

Roadmap for US corporate political engagement in the 2018 midterm elections

With the 2018 election cycle already in full swing, businesses across the country have a unique opportunity to shape the political and public policy landscapes at the federal, state and local levels in a manner that aligns with their commercial goals. Although corporate participation in the political process can be quite beneficial to the bottom line, it is also fraught with a multitude of complex rules, regulations and optical considerations.

How can your company make the most of this opportunity to engage with policymakers without exposing itself to unnecessary regulatory or commercial risk? Here are a few key factors to consider. Be advised, however, the potential issues we're alerting you to arise in a federal context; every state and locality has its own unique political law framework that your company will also need to navigate when attempting to shape political and public policy matters.

A cautionary note: Corporate political engagement comes with scrutiny

- Some, but not all, corporate political spending is disclosable. As a result, some businesses' political spending has come under scrutiny from competitors or political transparency groups. Political engagement is therefore a delicate balancing act that must be carefully considered in the C-suite and boardroom.
- Unintended consequences range from unwanted publicity to unacceptable economic risk. A company may face a backlash when a candidate it helped to elect backs a bill or pursues a policy that clashes with the values of the firm or the community at large. Consequences of these risks

may become manifest in stock value fluctuations, shareholder proxy suits and negative press coverage. On the other hand, transparency in political spending can confer many benefits on a corporation, such as positive media coverage of local corporate social responsibility activities.

Candidate appearances on company grounds

- Corporations may invite candidates to speak to their employees or shareholders—and may promote such appearances—but the opportunity must be given to all candidates in a particular race.
- Corporate PACs may host fundraisers and do so in a more targeted fashion, but the PAC must reimburse the corporation for the use of its space.
- Corporations may permit their space to be used by candidates, but must be reimbursed for the market value of the space to avoid making an impermissible in-kind contribution. This also applies to corporate space at sporting events and other external venues.

Volunteer political activity by corporate employees

- While direct corporate contributions to political campaigns are prohibited at the federal level, corporate employees are permitted to use corporate resources to engage in incidental political volunteer work, such as making phone calls or sending emails, provided that such activities are limited to no more than one hour per week and are not endorsed by the company.

- Managers should beware not to encourage subordinates to engage in political campaigning or fundraising activities. Corporate executives should also make it clear to employees that fundraising should take place only on personal time using personal email, and that superiors should avoid soliciting donations from subordinate personnel.
- Executives may host fundraisers at their homes and spend up to \$1,000 on food and beverages without triggering contribution limits.

Use of corporate jets for campaigns

- Corporations may rent their jets to Senate candidates for campaign use, provided the candidates pay pro rata share of the fair market value of the trip. Note that this rule does not apply to House candidates, who are prohibited from utilizing such aircraft.

Corporate campaign finance restrictions and PAC engagement

- Has your company considered forming a political action committee, or PAC? These common political-engagement vehicles allow corporations to speak with a unified political voice centered on targeted business priorities and key public policy issues. PACs also facilitate greater business/policy buy-in and engagement by eligible company employees.
- Already have a PAC? If so, is it making use of such solicitation methods as charitable matching, raffles, payroll deductions and promotional entertainment to maximize support from the company's senior executives and management personnel?

Independent expenditures and donating to 'Super PACs'

- Citizens United paved the way for corporate spending in federal elections through "Super PACs" - committees that make independent expenditures on behalf of, or in opposition to, certain candidates. Corporations can give unlimited contributions to Super PACs, and can also create their own independent ads (known as "independent expenditure" communications) for or against candidates.
- Note that these types of corporate political engagement must be disclosed to the FEC.

Social welfare groups and political/issue-based spending

- Consider making contributions to social welfare organizations that align with your company's policy objectives. These contributions are concealed from public scrutiny (unless voluntarily disclosed by the company or recipient entity) and can be used to support issue campaigns that align with your company's political priorities.
- Social welfare organizations may also contribute to certain candidates in state and local elections, so this is a way to involve your company in certain non-federal elections where public involvement is less than desirable.

Come talk to us!

Corporations seeking to engage in the 2018 midterm elections should weigh the pros and cons of the various approaches to engagement listed above, and Dentons' bipartisan Political Law team can help. Our experienced attorneys have assisted many corporate clients in compliantly achieving their public policy and electoral engagement goals at the federal, state and local levels. Please don't hesitate to reach out to us if you would like to learn more about how you can legally engage in the political process and better shape the business playing field for 2018 and beyond.

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