Playing by the Rules: Political Activity

Part Two of the CAPLAW webinar series:
Changing the Game: How CAs can engage in politics, advocacy, and lobbying

April 11, 2017

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CAPLAW

Link to presentation:

Lobbying and Political Activity
Agenda

- Rules governing CAA political campaign activity
- What types of political activity can CAAs and their employees engage in?

Lobbying vs. Political (Campaign) Activity
Lobbying
Issues + Legislation

Political (Campaign) Activity
Candidates

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**Federal Grant Law**
(Public & Nonprofit CAAs)
- Federal award authorizing statute
- OMB federal cost principles
- Award terms/conditions
- Hatch Act

**Tax Law**
(Nonprofit CAAs)
- Internal Revenue Code 501(c)(3)
- IRS Revenue Ruling 2007-41

**State/Local Rules**
(Public CAAs)
- Check with local gov’t attorney

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**Political Campaign Activity**
Organization vs. Individual Employee

Organizations face strict limitations in their ability to engage in political campaign activities.

Employees, on their own time and outside of work, may participate freely (mostly) in political campaign activities.
Tax code prohibits 501(c)(3) orgs. from engaging in political activity in support of or in opposition to candidates for public office.

- **Penalties** for violations:
  - Revocation of tax-exempt status
  - Two-tier tax by IRS

**IRS Revenue Ruling 2007-41**

Application of 501(c)(3) ban on political activities to 21 scenarios
Voter Education

Ok, so long as conducted in a nonpartisan and unbiased manner

- Must NOT reference any candidate or political party

Voter Registration

Ok, however:

- Must be nonpartisan

- Cannot use Head Start or CSBG funds to pay for any resources or staff used in voter registration

- Cannot be conducted in a way that identifies CSBG funds with the voter registration activities
Activity by Org.'s Leaders
Ok* if speaking for themselves as individuals, rather than on behalf of the organization
*But note additional Hatch Act restrictions

Candidate Appearances
Ok, however:
• Must invite all candidates and give equal opportunity to speak
• Must be neutral, nonpartisan
• No political fundraising
Candidate Appearances:  
Non-Candidate Capacity

- Ok if legitimate reason to speak at the organization
- Don't mention campaign
- No political fundraising
- Don't invite close to election time

Websites

- CAA is responsible for content of its website and the links to other sites - check them!
Issue Advocacy
May take positions on public policy issues, but CANNOT explicitly or implicitly favor or oppose a candidate when doing so.

Federal Grant Law Restrictions

Uniform Guidance
Federal funds may NOT be used to:
- Influence the outcome of elections, referendums, or initiatives
- Give to political campaigns or PACs
- Contribute to political parties
(CFR 1 300.430)

CSBG Act
CSBG funds may NOT be used in a manner supporting or resulting in the identification of CSBG program participants in:
- Any partisan or nonpartisan political activity
- Any activity to provide voters with transportation to the polls
- Any voter registration activity
(2 U.S.C. 1996(b)(2)(C))

Head Start Act
Head Start-funded programs and employees may NOT engage in:
- Any partisan or nonpartisan political activity
- Any activity to provide voters with transportation to the polls
- Any voter registration activity

Hatch Act

*The Hampton and Pabst 4th amendments to voter protection for federal office or Head Start activities
*2 U.S.C. 4340
*2 U.S.C. 746(a)(2)(C)
Uniform Guidance

Federal funds may NOT be used to:

- Influence the outcome of elections, referenda, or initiatives
- Give to political campaigns or PACs
- Contribute to political parties

(2 C.F.R. § 200.450)

CSBG Act

CSBG funds may NOT be used in a manner supporting or resulting in the identification of CSBG programs with:

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- Any activity to provide voters with transportation to the polls
- Any voter registration activity

(42 U.S.C. § 9918(b)(2)(C))
**Head Start Act**

Head Start-funded programs and employees may NOT engage in:

- Any partisan or nonpartisan political activity
- Any activity to provide voters with transportation to the polls
- Any voter registration activity*

*But a nonpartisan organization MAY register citizens to vote in elections for federal office at Head Start facilities

(42 U.S.C. 9831(b)(2))

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**Hatch Act**

- Generally, does not apply to nonprofit organizations even if they receive federal funding
- However, both the CSBG and Head Start Acts explicitly require Hatch Act restrictions on certain employees paid with CSBG and/or Head Start funding

Diagram showing the scope of Hatch Act restrictions.
Hatch Act

- Generally, does not apply to nonprofit organizations even if they receive federal funding.

