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MEMORANDUM

TO: NABPAC Membership

FR: Geoff Ziebart, Executive Director

DA: March 7, 2006

RE: ETHICS, LOBBYING AND CAMPAIGN FINANCE LAW REMINDER

The U.S. Senate this week will consider ethics and lobbying reform legislation reported from both the Senate Rules & Administration and Homeland Security & Governmental Affairs Committees. As this action may stimulate questions from within your organization about how such proposals will/may change existing rules, NABPAC thought the membership might appreciate a quick "mini-primer" on selected rules prepared by NABPAC Legal Hotline Counsel Jan Baran's law firm, Wiley Rein & Fielding. Additional sections address certain campaign finance topics that are good to review periodically. Accordingly, below are a series of short articles and links back to Wiley Rein & Fielding's own ***Election Law News*** publication.

If you have any questions about these issues or the coming Senate debate, we urge you to contact Jan Baran directly at (202) 719-7330 (jbaran@wrf.com) so he or one of his team of professionals can answer your questions. As a reminder, the NABPAC Legal Hotline is a FREE service to NABPAC members in good standing who seek advice and counsel on ethics, lobbying and campaign finance laws at the state and federal level.

We hope you enjoy this quick primer. Stay tuned to our ***PAC Professional*** newsletter on Friday for a summary of Senate action.

Post-Abramoff: Now Is the Time to Review Ethics, Lobbying and Campaign Finance Laws

By Jan Witold Baran

January 2006 | *Election Law News*

Earlier this month, lobbyist Jack Abramoff pleaded guilty to a variety of federal crimes, many of which included issues related to the Congressional gift rules, the Lobbying Disclosure Act (LDA) and campaign finance.

In the wake of calls for lobbying and ethics reform on Capitol Hill, Jan Witold Baran, chair of the Election Law and Governmental Ethics Practice Group, penned his thoughts in a recent Outlook section of *The Washington Post*. Baran's article, "Can I Lobby You? Don't Let One Bad Abramoff Spoil the Whole Bunch," examines the beneficial side of lobbying and highlights the thousands of lobbyists in Washington who render a service that is both critical to a democratic society and enshrined in the Constitution. Baran has also been quoted in numerous publications on the recent lobbying scandal, including *The Washington Post* and *The Washington Times*.

In order to aid our readers in their quests to avoid even the appearance of impropriety in their lobbying and political activities, the editors of*Election Law News* have created the following index of past newsletter articles about ethics rules, the LDA, pertinent Internal Revenue Service rules and the Federal Election Commission's campaign finance regulations. In future issues of *Election Law News*, we will address additional topics.

Special Report: Gift and Travel Rules for Lobbyists

By Jan Witold Baran and Carol A. Laham

May 2005 | *Election Law News*

http://www.wrf.com/publication_newsletters.cfm?sp=newsletter&year=2005&ID=16&publication_id=12106&keyword=

Press reports in Washington and elsewhere have been replete with stories about travel taken by members of Congress that is paid for by non-governmental entities. As a general matter, privately sponsored travel by members of Congress for officially-related purposes is permissible but is subject to a variety of rules regarding the specific parameters of the travel.

There is, however, a clear prohibition on travel that is sponsored by a registered lobbyist, a lobbying firm, or an agent of a foreign principal (*e.g.*, a lobbyist for a foreign government or foreign political party). This prohibition applies even if the lobbyist, lobbying firm, or agent of a foreign principal is to be later reimbursed by a non-lobbyist client. A non-lobbyist client may, nonetheless, pay for the expenses directly assuming the travel is otherwise permissible.

The Congressional gift rules contain other lobbyist-specific prohibitions, including:

- Gifts to an entity that is maintained or controlled by a Member of Congress.
- Charitable donations made at the direction or recommendation of a Member of Congress.
- Contributions to a legal defense fund of a Member of Congress.
- Financial contributions relating to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional organization, for or on behalf of a Member of Congress.
- Gifts of personal hospitality to a Member of Congress.

Lobbyists and their clients should be aware of these rules to minimize the risk of negative press and possible penalties directed toward their friends in Congress and themselves. Additional details about the lobbyist gift prohibition and other Congressional gift rules can be found at the Congressional ethics committees at www.ethics.senate.gov and www.house.gov/ethics.

For more information, please contact Jan Witold Baran at 202.719.7330 or jbaran@wrf.com and Carol A. Laham at 202.719.7301 or claham@wrf.com.

