

The Corporation as Political Host: When Corporations Sponsor Appearances by Federal Candidates

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Corporations often have an interest in hosting appearances by candidates for federal office. The Federal Election Campaign Act (FECA) and regulations issued by the Federal Election Commission (FEC) impose certain restrictions on corporate-sponsored forums for federal candidates. Corporations must comply with these rules to avoid making illegal contributions since a speaking forum and audience can constitute "anything of value" under the definition of "contribution." The rules for candidate appearances before an audience limited to the restricted class differ from appearances before all employees. Both types of appearances are discussed below. Pertinent regulations can be found at 11 C.F.R. §§ 114.3 & 114.4.

Appearances Before the Restricted Class

The FECA permits a corporation to host appearances by federal candidates and political party leaders on corporate premises at a meeting, convention or other function of the corporation to address the corporation's officers, executive and administrative personnel, including professionals, stockholders and their families (commonly referred to as the "restricted class"). The corporation may sponsor the event and select the candidates it wishes to hear from, at no charge to the candidate, in order to facilitate a political communication to its senior executives and stockholders. The following rules generally apply to events attended only by the corporation's restricted class:

- (1) The candidate and corporate officers may expressly advocate the candidate's election before the restricted class. The corporation may communicate its preference for the candidate.
- (2) Corporate representatives may coordinate the political message to be conveyed at the event with the candidate and his staff prior to the event.
- (3) The candidate and corporate representatives may solicit contributions to the candidate and the candidate may accept contributions from members of the restricted class before, during or after the candidate's appearance.

(4) The corporation may *not* collect any contributions through any officers, directors or other representatives of the corporation, either before, during or after the appearance.

(5) The corporation is not required to offer all candidates an opportunity to appear before its restricted class. The corporation may select one candidate to appear and speak.

(6) *If* the corporation permits more than one candidate for the same office to address its restricted class, and *if* the corporation permits the news media to cover or carry an appearance by one candidate, the corporation must permit the news media to cover or carry the appearances by the other candidate(s) for that office, as well. In addition, if the corporation permits a representative of the news media to cover or carry a candidate appearance, the corporation must provide all other representatives of the news media with equal access for covering or carrying that appearance, but equal access permits "the use of pooling arrangements if necessary."

Appearances Before All Employees of the Corporation

Sometimes a corporation wishes to make a political forum open to all of its employees, not just its restricted class. If a corporation wishes to invite a political candidate to speak to all employees in an open forum, the corporation must comply with the following conditions:

(1) If a candidate for the House or Senate or a candidate's representative is permitted to address or meet employees, all candidates for that seat who request to appear must be given a similar opportunity to appear.

(2) The candidate's representative or party representative (other than an officer, director or other representative of a corporation) or the candidate, may ask for contributions to his or her campaign or party, or ask that contributions to the separate segregated fund of the corporation be designated for his or her campaign or party. The candidate, candidate's representative or party representative may *not*, however, accept contributions before, during or after the appearance while at the meeting, convention or other function of the corporation, but may leave campaign materials or envelopes for members of the audience.

(3) A corporation, its officers or employees, or its federal PAC may *not*, either orally or in writing, solicit or direct or control contributions by members of the audience to any candidate or party in conjunction with any appearance by any candidate or party representative, and may *not* facilitate the making of contributions to any such candidate or party.

(4) A corporation or its separate segregated fund may *not*, in conjunction with any candidate appearance, expressly advocate the election or defeat of any clearly identified candidate or candidates of a clearly identified political party and may *not* promote or encourage express advocacy by employees.

(5) A corporation may *not* endorse the candidate in connection with his or her appearance.

(6) No candidate, candidate's representative or party representative may be provided more time or a substantially better location than other candidates, candidates' representatives or party representatives who appear, unless the corporation is able to demonstrate that it is clearly impractical to provide all candidates, candidates' representatives and party representatives with similar times or locations.

(7) Corporate representatives may coordinate the appearance logistics with the candidate, candidate's agent and candidate's authorized committee. Such coordination may include discussions of the structure, format and timing of the candidate appearance and the candidate's positions on issues. This coordination must *not* include discussions of the candidate's campaign plans, projects, or strategic or financial needs.

(8) Representatives of the news media are permitted to attend a candidate's or candidate representative's appearance before a corporation's employees.

(9) A corporation may *not* reproduce, republish or distribute the candidate's or a political party's campaign literature, advertisements, campaign signs and similar material. The corporation may, however, produce and distribute, on its own, announcements for the candidate forum that identify the candidate who will attend the forum and the office the candidate seeks. In producing these announcements, the corporation may use campaign-provided photographs and biographical information.

Official Visit or Campaign Stop?

Sometimes a question will arise regarding whether these rules apply to an appearance by an incumbent federal officeholder who is invited to speak in his capacity as the local Congressman rather than in his capacity as a federal candidate. The Federal Election Commission has opined that invitations extended to multiple candidates for the same office, to appear together or separately, are in connection with the federal election and the rules outlined above apply. Where the incumbent officeholder appears in his capacity as a candidate, then the event is, in fact, in connection with a federal election and the rules outlined above apply.

However, where the invitation to a speaker is not based on his status as a candidate, but rather is based on his role as a legislator who has had an impact upon current statutes and future legislation of interest to the corporation's employees, the corporation may invite him to speak without triggering the restrictions outlined above. If this is the case, the officeholder's remarks should be strictly limited to a discussion of his work as a legislator, legislation and policy. There should be no reference to his candidacy or campaign. There is a risk, however, that the incumbent officeholder's remarks might go beyond the discussion of legislation and policy and place the corporation in an awkward position. For example, complaints have been filed with the FEC over closing remarks that talked about re-election. See, e.g., FEC MUR 2872. A simple statement like that can possibly transform a non-campaign forum into a campaign-related forum. For this reason, it is advisable to observe as many of the rules noted above as possible and to reach a clear understanding with an incumbent federal officeholder ahead of time to ensure that remarks will not be campaign-related.