

Political Law Group

MEMO

TO: Democratic Senate Candidates

RE: Raising Money for Nonfederal Candidates, Parties, and PACs

Federal campaign finance law limits the type of funds that a federal candidate or officeholder may raise on behalf of a state or local candidate, PAC, or party committee. This memorandum summarizes the rules that must be followed when a federal candidate/officeholder raises funds for state and local candidates, PACs, and parties.

The restrictions on soft money fundraising described below bind not only federal candidates and officeholders, but also any who are their "agents." An "agent" includes anyone who has actual authorization, express or implied, to raise money on behalf of a federal candidate or officeholder. A federal candidate will not escape liability by requesting that another do what he or she is forbidden from doing directly.¹

A. Raising Federally Permissible Funds for State and Local Candidates, PACs, and Parties

A federal candidate may only solicit funds for state and local candidates, PACs, and parties that fall within federal source restrictions and amount limitations. *Subject to state law*, which may place tighter restrictions on the source or amount of contributions, a federal candidate may solicit:

- Up to **\$2,700 per election** for a state or local candidate from most federally permissible sources, such as an individual or a partnership.²
- Up to **\$5,000 per year** for a state or local political action committee from any federally permissible source.
- Up to **\$10,000 per year** for a state party or an affiliated local party from most federally permissible sources, such as an individual or a partnership.³

¹ For purposes of this memorandum, "federal candidate" shall refer collectively to federal candidates, officeholders and their agents.

² Subject to state law, a federal candidate may solicit up to \$5,000 from a federal multi-candidate committee.

³ Subject to state law, a federal candidate may solicit up to \$5,000 from a federal multi-candidate committee.

- Up to **\$5,000 per year** for a local party not affiliated with the state party from any federally permissible source.

Federal candidates may not solicit funds outside these limits or from federally prohibited sources, such as corporations, labor organizations, national banks, federal government contractors, or foreign nationals⁴ (so-called "soft money"). A federal candidate should never sign or agree to appear in a solicitation that asks for soft money, nor should he or she ask for soft money in a one-on-one discussion or contact with a prospective donor.

Notwithstanding these restrictions, federal candidates may still attend, speak at, or be a featured guest at a fundraising event at which nonfederal funds are raised. In addition, federal candidates may solicit federally permissible funds at nonfederal fundraising events.

However, when soliciting funds in a state that permits political contributions in excess of what is permitted under federal law – such as a state that permits corporate contributions, or one in which the individual contribution limits to candidates are higher than \$2,700 per election – disclaimers may be required to limit solicitations to federally permissible funds.

B. What Counts as a Solicitation?

A solicitation is an oral or written communication that asks, requests, or recommends, *explicitly or implicitly*, that another person make a contribution. Solicitations need not be explicit to count as solicitations. The statement, "I am not permitted to ask for contributions, but unsolicited contributions will be accepted at the following address . . . ," is a solicitation. If a reasonable person would understand that he or she has been asked to make a contribution, the statement is a solicitation.

A federal candidate remains free to make generally supportive remarks about a state or local candidate. Statements requesting political, instead of financial, support are not solicitations, and do not require the disclaimer described below. For example, saying or writing, "It is critical that we support the entire Democratic ticket in November" is not a solicitation. Even thanking contributors for their *past* support is not a solicitation, so long as it is not accompanied by a request for *future* support.

C. Appearing on Pre-Event Publicity

A federal candidate may permit his or her name or likeness to appear on publicity (e.g., advertisements, announcements, and invitations) for non-federal fundraising events at which soft

⁴ Foreign nationals are defined to include individuals other than U.S. citizens and lawfully admitted permanent residents of the U.S.

money will be raised, provided that certain requirements are met. The applicable requirements will depend on the content of the publicity materials.

1. Publicity that contains a solicitation of nonfederal funds

Federal candidates may appear on pre-event publicity that solicits funds outside the federal amount limitations and source restrictions, but **only if** certain criteria are met.

First, the federal candidate must be identified in a manner that is not specifically related to fundraising. For example, the publicity may identify the officeholder as a "featured guest," "honored guest," "special guest," "featured speaker," or "honored speaker," or it may simply state "please join us for a reception with Representative X." It may **not**, however, identify the federal candidate as serving in a position specifically related to fundraising (e.g., as an "honorary chair" or as a member of a "host committee"). In addition, a federal candidate may not sign a solicitation that solicits soft money, or be otherwise identified as extending an invitation to the event.

Second, the publicity must include a disclaimer that the solicitation is not being made by the federal candidate. The disclaimer should read:

[Federal candidate/officeholder] is appearing at this event only as a [featured speaker/special guest]. [Federal candidate/officeholder] is not asking for funds or donations.

Or

All funds solicited in connection with this event are by [name of non- federal candidate or entity], and not by [federal candidate/officeholder].

This disclaimer is required on all written materials that solicit nonfederal funds, as well as on recorded oral solicitations and on oral solicitations that follow a written script. The disclaimer must meet the same requirements as a federal candidate's own campaign materials: they must be clear and conspicuous, and in a printed box.

Third, the federal candidate may not publicly disseminate publicity for a non- federal fundraising event that contains a solicitation for soft money.