Tax Corner: The Tax Code and the Lobbying Disclosure Act

By Jan Witold Baran and D. Mark Renaud

March 2005 | *Election Law News*

http://www.wrf.com/publication_newsletters.cfm?sp=newsletter&year=2005&ID=16&publication_id=11983&keyword=

Q: *For what purposes may my company use the nondeductible lobbying expenses under Section 162(e) of the federal tax code in its Lobbying Disclosure Act reports?*

A: The Lobbying Disclosure Act (LDA) permits for-profit organizations that are unable to deduct lobbying expenditures under Section 162(e) of the tax code to use the calculations under that section on the LDA reports. Not-for-profit organizations may use calculations under Section 6033(b)(8). Specifically, the tax calculations may be used for the following:

1. To report the organization's total lobbying expenditures for a given six-month reporting period.
2. To determine whether an in-house employer of lobbyists has hit the threshold of total lobbying expenses that would trigger lobbyist registration by the employer (currently at $24,500 per six- month period).

In addition, organizations using the tax option are to use the tax code's definitions in order to determine who is an executive branch lobbyist, and the LDA's definitions to determine who is a legislative branch lobbyist.

If an organization opts to use the tax code's calculations and definitions, as opposed to the LDA's calculations and definitions, then it must do so for both reports covering a calendar year. The next LDA report is due on August 15, 2005.

For more information, please contact Jan Witold Baran at 202.719.7330 or jbaran@wrf.com and D. Mark Renaud at 202.719.7405 or mrenaud@wrf.com.

Practical Tip: Post-Government Employment

By Jan Witold Baran and Carol A. Laham

July 2004 | *Election Law News*

http://www.wrf.com/publication_newsletters.cfm?sp=newsletter&year=2004&ID=16&publication_id=10067&keyword=

Beware the Revolving Door!

With a national election on the horizon, Washington, DC may soon witness another large-scale turnover of officials in both the legislative and executive branches of the federal government, regardless of who wins. In the states, too, the revolving door of government service constantly sends many individuals back into the private sector. Those who employ persons leaving government jobs must cast a careful eye toward rules and regulations that restrict legally permissible contact with previous employers. These restrictions can last for long periods of time and can affect a potential employee's utility. A brief discussion of the federal rules and the rules for California and Texas as representative examples follows below.

Federal Restrictions

Legislative Branch Officials and Members of Congress

The employment restrictions of former legislative branch members are all one year in duration. The former employee's position is the only distinction that the law makes, with elected officials subject to the ban with the broadest scope. By federal law and for one year, all members of Congress are banned from attempting to influence any member, officer or employee of Congress (House or Senate) from representing or advising a foreign entity, and from using confidential information obtained through trade and treaty negotiations in any private situation.

As for non-elected Congressional employees, only individuals who meet an annual salary threshold of 75 percent of the basic pay rate of a member of Congress in *any* 60-day period during the final year of employment are covered by federal statutory restrictions upon post-employment activities (the 2004 threshold is $118,575).

The general rules for Congressional staffers are as follows:

- A personal staff employee who meets the 75 percent threshold is banned for one year from seeking official action from his former employer or any of his current staff members.
- A committee staff employee is barred for one year from seeking to influence anyone, either involved with the specific committee during the time of employment (including members of Congress) or with the committee currently, regarding any matter, not just those within the committee's jurisdiction.
- A leadership staff employee for one year may not attempt to influence any current member of the chamber's leadership or any current staff member.
- All other legislative employees are restricted for one year from lobbying any current member of the office in which the former employee worked.

In addition to federal law, the Senate imposes rules of its own upon former Senators and former Senate employees who become lobbyists. These rules cover *all* former employees,*regardless of salary threshold*—a scope of coverage greater than that of federal law. Former Senators may not lobby any current Senator or employee of the Senate for one year, while Senate employees may not lobby their former offices or any offices in which they held "substantive responsibilities" for that same period. Substantive responsibilities involve actually assisting with drafting committee bills or with hearings and mark-up, rather than merely monitoring a committee or serving as a liaison for a member's personal office. Therefore, a personal Senate staff member is not necessarily free to lobby the committees on which his former employing Senator sat. Rather, one must look at the staffer's past work and involvement with the committee.

Former Executive Branch Officers and Employees

For executive branch members, post-employment restrictions vary by the type of work performed for the government and the depth of one's involvement in that work. In general, the more immersed one was in a particular matter, the longer lasting the restrictions upon that person.

To begin, anyone who participated "personally and substantially as [an] officer or employee" in a specific matter is banned for life from acting overtly with the intent to influence on behalf of another party, other than the United States, in that same matter. In comparison, the prohibition against a former employee acting on behalf of another, with the intent to influence, in matters "actually pending" during his tenure over which the employee had an "official responsibility" is merely two years.