- However, both the CSBG and Head Start Acts explicitly impose Hatch Act restrictions on certain employees paid with CSBG and/or Head Start funding.

Nonprofit CAAs

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<th>HATCH ACT RESTRICTIONS</th>
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Soliciting Contributions

- Merely *asking* for contribution is considered an **indirect form of coercion** if supervisor-subordinate relationship

- Includes *contributions* for candidates, PACs and political parties

- Includes *commanding* or advising another covered employee to make political contributions

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Partisan Election

- At least one candidate is associated with a party whose presidential candidate received votes in last election
- Candidate is identified on ballot with party
- Designated by state or local law

Public CAAs

**FIRST TYPE OF EMPLOYEE**
- Works in connection with activities financed by ANY federal grants or loans

**HATCH ACT RESTRICTIONS**
- Can’t run as candidate for public office in partisan election
- Can’t use official authority to influence election results
- Can’t coerce Hatch Act employee to make political contributions

**SECOND TYPE OF EMPLOYEE**
- If 100% of salary paid out of ANY federal grants or loans
Scope of Hatch Act Restrictions

- Restrictions apply regardless of whether activity is conducted inside or outside the workplace or work time.
- Restrictions apply even when employee is on unpaid or paid leave.

"Hatched" individuals can still . . .

- Be a candidate in a nonpartisan election
- Be a candidate in a partisan election if not 100% paid from CSBG and/or Head Start
- Express opinions on political subjects
- Vote as one chooses
- Participate in political campaigns and parties
- Make contributions to candidates and PACs
Penalties for Violating Hatch Act

- If offense is serious enough, employer must either:
  - Dismiss employee; or
  - Forfeit its federal funding in an amount equal to two years of employee’s salary

- Whether employee knowingly violates statute, especially after warning from OSC or funding source, is factor in determining seriousness of offense

Hatch Act: Office of Special Counsel

- Responsible for enforcement of Hatch Act
- Will issue advisory opinions on individual questions (upon request) by e-mail, phone, or fax:
  - hatchact@osc.gov
  - 800-854-2824 (phone)
  - 202-254-3700 (fax)
CAP

Community Action Agency, Inc. ("CAP") is a nonprofit community action agency that runs a number of anti-poverty programs, including Head Start, WIC, Foster Grandparents, state-funded child care, housing assistance, and a job training center. CAP uses its CSBG funds for case management services, community needs assessment and planning, enhancement of linkages with other community anti-poverty programs, as well as neighborhood youth programs in CAP satellite offices, and a portion of indirect costs for central management.
Polly Politico

Polly Politico, longtime Chairperson of the CAP board of directors, is running on the American Party ticket for State Senator. She has served CAP well and was responsible for hiring the current Executive Director, Eddie Dare. She is looking for support from CAP and asks Dare for a few favors:

1. As a small token of its support, would CAP buy a $100 ticket to a campaign fundraiser?

2. Perhaps Dare could also buy a ticket himself and ask the CAP department heads at the next staff meeting to do the same?

Uniform Guidance

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(2 C.F.R. § 200.450)
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- **Penalties** for violations:
  - Revocation of tax-exempt status
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*(42 U.S.C. § 9918(b)(2)(C))*

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Head Start-funded programs and employees may NOT engage in:

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*But a nonpartisan organization MAY register citizens to vote in elections for federal office at Head Start facilities

*(42 U.S.C. § 9851(b)(2))*
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**Additional Resources**

- **CAPLAW Articles, Model Policies on Political Activity**
  [http://caplaw.org](http://caplaw.org)

- **IRS Political Activity Information**

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This training is part of the Community Services Block Grant (CSBG) Legal Training and Technical Assistance (TTA) Center. It was created by Community Action Program Legal Services, Inc. (CAPLAW) in the performance of the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Cooperative Agreement - Grant Award Number 90ET044103. Any opinions, findings, and conclusions or recommendations expressed in this materials are those of the authors and do not necessarily reflect the views of the U.S. Department of Health and Human Services, Administration for Children and Families.