

Three Cheers for Corporate Partisan Communications

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Practical Tips for Election Year Activities

With the increased regulation of political action that has emanated from the Bipartisan Campaign Reform Act of 2002 (BCRA) and continues to pile up, it is refreshing to return to an area of corporate political involvement that remains unchanged. Such an area is corporate partisan communications to high-level employees and shareholders and their families (the restricted class). For trade associations, it entails communications to individual members or to the one or two corporate representatives from each member company who normally deal with trade association matters.

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 (See July 2003 *Election Law News*).

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. (For example, California allows certain types of employee partisan communication, but San Diego County declares them to be

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"expenditures," thus triggering reporting.) 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 main limitations, which are described below.

1. 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 sphere 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 may also 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. Corporations and trade associations, then, may not communicate with the public about federal candidates. Such an activity would be a corporate contribution, which is prohibited.

2. Corporate and association partisan communications may entail reporting requirements. 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 Federal Election Commission (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 are also special reports due before general elections.

3. If the communications solicit money for federal candidates, the corporation or trade association should include a disclaimer stating that contributions are voluntary and that the individual has a right to refuse to contribute without reprisal. The disclaimer should also state that contributions are not tax deductible.

4. 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 address of the campaign to which individuals can send contributions at their own cost.

5. Corporate and trade association employee/member partisan communications may not be republications or reproductions, in whole or in part, of any candidate or political 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 an opportunity to participate in the political arena regardless of the changes wrought by BCRA.