



MEMORANDUM

TO: Interested Parties

FROM: Michael E. Toner
Caleb P. Burns

EMAIL: mtoner@wiley.law
cburns@wiley.law

RE: Frequently Asked Questions Concerning Contributions to the American Bankers Association Voter Education Program

This document answers many of the frequently asked questions about contributing to the American Bankers Association (“the ABA”) to support the ABA’s nationwide voter education program. Below is information concerning the ABA’s tax status, public disclosure requirements, contribution limits, and the types of voter education activities concerning federal candidates and officeholders that the ABA may lawfully engage in during an election cycle.

Q. What is the ABA’s tax status?

The ABA is a Section 501 (c)(6) organization under the Internal Revenue Code (“IRC”). The IRC provides that Section 501(c)(6) nonprofit, tax-exempt groups, including business leagues, chambers of commerce, real estate boards and boards of trade, can engage in political activity, as long as those activities do not become their primary purpose.

Q. What kinds of political activities can the ABA engage in?

The ABA intends to engage in a wide range of activities as part of a nationwide voter education program. These activities can include both generic advertising regarding issues and voting *and* federal candidate-specific advertising, such as:

- Television and radio advertising not coordinated with candidates and political parties, which can include candidate names and can educate the public regarding a candidate’s position on issues of importance to the ABA;
- Other types of media and public communications not coordinated with candidates and political parties, such as print communications, billboards, direct mail, phone calls, etc; and
- Public communications via the ABA’s internet site.

Note that the voter education program is not a separate entity, but merely an initiative of the ABA. Accordingly, donations designated for the voter education program are treated as donations to the ABA.

Q. Is the ABA required to disclose publicly the donors to its voter education program?

No, the Internal Revenue Service does not publicly disclose the identity of donors to and members of Section 501(c)(6) organizations such as the ABA. That protection extends to all contributions donors make to the ABA, including those related to the ABA's voter education program.

Some of the ABA's voter education program activities may be subject to Federal Election Commission ("FEC") disclosure requirements, but the ABA structures all of its activities, including the voter education program, in a manner that does not require the disclosure of any of the ABA's donors to the FEC. To that end, the ABA does not accept donations that are earmarked for specific political purposes. The ABA exercises full discretion over how it uses its donated funds and informs donors to the ABA's voter education program: "The ABA does not solicit or accept funds earmarked for specific political purposes."

Q. Are there contribution limits on corporations, trade associations or individuals who support the ABA's voter education program?

There are no limits on the size of donations that corporations, trade associations or individuals can make to support the ABA's voter education program.

Q. Are there other restrictions on who can support the ABA's voter education program?

Yes, because the program could include political activities, there may be restrictions on the types of funding that can be accepted to support the ABA's voter education program.

Under Federal law, a nationally chartered bank, which includes a national bank, commercial bank, or a federal savings association (including savings and loan associations and federal savings banks) and other federally chartered corporations are prohibited from engaging in certain political activities. These restrictions would not apply, for example, to:

- A state chartered bank;
- A holding company affiliated with a national bank or savings and loan if the holding company has sufficient income derived from other sources;
- Affiliates or subsidiaries of a national bank or savings and loan with their own income; and
- Individual executives and board members.

Federal law similarly prohibits foreign nationals from engaging in certain political activities. A "foreign national" can be a non-U.S. citizen (unless he or she is residing in the U.S. as a lawful permanent resident as evidenced by a "green card") or a partnership, association, corporation, or other entity that is organized under the laws of or has its principal place of business in a foreign country. These restrictions would not apply to a subsidiary of a foreign corporation that is both organized under the laws of a U.S. state and has its principal place of business within the U.S. provided that: (1) any funds used to support the voter education program are wholly derived from revenues generated within the U.S. and are not subsidized by a foreign parent, and (2) no foreign national directs, controls, or participates in the decision-making process regarding the U.S. subsidiaries' donation to the voter education program.

Q. If the restrictions apply, can we still contribute?

Yes, the ABA maintains a segregated cost center to account for restricted funds from national banks. The ABA uses those funds for polling, research, and generic GOTV activities that do not constitute contributions, expenditures, or electioneering communications as defined by federal campaign finance law.

Q: What about pay-to-play restrictions?

The Securities and Exchange Commission’s “pay-to-play” rule at 17 C.F.R. 275.206(4)-5 restricts political contributions from financial services providers to campaigns of state and local officeholders with discretion over retaining those services. Because the voter education program does not make direct contributions to campaigns, it does not implicate this “pay-to-play” rule.

Note, however, that federal law separately restricts the political activities of federal government contractors in much the same way as nationally chartered banks.

Q. What steps is the ABA taking to help donors comply with these legal restrictions?

To ensure that only clearly permissible funds will be used to support its voter education program, the ABA will finance the program entirely from a separate bank account. Only funds from sources that are not subject to the above-described prohibitions will be solicited and accepted into the separate account.

Q. Does the ABA coordinate its voter education efforts with officeholders, candidates, or political parties?

For the legal protection of both donors and the ABA, the ABA does not coordinate its voter education efforts with any federal officeholder, campaign or candidate, or political party. The ABA’s efforts will be devoted to independently promoting the issues and, at its discretion, the federal candidates who support and best represent the ABA and its members on policies and legislation.

Q. What are the key differences between contributing to a PAC, a Super PAC, and the ABA’s voter education program?

A chart summarizing the differences follows:

A PAC	A Super PAC	The ABA
<ul style="list-style-type: none"> • A PAC is registered as a political committee with the FEC in order to make contributions to federal candidates or committees. • Individuals may contribute up to \$5,000 per calendar year to a PAC and there are significant restrictions on who may be solicited to contribute to a PAC. • Corporations are prohibited from contributing to a PAC. • Contributors of more than \$200 per calendar year to a PAC are publicly disclosed. 	<ul style="list-style-type: none"> • A Super PAC is registered as a political committee with the FEC in order to make independent expenditures to advocate the election or defeat of federal candidates; a Super PAC is prohibited from making contributions to federal candidates or committees. • There are no limitations on the amounts that may be contributed to a Super PAC; there are some restrictions on who can contribute to a Super PAC. • Contributors of more than \$200 per calendar year to a Super PAC are publicly disclosed. • Most Super PACs have no membership structure, no grassroots messaging capabilities, and little or no name identification among the public. 	<ul style="list-style-type: none"> • The identities of ABA donors are protected from public disclosure. • The ABA can engage in many of the same activities as a Super PAC. These activities include airing television and radio advertisements, sending mail, making phone calls, putting staff on the ground, and conducting traditional and electronic get-out-the-vote operations. • The ABA can accept unlimited donations and is segregating funds for its voter education program to avoid restrictions that could apply to certain political activities that may be conducted as part of the program. • The ABA has a significant national membership and, therefore, grassroots capabilities in states and congressional districts.