

## **Political Activity: Playing by the Rules**

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### **Handouts:**

1. PowerPoint Slides
2. Political Activity Hypothetical
3. Political Activity Quiz



## Political Activity: Playing by the Rules

2010 CAPLAW National Conference

Presented by  
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### Agenda

- Federal election law
- 501(c)(3) rules
- Federal grant program rules
  - CSBG
  - Head Start
  - Corporation for National Service
- Hatch Act



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### Organization vs. Individual Employee

- *Organizations*, such as CAAs, Head Start grantees, and other 501(c)(3)s, face strict requirements as to their “political activities”
- *Individual employees*, on their own time and off work premises, enjoy most of the same rights to participate in political process as other citizens



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## Organizations – Election Law

- *Citizens United, 130 S. Ct. 876 (2010)*
  - 2010 U.S. Supreme Court decision
  - Changed federal election law
    - Struck down 2 U.S.C. § 441b which prohibited corporations from making “independent expenditures”
  - Corporations (nonprofit and for-profit) still may not:
    - Contribute to candidates
    - Make communications coordinated with campaigns

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## Organizations – Election Law

- *Citizens United*
  - No impact on 501(c)(3)s – still cannot
    - Contribute to a political campaign
    - Endorse or oppose a candidate
    - Make independent or coordinated expenditures
  - Impact on 501(c)(4) and 501(c)(6) organizations
    - May now make “independent expenditures” and “electioneering communications”
    - Must still comply with federal tax rules
      - Primary purpose test
    - May trigger additional disclaimer/disclosure requirements
      - “Paid by...” disclaimers
      - FEC disclosure statements

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## 501(c)(3) Rules

- 501(c)(3)s are prohibited by tax code from engaging in political activity in support of or in opposition to candidates for public office
  - 26 U.S.C. 501(c)(3)
- Penalties for violation of ban on campaign activity by 501(c)(3)s:
  - Revocation of tax-exempt status
  - Two-tier tax by IRS (26 U.S.C. 4955)

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## IRS Revenue Ruling 2007-41

- Helpful analysis of application of 501(c)(3) political campaign ban to 21 situations:
  - Voter education, voter registration, GOTV
  - Individual activity by organization leaders
  - Candidate appearances
  - Issue advocacy vs. political campaign intervention
  - Business activity
  - Web sites
- <http://www.irs.gov/pub/irs-tege/rr2007-41.pdf>

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## IRS Rules on Individual Activity By Organization Leaders

- Permissible, but not on organization time, with its assets, using its name, during its events, or in its publications or website
  - Assign work schedule to all employees
- Best to clearly indicate it is personal view

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## IRS Rules on Candidate Appearances

- May invite political candidates to speak at events, but caution is urged
  - Invite all candidates in writing
    - Can appear together or at separate times, but equal opportunity must be given to all
  - No support or opposition by organization either directly or indirectly
  - No political fundraising at event

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### Candidate Appearances

- May also invite individuals in their individual or official capacity who are also candidates, if individual has some legitimate reason to speak at organization
  - But don't invite just at election time
  - Don't mention campaign and instruct individual not to mention either
  - No political fundraising



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### IRS: Candidate Forum Best Practices

- Conduct in a neutral, nonpartisan manner
- Invite all candidates
- Independent panel, not 501(c)(3), should prepare questions
- Topics must cover broad range of topics
- No explicit or implicit approval or disapproval of candidates by moderator



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### Rules on Political Activity by Federal Grantees

- Federal funds may not be used to:
    - Influence the outcome of elections, referenda, or initiatives, or
    - Contribute to political parties, campaigns or PACs
- OMB Circular A-122, Att. B, par. 25  
(2 CFR Part 230, App. B)



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## CSBG Act

- CAA programs receiving CSBG funds may not be carried on in a manner involving use of program funds, provision of services, or employment or assignment of personnel,
- In a manner supporting or resulting in identification of such programs with:



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## CSBG Act

- Any partisan or nonpartisan political activity or any political activity associated with a candidate, or contending faction or group, in an election for public or party office
  - Any activity to provide voters with transportation to the polls or similar assistance
  - Any voter registration activity
- 42 U.S.C. 9918(b)



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## CSBG Act – Voter Registration

- HHS Office of Community Services (OCS) issued Info. Memo. 81 in August 2004
- [www.acf.hhs.gov/programs/ocs/csbg/guidance/im81.pdf](http://www.acf.hhs.gov/programs/ocs/csbg/guidance/im81.pdf)
- CSBG \$ can't be used for voter registration activities or other political activities, including transportation to the polls
- CAA or other entity receiving CSBG \$ can't conduct CSBG-funded programs or provide CSBG-funded services in manner that could result in identification of such programs or services with prohibited activities