The two-year ban upon applicable former employees makes use of two key phrases not found in the lifetime ban: "official responsibility" and "actually pending." Official responsibility involves any authority to "approve, disapprove, or otherwise direct Government action," including anything that an employee knew or should have known would fall under his purview, either as the intermediate or final authority, and anything over which the employee would have exerted authority had he not recused himself. All matters that any of the former employee's subordinates had been in the process of considering during his supervision are encompassed by matters that were "actually pending." Therefore, any future employer must take a close look at the employment activities of all new hires to determine not only the matters on which the new hire actually worked, but also the matters over which the new hire had decision-making power, regardless of whether he actually exercised that power.

While the above restrictions apply to all members of the executive branch, the law also makes distinctions between different levels of personnel, creating special restrictions for "senior personnel" and "very senior personnel." In general, the higher the office held, either in pay or influence, the broader the restrictions will be. For those in a senior position, a one year ban is imposed upon any communication, with the intent to influence, regarding any matter before anyone in his or her former department. For those in a very senior position, the scope of the one-year prohibition broadens to include not only those in the employee's former department, but also most employees in executive-appointed positions within any department.

As mentioned above, distinctions also are made between types of work. Additional prohibitions are placed on those involved in trade or treaty negotiations. Anyone who participated "personally and substantially" in such a negotiation is barred for one year from representing or advising any other party involved in or affected by that negotiation. Like the other bans, this restriction does not apply to advising or representing the United States, any of its entities or the employee himself. Like other executive branch work restrictions, a distinction is made by personnel level, with U.S. Trade Representatives and Deputy U.S. Trade Representatives prohibited from representing or advising any foreign entity for one year after leaving office.

State Restrictions

Former Government Officials

While federal law and Senate rules cover a wide range of former employees and their post-employment activities, a 2002 Center for Ethics in Government study found that fewer than thirty states have any sort of limited time ban on lobbying or other "revolving door" statute. Nearly forty states, however, have an ethics commission or other agency charged with investigating conflict of interest complaints and overseeing the ethical standards of other state agencies, public officials, and governmental employees. Generally, those commissions and agencies govern post-employment activity compliance where such restrictions exist. Two states are highlighted below: California and Texas.

California
In California, overseen by the state's Fair Political Practices Commission, all state employees, elected officials and state board or commission members are forbidden, for one year, from representing any party before the state agency by which they were formerly employed. For legislators, this ban includes any appearance before or communication with a legislator, employee, committee or subcommittee. For employees, the ban includes not only the agency of previous employment but also any other agency that would fall under the direction or control of the former agency. A lifetime ban also exists against switching sides in a matter on which an official worked while employed by or elected to the state government.

Texas
In contrast to the breadth of California's coverage, the length of the post-employment ban in Texas is doubled, but the scope is much smaller. The "revolving door provisions," which fall under the purview of the Texas Ethics Commission, only apply to former officers and employees of the executive branch; in Texas, unlike California, a former legislator or legislative employee can begin to lobby current legislators and legislative employees the day after termination of employment, subject only to general state lobbying provisions. In the executive branch, no board member or executive head of a regulatory agency may appear before or communicate with the officers or employees of the board or agency on which he or she served for two years. In addition, no former agency employee or officer who was paid above a certain salary threshold may represent a party or receive compensation from a party regarding any "particular matter"

in which the employee "participated" during his or her government service or for which the employee was responsible—a lifetime ban.

"Particular matter" is defined quite narrowly to be a specific proceeding, so that a former employee would be barred from representing a party in a specific permit application process in which the employee participated but not in that permit application process generally. Thus, a former employee can work on behalf of clients who appeared before his or her former agency, just not on specific matters that came before the former agency while the employee worked there and not for two years after employment if the former employee was a board member or executive head of a regulatory agency.

Conclusion

While profound differences in post-employment restrictions exist among the several states and within the different branches of the federal government, the key, when one is contemplating employing individuals who are leaving government posts, is to research the scope of their government duties and to understand how that scope will affect future employment. As can be seen in the examples provided above, laws restricting post-employment activities often limit the immediate plans of a former government employee and may carry additional lifetime restrictions upon future employment.

For more information, please contact Jan Witold Baran at 202.719.7330 or jbaran@wrf.com and Carol A. Laham at 202.719.7301 or claham@wrf.com.

