



# Virtual Conventions Yield to Real Campaign Law Enforcement: What Your Organization Needs to Remember

08.27.2020 | By **William A. Powers, Frederick T. Dombo III**

With the final (virtual) balloons dropping on this year's Democratic and Republican National Committee Conventions, we have reached general election season. Campaigning has a different look and feel this year, but the federal campaign finance rules that apply to it are still quite real, as is enforcement by the Federal Election Commission ("FEC") or the Department of Justice ("DOJ"). Corporations, associations and membership organizations need to consider federal, state and local campaign finance laws as usual, as their employees engage in political activity.

**Do not allow use of corporate resources when working with campaigns.** Paramount among all rules in this area is that employees are free to volunteer for candidates and parties—but employers may not permit corporate resources to be used to support employee campaign work. Even though the Supreme Court's decision in *Citizens United* permits corporations and unions to spend money to support candidates in a way that is independent (i.e., not coordinated with the candidate/party), it is still illegal for an organization to allow, or worse yet coerce, its employees' political activities. Reimbursing or advancing funds for a political contribution (i.e., making a conduit or straw-donor donation) is illegal and typically charged as a felony by DOJ. This is still an area of high priority for FEC enforcement and can even lead to criminal charges.

**Interacting with candidates is still okay, as long as you follow the rules.** First, if you plan to interact with a sitting officeholder who is also on the ballot, be very clear whether the interaction is in their official capacity, or in their capacity as a candidate. Regardless in which capacity the candidate appears, there are separate sets of rules for each interaction. For example, if your meeting with a Member of Congress involves a solicitation for campaign contributions, FEC rules will govern it. However, if the meeting concerns specific official acts you would like the Member to take, House or Senate Ethics rules should govern rather than

campaign laws.

**Have a plan for employee/member volunteers.** Now is the time to remind your employees about your organization's political activity policy (or update or adopt one, if needed). Your employees or members may wish to volunteer their time with campaigns, such as for phone or text banking. Although FEC rules generally prohibit the use of corporate or organization resources for direct support of candidates, there is a narrow exception for volunteer activity on corporate time and premises, as long as doing so does not increase the overhead of or incur costs to the organization. If you choose to allow your organization's resources to be used for political purposes in this way (to be clear, you don't have to), remember FEC rules only permit you to allow employees or members the use of 1 hour per week (up to 4 hours per month) under the volunteer exception.

**Early voting and mail-in deadlines.** Some states will begin early voting as soon as 46 days before the general election. This means that your employees or members may be voting in mid-September, and they may receive an absentee or mail-in ballot even sooner. If you plan to offer non-partisan support for your employees' or members' participation in the electoral process, the time to develop guardrails is now, not November.

**GOTV and Voter Registration Should be Non-Partisan.** Your organization can engage in get-out-the-vote and voter registration activities, but it must do so in a non-partisan manner, at least if you don't want to make an independent expenditure that must be reported to the FEC (or other state campaign finance regulator). In past years, common activities to facilitate voting or voter registration have included giving rides to the polls or providing voter registration forms in the breakroom or storefronts. But these days, your voter engagement may involve novel approaches that require more thought before execution.

This year's campaign season may present unique challenges to your organization's approach to engaging employees and members around the election, but the core tenets of political compliance remain intact. With careful planning and forethought, your organization can be ready for campaign season, no matter what form it takes.