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## Head Start Act

- Head Start-funded program and any individual employed by, or assigned to or in, such program (during time individual works for Head Start program), may not engage in:
  - Any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office; or
  - Any activity to provide voters or prospective voters with transportation to polls or similar assistance

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## Head Start Act – Voter Registration

- 2007 – more liberal voter registration rule
    - Head Start funds may not be used to conduct voter registration activities
    - BUT, Head Start facilities may be used during hours of operation by any nonpartisan organization to increase number of eligible citizens who register to vote in elections for Federal office
- 42 USC § 9851

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## Corporation for National Service

- In Domestic Volunteer Service Act (DVSA)
  - Applies to Foster Grandparents, Retired Senior Volunteer Program (RSVP), Senior Companion Program, VISTA, National Civilian Community Corps
  - Same restrictions as CSBG, EXCEPT:
    - Voter registration applications and non-partisan voter registration information may be made available to the public on DVSA program premises
- 42 U.S.C. 5043(b)(1)(C)

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### Corporation for National Service – Voter Registration

- In making voter registration information available, individuals affiliated with or employed by such programs shall not:
    - Indicate a preference with respect to any candidate, political party, or election issue; OR
    - Seek to influence the political or party affiliation, or voting decision, of any individual
- 42 U.S.C. 5043(b)(2)

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### Can States Require CAAs to Do Voter Registration?

- National Voter Registration Act (NVRA) requires states to designate all state offices that provide public assistance as mandatory voter registration agencies
  - “Public assistance” = Food Stamps, Medicaid, WIC, and AFDC
  - “State offices” includes state and local gov’t agencies, but not federal or nongovernmental offices
    - Disabled in Action v. Hammons, 202 F.3d 110, 124-29 (2nd Cir. 2000)

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### Can States Require CAAs to Do Voter Registration?

- States must also designate some federal and nongovernmental offices as discretionary voter registration agencies, but can only do so with agreement of those offices
- 42 U.S.C. 1973gg-5(a)(2)(A)

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## Individuals – Election Law

- Federal and state election laws impose additional rules on campaign activities of individuals

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## Hatch Act – How Does It Apply?

- Hatch Act is not imposed generally on nonprofits, even if they are federally-funded
- BUT, both the CSBG and Head Start Acts impose Hatch Act restrictions on employees (not unpaid board members) who work in connection with any activity funded by CSBG or Head Start

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## What Does Hatch Act Permit?

- Being a candidate for public office in a nonpartisan election
- Voting as one chooses and expressing opinions on political subjects
- Engaging in any other political activity not specifically prohibited by Hatch Act

5 U.S.C. 1501 - 1508

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### What Does Hatch Act Prohibit?

- Being a candidate for public office in a partisan election
  - CAA may employ those currently serving as elected officials so long as they are not candidates (e.g. seeking re-election)
- Using official authority or influence to interfere with or affect results of an election or nomination for office
- Directly or indirectly coercing, attempting to coerce, commanding or advising a person covered by Hatch Act to make a political contribution

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### What Is a “Partisan Election”?

- State or local law designates it as such
- At least one candidate is nominated, represents, is supported by, or associates himself with party whose Presidential candidate received votes in last election
- Candidate is identified on ballot with party

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### Which CAA or Head Start Employees are “Hatched”?

- Any person who:
  - Spends more than half of her total work time employed by CAA or Head Start grantee; OR
  - Receives more than half of her total wages from organization; **AND**
  - Works in connection with activities financed by CSBG or Head Start funds
    - But may be broader – all federally-funded activities

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### “Hatched” Employees

- 2006 Office of Special Counsel (OSC) decision (AD-06)
  - Employee’s mere use of federal grant-funded equipment not close enough connection

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### Scope of Hatch Act Restrictions

- If employee is covered by Hatch Act, restrictions apply regardless of whether activity is conducted inside or outside the workplace or work time
- Hatch Act restrictions apply even when employee is on unpaid leave of absence or paid terminal leave

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### Solicitation of Political Contributions

- “Hatched” CAA employees may not coerce, command or advise another covered employee to make political contribution
  - Merely “asking” for a contribution is considered indirect form of coercion, thus prohibited, if supervisor asks subordinate
  - Includes \$ for candidates, PACs, and political parties

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### Permissible Political Activities Under Hatch Act

