



**MEMORANDUM**

**TO:** Fraternity & Sorority PAC Executive Board

**FROM:** Megan Sowards Newton

**DATE:** February 28, 2002

**RE:** Ethics Rules and Laws Governing Political Contributions to Public Officials

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This memorandum provides guidance regarding the applicable federal laws and ethics rules that govern interactions with Members of Congress and their staff. Fraternity and Sorority PAC (“FSPAC”) representatives who may also engage in volunteer lobbying as representatives of individual fraternities and sororities or other organizations will want to be especially diligent in following these rules, which at their core, require that officials engage in political activity in their capacity as a candidate without using official resources and that they never engage in official action in exchange for or because of something of value.

**Legal Framework**

The law and applicable government ethics rules strictly prohibit the use of official resources for campaign purposes. *See, e.g.* 31 U.S.C. § 1301(a). In addition, several criminal statutes are relevant in this area. For example, federal criminal law prohibits the solicitation or receipt of campaign contributions in any federal building. *See* 18 U.S.C. § 607. Of course, the bribery and illegal gratuity laws prohibit offering or providing of a thing of value in exchange for an official act by a public official or offering or providing a thing of value because of an official act by a public official. *See* 18 U.S.C. §201. In addition, defendants have pleaded guilty to the federal crime of honest services fraud defined in 18 U.S.C. § 1346 where evidence has shown that they accepted campaign contributions from parties who later benefited from political favors by the official such as the award of a government contract. There are also strict prohibitions on the provision of gifts to Members of Congress and their staff under the House and Senate Ethics Rules. Finally, the House and Senate Codes of Conduct go beyond the black letter law and admonish Members and staff to avoid even the appearance of impropriety. For example, House Rule 23, clause 1 states that Members should conduct themselves “at all times in a manner that shall reflect creditably on the House.

**Fundraising**

In light of this legal framework, Members of Congress and their staff must strictly segregate official activity from campaign activity and avoid the appearance of any connection between official

activities and the receipt of campaign contributions.<sup>1</sup> FSPAC members who separately engage in advocacy on behalf of their individual fraternity or sorority or another organization thus should take care not to discuss fundraising in an official office or at a meeting with a Member of Congress in his or her official capacity. For example, FSPAC representatives should never make a PAC check presentation in an official office building even if the representatives may be meeting with a Member on other business. Instead, FSPAC representatives may arrange a PAC check presentation at a separate political event that is held outside of the Capitol grounds or official district office such as at one of the party committee offices or at a restaurant or hotel.

Similarly, FSPAC should not contact official legislative staff regarding political activities including fundraising. Political requests should be directed to a representative of an official's reelection campaign instead. Because the House and Senate Ethics rules permit official staff to engage in volunteer activities on behalf of their employing Member's political campaign on the employee's own time and not using official resources, there are instances in which an individual such as a Chief of Staff wears two hats: one official and one political. In that case, when conducting FSPAC business, it is important to direct the communications to the individual's personal or campaign email address as opposed to an official email address. In the case of Senate employees, there are also strict rules that limit to three the number of Senate office employees who may handle a campaign contribution. In the event an inadvertent mistake occurs, it is best to correct the error such as by sending an email noting that it was inadvertently directed to the official account and will be resent to the political account.

### **Never Link Official Action With Campaign Contributions**

In addition, FSPAC representatives should never make an FSPAC contribution to a candidate that is directly related to official action or contingent upon official action. For example, in transmitting an FSPAC check to a Member of Congress who has been supportive of the Greek policy agenda, FSPAC should take care not to indicate that the contribution is a direct result, for example, of the individual's vote on a particular bill. Similarly, FSPAC representatives who also engage in advocacy should never raise the possibility of a FSPAC contribution during advocacy day activities such as indicating that all those who cosponsor a particular bill will receive a contribution. Nevertheless, candidates run for reelection on their record and policy views. It is thus entirely appropriate for FSPAC to support individual candidates based upon his or her demonstrated legislative record or stated policy views.

When disbursing FSPAC contributions it is also advisable to mind the timing. Disbursing a contribution in the immediate lead up to a vote on a key policy issue or shortly after a Member introduces a key piece of legislation may give rise to allegations that the contribution was somehow linked to the official action. For example, in 2011, several Members of the House of Representatives were exonerated in an investigation by the House Ethics Committee after holding a financial services industry fundraiser in the days leading up to the vote on the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Committee found that they had not committed any ethical violations in part because of their longstanding legislative positions on the bill, the fact that

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<sup>1</sup> There are limited exceptions to these rules that allow for the official scheduler to maintain a unified schedule that includes campaign events and to coordinate with political representatives to ensure that a Member is not double-booked between campaign and official appearances.

the event was scheduled long before the vote on the legislation was set, the event was coordinated by professional fundraising staff and any discussions among the attendees regarding the legislation were brief and non-substantive. In light of these issues, FSPAC may want to disburse contributions at set times such as in response to a specific solicitation from a candidate, immediately following the approval of its annual budget, or during its annual meeting in Washington, D.C.

