fraud Section, the branch involved in the Enron investigation and, in its early stages, the Abramoff investigation. In addition to the considerable corporate compliance experience one would expect of a firm with the bench strength of McKenna Long, we are able to draw upon people with extraordinary expertise in lobbying disclosure work and in the representation of tax-exempt associations. And, of course, we also have people directly engaged in state ethics and lobbying compliance work.

**Editor:** What kinds of services do you provide your clients in this practice?

**Passantino:** We represent a number of political clients with regard to fundraising issues, advertising and promotional activities, putting on events, and the like. Campaign finance compliance also extends to corporations and the activities of political action committees. Our primary service for private corporate clients is in helping them establish a comprehensive structure for identifying all of their activities which are now subject to new lobbying, contribution and gift disclosure laws at the state and federal level. From there, we assist those corporate clients in educating their personnel on the nuances of these laws as well as proper disclosure

for compliance.

In addition, we provide services to various tax exempt organizations. I mentioned §527 organizations, as to which there are no IRS restrictions with respect to opposing or supporting candidates for public office. We also advise other tax exempt groups such as social welfare organizations, trade associations, labor unions, and so on with the host of compliance challenges unique to them. There is a very complex interplay among tax issues, campaign issues and SEC compliance issues in this practice.

Litigation services are also part of the practice, and I enjoy being in the courtroom. With political law, however, and these particular clients, one strives not to use those skills.

**Editor:** How does the firm's political law practice connect to its public policy and regulatory affairs practice?

**Passantino:** We connect with the public policy and regulatory affairs practice in a number of ways. McKenna Long is recognized as one of the top firms in the nation when it comes to advising businesses on their relationships with government – federal, state and local. As such, our practices are naturally connected as they represent elements of the core identity of our firm. We have had a very strong federal and state lobbying practice for many years, and one of the original strengths of the firm was in government contracts. In this regard, our role is to provide for the compliance needs of those clients who work with our colleagues in those areas. In today's environment it is necessary to interact with government in a variety of ways and at different levels, and our participation in this process helps to provide these clients with a seamless interaction across the entire spectrum of what is required of them.

**Editor:** What about the future? How would you like to see this political law practice develop over the next five years or so?

**Passantino:** The representation that we handle for individual politicians – and for their committees and other organizations – tends to grow organically by word-of-mouth recommendation, and I see that continuing.

Where the growth has been fairly dramatic, however, is with the private sector clients. As corporate America begins to understand that these new federal and state compliance requirements have the ability to impact their bottom line as well as public perception of them, we are seeing something that I would liken to the impact of Sarbanes-Oxley on corporate America. With an increasing awareness of how important this area of law has come to be in recent years, these companies look to the few firms with an established reputation in political law. McKenna Long has represented some very important political figures – which contributes to its high profile in this area – and the firm has also built a very solid base of experience and expertise. If we are on solid ground today, in five years I would expect us to be recognized as the go-to firm in the political law arena.

Please email the interviewee at [spassantino@mckennalong.com](mailto:spassantino@mckennalong.com) with questions about this interview.