Nonprofit Bloopers: Avoiding Political and Promotional Pitfalls

AFP DC Chapter’s Advanced Education Session
October 12, 2012

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Agenda

CAMPAIGN ACTIVITIES: WHAT CAN YOU DO?

- Host candidate appearances
- Host candidate forums and debates
- Invite candidates in other capacities
- Legislative scorecards
- Publish candidate questionnaires
- Engage in issue advocacy

COMMERCIAL CO-VENTURE CONSIDERATIONS

- Current state regulation
- Social media implications
- Regulatory update
- Considerations for commercial co-venture promotions
Candidate Appearances

- Invite all candidates
- Equal opportunity to speak at similar events
- Explicitly state no support or opposition
- Tell people everyone was invited
- No fundraising
Candidate Forums and Debates

WHO GETS INVITED?

- Invite everyone (or have objective criteria to limit)
- Equal opportunities to speak at similar events if not all together
  - Note FEC rules on simultaneous participation
Candidate Forums and Debates

HOW DO THE QUESTIONS WORK?

- Questions prepared and presented by independent nonpartisan panel
- Topics cover broad range of issues
- Provide equal opportunity to respond/present views
- Don’t use agree/disagree questions
Candidate Forums and Debates

WHAT DOES THE ORGANIZATION DO?

- Don’t comment on questions
- Don’t imply approval or disapproval
- No fundraising
- Maintain neutral atmosphere
Non-Candidate “Candidate” Appearances

OFFICIAL CAPACITY/EXPERT

**Reason**
- Other than candidacy
- E.g. sitting official

**Organization**
- No mention of candidacy
- Refers to official position

**Speaker**
- No mention of candidacy
- Speaks in other role

**Event**
- No campaign activity
- Non-partisan atmosphere
Legislative Scorecards

WHEN ARE THEY PERMISSIBLE?

- List all votes by a legislative body
- May include reference to issues
- May not include candidates
- Is it a regular activity
- Is it timed with an election
501(c)(3)s and Political Activities

THE FUNDAMENTAL TAX RULES

- Political campaign intervention is prohibited
  - Ban applies to political campaigns at all levels of government – federal, state, and local
  - Consequences:
    • Loss of tax-exempt status
    • Excise taxes
- Lobbying permitted provided it is not a substantial part of the organization’s activities
501(c)(3)s and Political Activities

OTHER IMPORTANT RULES

- Campaign finance laws
  - Federal law prohibits corporate political contributions
  - Same rule applies in many, but not all, states

- Lobbying disclosure laws (federal, state, local)
  - Registration
  - Reporting
Political Campaign Intervention

WHAT IS IT?

- Any and all activities that **favor** or **oppose** one or more candidates for public office:
  - Candidate endorsements
  - Campaign contributions
    - $$
    - Use of facilities or resources
  - Public statements of support or opposition
Permissible Election-Related Activities
WHAT IS ALLOWED?

- Voter registration and GOTV drives
- Candidate appearances
- Voter guides/candidate questionnaires
- Issue advocacy
- Activities by individual organization leaders or employees in their personal capacity (not on behalf of the organization)
### Voter Guides/Questionnaires

**WHAT THE IRS SAYS**

<table>
<thead>
<tr>
<th>Structure</th>
<th>All Candidates for office sent questionnaire</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unbiased structure</td>
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<tr>
<td></td>
<td>No endorsement</td>
</tr>
<tr>
<td>Questions</td>
<td>Clear and unbiased</td>
</tr>
<tr>
<td></td>
<td>Subjects cover major areas of interest</td>
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<tr>
<td></td>
<td>Clear issue descriptions</td>
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<tr>
<td></td>
<td>Don’t ask to accept a pledge</td>
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<tr>
<td>Answers</td>
<td>Reasonable time to respond</td>
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<tr>
<td></td>
<td>If limited answers allowed (support/oppose), opportunity to explain position</td>
</tr>
<tr>
<td>Guides</td>
<td>Questions the same in the guide as provided to candidates</td>
</tr>
<tr>
<td></td>
<td>Answers the same as provided or edited for space only</td>
</tr>
<tr>
<td></td>
<td>Answers presented close to the question</td>
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</tbody>
</table>
Issue Advocacy

OVERVIEW

- IRS is wary of issue advocacy during elections
- Communications that refer to:
  - Candidate’s name
  - Candidate’s picture
  - Political party affiliation
  - Distinctive features of biography
  - Candidate’s platform
- Communications that reference voting
Issue Advocacy

DISCLOSURE

- Electioneering communications
  - Defined
    - Broadcast
    - 30 or 60 days before election
    - Refer to a candidate
  - Disclosure of expenditures
  - Disclosure of funding
  - State rules may differ
- Grassroots lobbying
Charitable Solicitation
CURRENT STATE REGULATION

- A. Charity/Nonprofit Organization
- B. Professional Solicitor
  - Professional fundraiser
  - Professional fundraising counsel/consultant
- C. Commercial Co-venturer
Charitable Solicitation
COMMERCIAL CO-VENTURE REGULATION

- **Commercial Co-Venture ("CCV")** – An arrangement between a charity and a commercial entity, engaged in trade or business other than charitable solicitations, under which the commercial entity advertises in a sales or marketing campaign that the purchase or use of its goods or services will benefit a charity or charitable purpose