## **Gift Rules**

When providing hospitality to Members of Congress, it is important to do so in accordance with the applicable House and Senate gift rules. Each chamber has each adopted gift and ethics rules that vary slightly from one another as well as from the Executive Branch Ethics and Gift Rules. While this memorandum provides a general overview of the legislative branch rules, please consult counsel with specific questions.

As a general matter, Members of Congress and their staff may not accept a gift unless the item provided is exempted from the definition of a gift. In addition, the rules are stricter for entities that employ lobbyists. In this regard, it is important to keep in mind that while your volunteer advocacy efforts may not trigger federal lobbying registration for you personally, you may be volunteering on behalf of an entity that retains lobbyists and thus the stricter rules may apply. For example, a Member or employee may not accept a gift valued at less than \$50 from a lobbyist or an entity that employs a lobbyist, whereas the Member or staff may be able to accept a gift valued at less than \$50 from an organization that does not employ lobbyist. Other commonly used exceptions to the definition of a gift under the legislative branch gift rules include:

- **Widely Attended Events**

The House and Senate Ethics rules permit Members and their staff to attend widely attended events, including those sponsored by entities that engage in lobbying, depending on how many people will be in attendance and what type of refreshments will be served. If more than twenty-five people — counting only those who do not work for the U.S. Congress — will attend, the event can qualify as a “widely attended” event under the House and Senate Ethics Rules. Senate Rule 35.1(d)(1); House Rule 25, cl. 5(a)(4)(A). At an event that qualified as a “widely attended” event, you, as the event’s sponsor, may invite Members and their staff. Each Member and staff member may also bring one guest. If a meal is provided to all attendees at the event, the Members and staff may partake in the meal. Meals included as part of “widely attended” events do not violate the House or Senate gift rules, as long as the Member’s or staff member’s attendance can be said to be related to his or her official duties. Events where a Member’s constituents will be in attendance or where information pertinent to issues important in the Member’s district will be presented qualify as “related to official duties.” *See* <http://ethics.house.gov/gifts/gift-exceptions-0/widely-attended-events> (House version); <http://www.ethics.senate.gov/public/index.cfm/gifts> (Senate version).

- **Receptions**

Alternatively, if less than twenty-five non-Congressional people will be in attendance or you wish to provide less than a full meal, you can provide “non-meal” food as part of a reception (the “reception exception”). Guests may be seated for any policy presentation. Senate Rule 35.1(c)(22); House Rule 25, cl. 5(a)(3)(U). However, for the food and beverage portion of the event, guests will need to be served hors d’oeuvres, cocktails, or a continental breakfast, depending on the time of day. To be certain you are in compliance, the food served should not require a fork and knife to eat. Items

capable of being served on a toothpick and eaten while standing meet the requirements for the “reception exception.” These items may not include food that would be served as part of a meal, regardless of how inexpensive. For example, if the event is to qualify as a reception, hot dogs and sandwiches cannot be served; but appetizers, hors d’oeuvres, doughnuts, and pastries could. *See* <http://ethics.house.gov/gifts/gift-exceptions-0/food-or-refreshments-nominal-value-attendance-receptions> (explanation of “reception” exception to the gift rule).

- **Political Fundraising Events and Other Acceptable Gifts**

The Rules in both the House and Senate also permit Members and staff to accept commemorative items such as a plaque, trophy or other item that is intended for presentation, and books, periodicals and other informational materials sent to the official. Finally, Members and Staff may accept any gift that is given by an individual on the basis of personal friendship, and paid for by the gift giver personally, as opposed to charged on a corporate credit card or reimbursed by a corporate entity. Gifts based on personal friendship that exceed \$250 must still be approved in advance by the House and Senate Ethics Committees. Finally, a Member or staff may accept “free attendance” at a fundraiser sponsored by a political organization such as FSPAC including refreshments, meals, or entertainment.

### **Do’s and Don’ts**

Below are some general do’s and don’ts. As always, please consult counsel with specific questions and fact patterns.

#### **Do’s**

- Attend fundraisers in your capacity as an FSPAC member and discuss the Member’s reelection campaign and/or any topic related to Greek life.
- Communicate with official Congressional offices in your volunteer capacity on behalf of your individual fraternities and sororities or other organizations, not on behalf of FSPAC.
- Wear an FSPAC donor ribbon on your nametag during Hill visits.
- Direct communications regarding FSPAC activities to campaign representatives of a candidate (even an incumbent Member of Congress).
- Provide hospitality to Members of Congress as part of a FSPAC fundraising event.
- Consult counsel before inviting a government official to participate in a non-FSPAC sponsored function, event, or reception.

#### **Don’ts**

- Link an FSPAC contribution to a specific official action or imply that an FSPAC contribution has occurred as a direct result of a specific official action.
- Discuss FSPAC fundraising in an official congressional office or meeting or make a FSPAC presentation on official government premises.
- Reference FSPAC in the body or signature of any email you send to a House or Senate office, or in a call to an official office.
- Frame a Hill meeting as a meeting about FSPAC or reference your role with FSPAC in your Hill advocacy meetings on behalf of other organizations.