Practical Tip: Corporate Communications Guide

By Jan Witold Baran and D. Mark Renaud

May 2004 | *Election Law News*

http://www.wrf.com/publication_newsletters.cfm?sp=newsletter&year=2004&ID=16&publication_id=10184&keyword=

Watch Your Communications!!

The election-year frenzy is upon us, with Congressional primaries popping up all over the country and, with them, federal limits on corporate communications. Below are a few clear guidelines to assist those corporations and trade associations that want to continue their lobbying and other forms of communications featuring federal candidates and officeholders, but want to avoid the legal pitfalls of violating election laws. The dates for Congressional primary elections can be found at www.fec.gov/pages/charts_ec_dates_cong.htm.

No Express Advocacy

At no time may a corporation or trade association expressly advocate the election or defeat of a federal candidate beyond its "restricted class." This means that corporate paid ads—whether on television, radio or the Internet, or in newspapers or magazines—may never expressly ask persons to vote for or against a federal candidate. Phrases such as "Vote for the President," "Re-elect your Congressman," "Smith for Congress" and "Lamar!" are also prohibited, as are public corporate ads that solicit contributions for federal candidates.

No Reproduction of Campaign Materials

At no time may a corporation or trade association republish, distribute or disseminate the campaign materials of a federal candidate. Small quotes may be used for certain specific reasons, but reproduction, in whole or in part, is prohibited.

120 Days before an Election

During the 120 days before an election—whether a primary or a general election—a corporation and trade association may not run a non-Internet advertisement that clearly identifies a candidate for federal office and is coordinated with that candidate, his or her opponent, a political party committee or the candidate, opponent or agent of the party. This restriction applies to advertisements in the newspaper, on radio and television and in all other types of non-Internet advertising, including outdoor signs and direct mail of more than 500 pieces.

For a candidate to be "clearly identified" in an ad means that he or she is mentioned in the ad, his or her picture, nickname or image is used, or he or she is referred to in a clear manner, such as "the Republican candidate for the Senate from Missouri."**Coordination** means that the ad was:

- Made at **the request or suggestion** of a candidate, authorized committee, political party committee or agent of any of the foregoing.

- Made **with the material involvement** of a candidate, authorized committee, political party committee or agent of any of the foregoing.
- Made **after substantial discussions** about the communication with a candidate, authorized committee, political party committee or agent of any of the foregoing.
- Made using a **common** political, media or production vendor (under certain conditions).
- Made using a **former employee or independent contractor** of a candidate, authorized committee, political party committee or agent of any of the foregoing.

60 Days before a General Election

During the 60 days before the general election on November 2, corporations, trade associations and entities using corporate money may not air ads on broadcast, cable or satellite television or radio that clearly identify a federal candidate and can be received by 50,000 or more persons in the relevant Congressional district or state. That's it. No coordination or express advocacy is required to trigger this prohibition. Simply mentioning or featuring a federal candidate in this time period violates the rules on "electioneering communications," even if the ad refers to legislation. This prohibition, which begins September 3, 2004, runs nationwide for presidential candidates.

30 Days before a Primary Election or Convention

During the 30 days before a primary election, corporations, trade associations and entities using corporate money may not air ads on broadcast, cable or satellite television or radio that clearly identify a federal candidate and can be received by 50,000 or more persons in the relevant Congressional district or state. For the national political party nominating conventions at the end of the summer, the "electioneering communication" blackout period extends nationwide for ads identifying candidates for president from the respective party.

Ads Permissible at any Time

As long as the communications do not expressly advocate the election or defeat of a federal candidate or solicit funds for a candidate's campaign, a corporation or trade association may mention a federal candidate in a public Internet or email communication. These types of communications are not covered by the 120, 60 and 30 day prohibitions.

Also, ads that do not clearly identify a federal candidate or political party may be aired by a corporation or trade association at any time. Further, no restrictions apply to**non-coordinated** ads by corporations or trade associations that are not aired on broadcast, cable or satellite radio or television. Such **non-coordinated** ads may identify a federal candidate but may not expressly advocate his or her election or defeat.

Finally, as mentioned in the March 2004 *Election Law News*, a corporation or trade association may at any time communicate with its "restricted class" on any topic. These communications to salaried executive, administrative and professional personnel and

stockholders and their families may expressly advocate the election or defeat of a federal candidate and may also solicit contributions for federal candidates. As noted in the article, "Three Cheers for Corporate Communications," reporting by the corporation or trade association may be required for such communications.