2. Publicity that contains a solicitation limited to federally permissible funds

Federal candidates have more leeway to appear on pre-event publicity that only solicits funds that comply with the federal contribution limits and source prohibitions. If the solicitation seeks only federally permissible funds, the federal candidate may be identified in a manner specifically related to fundraising, and may sign the solicitation.

Federal candidates should have counsel review solicitations in advance to ensure that they are truly limited to seeking federally permissible funds.

3. Publicity that does not contain a solicitation.

A federal candidate may appear without restriction on publicity for a nonfederal fundraising event that does not contain a solicitation (e.g., a "save the date" notice that does not solicit any funds). No federal disclaimer is required on such materials.

D. Attending and Speaking at Fundraisers for Nonfederal Candidates, PACs, and Parties

A federal candidate may attend a nonfederal fundraiser, and even make a speech, without necessarily making a solicitation, even if others at the event explicitly ask for contributions. The federal candidate may also solicit funds, as long as he or she limits the solicitation to federally permissible funds. However, the federal candidate may not ask for soft money, in formal presentations or speeches, or in one-on-one conversation.

There are several ways that the federal candidate may limit solicitations made at a non-federal event. The candidate may say in his or her remarks:

I am only asking for a donation of up to \$[applicable limit] from individuals and for donations of up to \$[applicable limit] from multi-candidate political committees. I am not asking for donations in excess of these amounts or for donations from corporations, labor organizations, foreign nationals, federal contractors, or national banks.⁵

Alternatively, a candidate may make a general oral solicitation for funds without mentioning specific amounts or sources by displaying a clear and conspicuous written notice that the solicitation is limited to funds that comply with the limitations and prohibitions of federal law. Such a notice should read:

Solicitations made by Federal candidates and officeholders at this event are limited by Federal law. The Federal candidates and officeholders speaking tonight are soliciting only donations of up to \$[applicable limit] from individuals and up to \$[applicable limit] from multi-candidate political committees. They are not soliciting donations in any amount from

⁵ If the beneficiary of the fundraiser has a Levin fund account and is raising funds for that account, the statement should also state "I am not seeking Levin funds."

corporations, labor organizations, foreign nationals, federal contractors, or national banks.⁶

The written notice should be prominently displayed so that it cannot be overlooked at the entrance to a fundraising event, or on a card placed on every table at the event. This statement may also be read by an event official or the federal candidate before any general solicitations are made by the federal candidate, such as in welcoming remarks to persons attending the event.

Once one of these limiting statements is made, it does not need to be repeated in one-on-one conversations. However, the candidate may not encourage event attendees to disregard the limitation during one-on-one discussion.

E. Linking to Nonfederal Candidates, PACs, and Parties on the Internet

Including a state or local candidate's website address on an e-mail or letter will not turn the communication into a solicitation, even if the website has a "contribute" button. However, if the website address is to a page *specifically dedicated* to fundraising, such as the contribution page or an online fundraiser invitation, the e-mail or letter containing the website address must be treated as a solicitation.

A Note on Working with Event Sponsors to Avoid Mistakes. A federal candidate should maintain final decision-making authority over all written materials circulated to potential attendees in connection with such events. The FEC has advised that it will treat solicitations as made by federal candidates or officeholders if they or their agents approved, authorized, or agreed or consented to be featured, or named in, the writing or publicity (e.g., by using their names or likenesses). Attached is a memorandum that a federal candidate may provide to state and local candidates, parties, and PACs, setting out the terms under which the federal candidate may participate in their events.

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⁶ If the beneficiary of the fundraiser has a Levin fund account and is raising funds for that account, the statement should also state "They are not soliciting donations of Levin funds."

TO: [NONFEDERAL CANDIDATE/PAC/PARTY]

FROM: [MEMBER/CANDIDATE]

RE: Participation in Fundraising Event

We have set out below the terms under which [MEMBER/CANDIDATE] will agree to participate in a fundraising event for your organization.

[MEMBER/CANDIDATE] must have the opportunity to review all written materials circulated to potential attendees with regard to the event, as well as all recordings and scripts used to solicit funds in connection with the event.

[MEMBER/CANDIDATE] and his agents maintain final decision-making authority over the content of these materials. Any materials distributed absent such review are not authorized by [MEMBER/CANDIDATE].

[MEMBER/CANDIDATE] will not personally sign or distribute a soft money solicitation. Any written materials, recordings or scripts used in advance of the event that solicit soft money (1) may only identify [MEMBER/CANDIDATE] as a guest, speaker, or attendee, and not in a fundraising role (e.g., "honorary chair") and (2) must include a clear and conspicuous disclaimer that states:

All funds solicited in connection with this event are by [name of non- federal candidate or entity], and not by [MEMBER/CANDIDATE].

Please prepare, and prominently display at the entrance of the event, a sign that states:

Solicitations made by Federal candidates and officeholders at this event are limited by Federal law. The Federal candidates and officeholders speaking tonight are soliciting only donations of up to \$[applicable federal limit] from individuals and up to \$[applicable federal limit] from multi-candidate political committees. They are not soliciting donations in any amount from corporations, labor organizations, foreign nationals, federal contractors, or national banks.

If you have a Levin account, the sign should also state: "**They are not soliciting donations of Levin funds.**" The sign must be placed in a prominent location and be of sufficient size so that it cannot be overlooked by the attendees.