

September 25, 2015

With summer finally at an end and the 2016 election season already in high gear, the time is ripe for corporations of all sizes to begin reviewing their existing political law compliance frameworks and refreshing their collective understanding of the rules governing organizational and employee political engagement. In light of this fact, the Dentons Political Law team will be publishing a series of client alerts over the course of the next several months highlighting key elements of those rules and providing corporations with useful compliance guidance for the upcoming presidential election year. In the first installment of our series, we briefly examine the guidelines associated with candidate appearances held at corporate facilities or on corporate property.

Corporations, although prohibited from making direct or indirect contributions to federal and many non-federal candidates, are generally permitted to host or sponsor appearances by candidates for elected office in corporate facilities or on corporate property. Such appearances must follow certain rules, however, so as to comply with these legal prohibitions and to avoid violating other restrictions on corporate political activity at the federal, state and local levels. In general, the rules associated with hosting a political candidate on corporate property or in a corporate facility vary based upon the audience attending the event. With that in mind, we offer some basic principles for corporations to keep in mind as they contemplate hosting candidate events during the 2016 election cycle.

Candidate appearances before only the corporate “restricted class”

A corporation is permitted to invite a candidate for elected office to appear before a meeting, convention, or other function involving the corporation’s “restricted class” (the corporation’s executive and administrative personnel, stockholders, and families of these groups). In such settings, the corporation and its employees are afforded substantial latitude in terms of the degree of political engagement that may be undertaken. For example, ***in an appearance limited to the corporation’s restricted class, the corporation and its executives are permitted to expressly advocate for or against candidates or political parties.*** Additionally, the corporation may permit the candidate and representatives to solicit and accept campaign contributions before, during, or after the event. In conjunction with such activities, the corporation and its executives may suggest to its restricted class that they contribute directly to the candidate, and may likewise solicit and collect earmarked donations for the candidate through the organization’s separate segregated fund (PAC). *The corporation and its representatives should not, however, use any corporate resources to directly collect contributions for the candidate or otherwise facilitate donation collection through the provision of campaign envelopes or other similar materials.*

Candidate appearances before all employees; not

solely those in the restricted class

If a corporation makes its premises available to a political candidate for an event that is open to all employees and not simply those in the restricted class, the company must follow a stricter set of guidelines. Unlike in the restricted-class setting, the corporation and its employees are not permitted to expressly advocate for the candidate making the appearance or against his or her political opponents. Additionally, in such settings, corporations and their employees may not solicit or collect contributions for the appearing candidate. ***The candidate's campaign, on the other hand, is permitted to solicit funds during these appearances, but may not collect any contributions before, during or after the event from either corporate employees or other attendees.***

Also, corporations may not play favorites with respect to who has access to their general employees. Corporations that choose to host candidate events open to all employees must give other candidates seeking the same elected office the option to appear. This is not to say that there must be an equal number of appearances, only that a corporation which makes such an opportunity available to a candidate may not reject such a request from all other candidates in a given race, if asked. This is not the case in the restricted-class setting, where the corporation may restrict appearances to favored candidates.

Candidate appearances before the general public

In certain circumstances, corporations may also sponsor appearances for political candidates that are open to the general public. In such settings, however, the appearance must typically fall into one of three categories: (1) an appearance in the candidate's capacity as an existing officeholder (if applicable); (2) a public debate between candidates vying for the same office; or (3) a public appearance held at an educational institution. For appearances in the candidate's capacity as an officeholder, the candidate may speak about topics that might be of interest to the organization, but may not reference any political campaign or expressly advocate for or against any candidate. Additionally, neither the officeholder nor the corporation may solicit campaign contributions at any time before, during, or after such an event. When a corporation allows an officeholder to speak in an official capacity in a public setting, the corporation is not required to allow any other candidates a similar opportunity.

In the public debate setting, corporations may sponsor candidate debates (alone or in conjunction with bona fide media outlets or nonprofit organizations). Such debates are strictly regulated, however, and must meet significant restrictions with respect to format and participant selection.

For additional information on the wide range of legal issues associated with hosting a candidate appearance on corporate property, please contact the Dentons Political Law team. Our lawyers and professionals are well versed in assisting corporate legal and government affairs teams with the logistical and compliance challenges related to such events.

Your Key Contacts



C. Randall Nuckolls
Partner, Washington, DC
D +1 202 496 7176
randy.nuckolls@dentons.com



Benjamin P. Keane
Partner, Washington, DC
D +1 202 496 7672
ben.keane@dentons.com



Michael E. Zolandz

Office Managing Partner,

Washington, DC

D +1 202 408 9204

M +1 202 441 3901

michael.zolandz@dentons.com