For more information, please contact Jan Witold Baran at 202.719.7330 or jbaran@wrf.com and D. Mark Renaud at 202.719.7405 or mrenaud@wrf.com

Tax Corner: Lobbying Restrictions for 501(c)(3) Organizations

By Jan Witold Baran and Thomas W. Antonucci

May 2004 | *Election Law News*

http://www.wrf.com/publication_newsletters.cfm?sp=newsletter&year=2004&ID=16&publication_id=9830&keyword=

Q: What are the restrictions on a 501(c)(3) organization's ability to lobby?

A: Lobbying may not constitute a "substantial part" of a 501(c)(3)'s overall activities. This is a subjective determination that has been interpreted differently among the courts and in various IRS rulings. However, most 501(c)(3) organizations can elect to be treated under the bright-line lobbying expenditure rules set forth in Section 501(h) of the tax code. An electing organization can spend a certain percentage of its overall expenses on lobbying-related activities. The percentage varies on a sliding scale and there is a more restrictive cap on grass-roots lobbying expenditures (e.g., an organization with total expenses of $1 million can spend $175,000 on lobbying, $43,750 of which can be for grass-roots lobbying). Lobbying expenditures above these permissible amounts are subject to a 25 percent tax. The 501(h) election is made by filing IRS Form 5768.

For more information, please contact Jan Witold Baran at 202.719.7330 or jbaran@wrf.com and Thomas W. Antonucci at 202.719.7558 or tantonucci@wrf.com.

New FEC Airplane Reimbursement Rules Effective January 2004

By Jan Witold Baran and D. Mark Renaud

January 2004 | *Election Law News*

http://www.wrf.com/publication_newsletters.cfm?sp=newsletter&year=2004&ID=16&publication_id=10608&keyword=

On December 4, 2003, the Federal Election Commission (FEC) amended its regulations pertaining to reimbursement by federal candidates and committees to corporations or other entities for the use of airplanes owned or leased by them. FEC, *Travel on Behalf of Candidates and Political Committees*, 68 Fed. Reg. 69,583 (Dec. 15, 2003). The amendments made three changes to the regulations. The new regulations will be effective January 14, 2004. The specific changes are summarized below:

1. Timing of Reimbursement

Candidates and other political committees are no longer required to reimburse owners or lessors of airplanes in advance. Candidates and committees now have seven days after the flight began in which to make the proper reimbursement. For travel by means other than airplane, reimbursement must be made within 30 days of receiving the invoice but no later than 60 days after the travel began. Notwithstanding this change, we recommend that clients continue to seek advance reimbursement from candidates and committees for airplane travel because, among other things, the failure of the candidate or committee to make payment in seven days results in an illegal corporate contribution by the airplane owner/lessor.

2. Rate of Reimbursement

The new rules set out the reimbursement rates, which are as follows:

- In the case of travel between cities served by regularly scheduled first-class commercial airline service, the lowest unrestricted and non-discounted first-class air fare;
- In the case of travel between a city served by regularly scheduled coach commercial airline service, but not served by regularly scheduled first-class commercial airline service, and a city served by regularly scheduled coach commercial airline service (with or without first-class commercial airline service), the lowest unrestricted and non-discounted coach airfare; or
- In the case of travel to or from a city not served by regularly scheduled commercial airline service, the normal and usual charter fare or rental charge for a comparable commercial airplane of sufficient size to accommodate all campaign travelers, including members of the news media traveling with the candidate and security personnel, if applicable.

The applicable fares are "walk-up" unrestricted fares publicly available for travel on the actual travel dates or within seven days of the actual travel dates. Reimbursement for trips with multiple stops must be made in accordance with the availability of commercial airline service for each leg of the trip. Finally, every candidate or committee sharing a

flight must each pay the first-class or coach fare for each person traveling on its behalf or the appropriate share of the charter rate.

3. Application to Noncommercial Airplanes

The FEC has clarified that reimbursement may be made to any owner or lessor of a private airplane used for candidate or committee travel. The reimbursement provision is no longer limited to airplanes owned or leased by corporations and unions. For example, a candidate now may travel on an airplane owned or leased by an individual and then reimburse that individual pursuant to these regulations.

However, the regulations only apply to airplanes not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 C.F.R. parts 121, 129, or 135. The reimbursement schedule does not apply to flights by candidates or committees on commercial airplanes.

For more information, please contact Jan Witold Baran at 202.719.7330 or jbaran@wrf.com and D. Mark Renaud at 202.719.7405 or mrenaud@wrf.com.

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

By Carol A. Laham

July 2003 | *Election Law News*

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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.

For more information, please contact Carol A. Laham at 202.719.7301 or claham@wrf.com.