- If conducted on own time and outside workplace, "Hatched" employee may:
  - Be a candidate for office in nonpartisan election
  - Continue to serve in office previously elected to (nonpartisan or partisan)
  - Run for and hold office in political party
  - Participate in political campaigns, party organization, make and solicit contributions



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### Penalty for Violating Hatch Act

- If offense is serious enough to warrant dismissal from employment, 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



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### Hatch Act Enforcement

- Hatch Act has been enforced against 2 CAAs in recent years:
  - Head Start director ran for county commissioner and, despite warnings, continued candidacy
  - Community outreach coordinator ran for county legislator and, despite warnings, continued candidacy



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**Hatch Act:  
Office of Special Counsel**

- Upon request, OSC will issue advisory opinions on individual questions by phone, fax, or e-mail
  - [hatchact@osc.gov](mailto:hatchact@osc.gov)
  - 800-854-2824 (phone)
  - 202-254-3700 (fax)
  - Hatch Act Unit, U.S. Office of Special Counsel, 1730 M Street, N.W., Suite 218, Washington, D.C 20036-4505



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**Political Activity Dos**

- CAA:
  - Voter education activities, including voter registration, get-out-the vote, candidate debates, in a nonpartisan manner with appropriate funds
    - Must not be identified with CSBG program
- Individuals:
  - Participate as a private citizen in political campaign activities
  - Run for office in nonpartisan election



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**Political Activity Don'ts**

- CAA:
  - In voter education, registration, or get-out-the vote, say things like:
    - The President doesn't represent your interests; we need a change
  - Use CSBG or Head Start \$ for voter registration or transportation to polls
- Individuals:
  - Run for office in a partisan election if you are covered by the Hatch Act
  - Speak on behalf of, or identify yourself with, 501(c)(3) in supporting or opposing a candidate
- Both:
  - Use organization resources to support or oppose candidates (including making contributions to PACs)



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## Additional Resources

- IRS
  - <http://www.irs.gov/charities> (Political Activity link)
- Office of Special Counsel
  - [www.osc.gov/hatchact.htm](http://www.osc.gov/hatchact.htm) (see especially info for state and local employees)

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## Political Activity Hypothetical

Community Inaction Agency, Inc. (“CIA”) is a nonprofit community action agency in the city of Sun which runs a number of anti-poverty programs, including Head Start, WIC, Foster Grandparents, state- funded child care, housing assistance, and a job training center. CIA uses its CSGB 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 CIA satellite offices, and a portion of indirect costs for central management.

Andy Activist, a member of the CIA Tripartite Board from the low-income sector, is a community activist who happens to be a strong supporter of the Democratic Party presidential nominee, Danny Democrat. He is interested in CIA becoming involved in voter registration activities as Election Day is approaching. As a federally funded nonprofit, can CIA conduct voter registration activities? If so, how can they become involved and where can the activities take place?

Polly Politico, longtime Chairperson of the CIA Board of Directors, is running on the Republican ticket for State Senator. She has reserved CIA well and was responsible for hiring the current Executive Director, Eddie Dare. She is looking for support from CIA and asks DAE for a few favors:

1. As a small token of its support, would CIA buy a \$100 ticket to a campaign fundraiser?
2. Perhaps Dare could also buy a ticket himself and ask the CIA department heads at the next staff meeting to do the same?
3. Would Dare be willing to write a letter to the editor about her service on the Board and express his support of her candidacy?
4. And would CIA sign on to an ad supporting her? And, by the way, would CIA mind if she addressed the crowd at the annual CIA dinner in October?

## Political Activity Quiz

- |   |      |       |
|---|------|-------|
| 1. Community Action Agencies can endorse candidates for public office.  | True | False |
| 2. CAA employees are prohibited from participating in political campaigns.  | True | False |
| 3. The recent U.S. Supreme Court decision, <i>Citizens United</i> , vastly changed the political activity landscape for 501(c)(3) nonprofits. | True | False |
| 4. The Hatch Act applies to employees of all federally funded nonprofits.   | True | False |
| 5. The Hatch Act prohibits covered employees from running in partisan elections.  | True | False |
| 6. CAAs can use CSBG funds to provide transportation to the polls.  | True | False |
| 7. Head Start funds may be used for voter registration activities.  | True | False |
| 8. Federal funds may not be used to influence elections or contribute to political parties.   | True | False |
| 9. A CAA executive director can urge the CAA's employees to contribute to a candidate or PAC.   | True | False |
| 10. An employee covered by the Hatch Act may take a leave of absence to run for political office.   | True | False |