  1. Other than charitable solicitation
  2. Tied to purchase of goods/services (*MA)
  3. Benefit charity or charitable purpose
Charitable Solicitation
COMMERCIAL CO-VENTURE REGULATION

- About 25 states have laws that specifically regulate CCVs
  - Registration/Bonding
  - Written Contract
  - Advertising Disclosures
  - Accounting and Recordkeeping

- Disclosure Requirements
  - Time frame
  - Charity
  - Amount per good or service
  - Minimum or maximum donation
Social Media Implications

- Same five charitable solicitation registration “buckets”
  - Charitable Organization
  - Professional Fundraiser
  - Professional Fundraiser Consultant
  - Commercial Co-venturer
  - Unregulated

- When move to social media – some view as “one big gray area”

- But, look toward same basic principles for analysis
Charitable Solicitation
SOCIAL MEDIA IMPLICATIONS

(1) Is There a Solicitation?

- Facebook posts
  - Status – “Instead of going to see 'The Grey', donate that $10 to the Grand Canyon Wolf Recovery Project!” (HSUS – Arizona - https://www.facebook.com/#!/HSUSArizona/posts/313603705349384)
  - Others’ status

- Twitter Feeds
  - “Right NOW every donation to the ASPCA is DOUBLED—help twice as many animals! http://ow.ly/aoDOd #DoubleYourImpact”
Charitable Solicitation
SOCIAL MEDIA IMPLICATIONS

(2) Is Another Party Receiving Consideration for Solicitation?

- Facebook status loans
- Re-tweets
- Charitable Platforms (crowdrise.org, donorschoose.org)
  - Is there compensation provided to site for posting or ranking?
  - Who provides the content?
  - Where does “donation” button go?
Choose a Cause

Basic Needs
- Disaster Relief
- Education
- Housing
- Human Rights
- Hunger
- Millennium Goals
- Water

Community
- Aging
- Arts & Culture
- Children & Youth
- Civil Society
- Peace
- Public Broadcast
- Refugees
- Veterans
- Women

Environment
- Agriculture
- Animal Welfare
- Environment
- Global Warming

Health and Safety
- Blindness & Vision

Charitable Gifts from ChangingThePresent

**Stop Toxic Dumping**
One reporting trip

**Fund for Global Human Rights**
Your gift will fund one trip by an activist to help document and report ongoing abusive practices against these communities. Because of the work of Fund grantee Green Advocates, these local communities are starting to organize, resist, and generate media attention. [more](#)

**Fight Corruption**
One hour of work

**Transparency International USA**
Your gift will provide one hour of tool development, helping TI-USA develop and promote anti-bribery codes and implementation programs and benchmarking tools for the private sector. [more](#)

**Connect Generations**
One art performance

**Generations United**
Your gift will allow one performer to attend and participate in an intergenerational performance. [more](#)
Charitable Solicitation

SOCIAL MEDIA IMPLICATIONS

(3) Are Goods or Services Being Offered under Premise It Will Benefit a Charity?

[Image of a Facebook post promoting a watch with a link to shop for it and support breast cancer awareness. The post includes comments from people discussing the cause and expressing interest or support.]
As part of our efforts to promote good health for everyone, New Balance will contribute 5% of the suggested retail price of sales from the Lace Up for the Cure® Collection with a guaranteed minimum donation of $500,000 to Susan G. Komen for the Cure.

Lace Up Shoes
Your favorite New Balance running, walking and toning shoes in pink Lace Up designs.
View All Lace Up Shoes

Lace Up Apparel
The performance apparel you expect from New Balance featuring empowering messages.
View All Lace Up Apparel

Lace Up Accessories
Show your support from head to toe in hats, socks, bags and more that sport the Lace Up logo.
View All Lace Up Accessories

Personalize the Fight
Celebrate a survivor in your life with a personalized pair of 883 running shoes.
Create a pair now

The 860 Walking Shoe
Official shoe of the Susan G. Komen 3-Day for the Cure™.
Shop the 860 Walking Shoe
Also available in Running

What's Popular in our Lace Up for the Cure Collection
Charitable Solicitation
REGULATORY UPDATE

- Much focus on CCVs by regulators and watchdog groups
- NY AG Breast Cancer Investigation
  - October 2011 – questionnaires sent to over 40 charities/130 for-profit companies involved in commercial co-venturer activities
  - Questions track statutory requirements – Contract? Accounting? Minimum or Maximum Contribution?
  - Also request, “television, print media, email, Twitter, Facebook, or in-store advertising”
- BBB Wise Giving Alliance Initiative on Solicitations
Charitable Solicitation
CONSIDERATIONS FOR COMMERCIAL CO-VENTURE PROMOTIONS

(1) Pick the right product or service
   – Komen Buckets for the Cure (2010)

(2) Make appropriate disclosures (particularly of minimum or maximums)

(3) Think about tax implications for charity’s activities
Charitable Solicitation
CONSIDERATIONS FOR COMMERCIAL CO-VENTURE PROMOTIONS

(3) Consider timing for regulatory requirements

(4) Keep alternatives in mind
   – Flat Corporate Donation
   – Free Action Program
Contact Information

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