

A Practical Guide for Corporate Fundraising and Partisan Communications Involving Federal Candidates

September 2010

This year, much of the attention in the campaign finance world has focused on implementing the Supreme Court's landmark decision in *Citizens United v. FEC*, which recognized the right of corporations and trade associations to make independent expenditures to the general public. But such organizations should not overlook a long-established mechanism for communicating their message internally without incurring some of the headaches associated with public communications.

The ability of corporations to make partisan communications to high-level employees and shareholders and their families (collectively referred to as the corporation's restricted class) remains both an effective and permissible way to communicate the organization's message to a receptive audience. For trade associations, engaging in partisan communications similarly allows the organization to communicate with individual members or to the one or two corporate representatives from each member company with whom the trade association normally deals.

By partisan communications, we mean communications on any topic. Indeed, corporations and trade associations may communicate with their respective restricted classes about federal candidates, federal parties and federal elections. A corporation or trade association may urge members of its restricted class to vote for a particular federal candidate, to vote against a particular federal candidate or to donate personal funds to selected federal candidates or committees. Such communications can take the form of emails, letters, phone banks and candidate appearances.

Authors

D. Mark Renaud
Partner
202.719.7405
mrenaud@wiley.law
Andrew G. Woodson
Partner
202.719.4638
awoodson@wiley.law

Corporations often urge members of their restricted classes to attend a fundraiser for a candidate or to register in order to vote for a particular candidate. Federal law and regulations proclaim communications may be on "any topic whatsoever," so this is indeed a broad avenue of political action, but a corporation should research state law before discussing state or local candidates or ballot issues. Federal partisan communications may even be coordinated with federal candidates.

With such a broad mandate for corporate activity, there are bound to be some limits. Indeed, there are five basic limitations, described below, that must be followed:

- Corporations and trade associations may only send partisan communications to their respective "restricted classes." For corporations, this includes certain salaried executive, administrative and professional employees and their families. A corporation's restricted class also includes its stockholders and their families.

For trade associations, the restricted class is much more limited. A trade association may make partisan communications with representatives of its corporate members with whom the trade association normally communicates about association matters. (The association also may communicate with any individual member and with its executive and administrative personnel and their families.) To make up for this limited restricted class, the trade association may ask its corporate members, at their own expense, to communicate the same message to their corporate restricted classes.

- Corporate and association partisan communications may require reporting. If a corporation or trade association spends more than \$2,000 in the aggregate for all primaries in an election year, or exceeds \$2,000 in the aggregate for all candidates for the general election, then the corporation or trade association must file reports with the FEC beginning with the first quarter during which the threshold is met and continuing for each quarter during which additional expenditures of any amount are made. The report is on FEC Form 7. There also are special reports due before general elections.
- If the communications solicit money for federal candidates, the corporation or trade association should include a disclaimer stating that contributions are voluntary, that the individual has a right to refuse to contribute without reprisal and that contributions are not tax deductible.
- The corporation may not provide an envelope or postage in order to facilitate the employee's contribution. Likewise, no corporate employee may collect the contributions. Solicitation letters should simply include the physical or Internet addresses of the campaign for individuals to utilize to make their contributions.
- Corporate and trade association employee/member partisan communications may not be republications or reproductions, in whole or in part, of any candidate or campaign committee campaign materials. Brief quotations are permitted in order to demonstrate a candidate's position.

Within these clear limits, corporate partisan communications provide corporations and trade associations with a tremendous opportunity to participate in the political arena.