



Groups Spending on Referenda

Connecticut State Elections Enforcement Commission



The Big Picture

- This is a general presentation on how informally organized grassroots groups and other more formally organized groups, such as 501(c)(3) and (c)(4) nonprofits, may spend on referenda, including the Constitutional question on this year's ballot.
 - We will also discuss the activity of political committees (a/k/a PACs) with regard to referenda spending.
 - This is NOT a substitute for the law.
 - The best places to get this information in more detail is by reading our [Declaratory Ruling 2018-01, Political Activity of Organized Groups and Advisory Opinion 2014-02, Disclosure of Expenditures](#). Also, our [Guide to Political Committees](#) is a good resource. All are available on our website (and at these links).
 - ***Call SEEC with your questions at this number: 860-256-2925.***
-

Basics - Terms

- Campaign finance law essentially is the regulation of money in politics, whether it be cash, credit or valuable stuff. We'll call all these valuable things **funds**.
 - When *funds* are spent to promote or oppose a referendum question (or a candidate) it is called an **expenditure**.
 - When *funds* are given to another person/group/committee to promote or oppose a referendum question (or a candidate) it is called an it is called a **contribution**.
-

Basics - Coordination vs. Independence

- **Coordination** with a committee means that the group or members of the group have “cooperated” with the candidate or committee, “consulted” with the candidate or committee or acted “in concert” with the candidate OR committee.
 - **Independence** from a committee means that the actions taken by the group are not coordinated at all with the candidate OR committee—they are wholly, truly, totally and completely independent of with the candidate OR committee.
-

Advanced Basics - Algebra

- Here's where it gets interesting.
 - Expenditures made that are wholly, totally and completely independent of a candidate or committee are called independent expenditures.
 - Expenditures made after any member of the group coordinates with a candidate or committee are called coordinated expenditures.
 - ***BIG CONCEPT:***
 - Coordinated expenditures are also known as contributions (these are sometimes known also as in-kind contributions).
 - Sometimes these are ok, sometimes not ok.
-

Basics of Disclosure (Owning Your Speech)

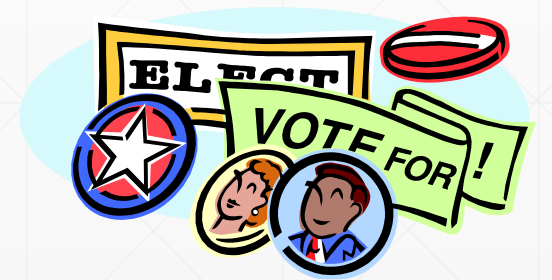
- **Attribution on Written Communications (Attribution)**
 - “Paid for by”
 - Sometimes name of agent or treasurer
 - Sometimes the top five funders (with exceptions)—or more!
 - **Campaign Finance Filings (Filings)**
 - Financial disclosure filings regarding how much was spent and sometimes the sources of that money. On the same schedule as a committee. For the Constitutional question this Fall that means by July 10, October 10 and/or 7 days prior to the November vote.
 - No 24-hour reporting for referenda spending.
 - Sometimes registration of a committee is also required (may require extra filing).
 - Filed with SEEC or the town clerk--where you file depends on what type of referendum it is. (If spending on the Constitutional question, file with SEEC.)
-

WHO, WHAT, WHEN, WHERE, HOW

Asking the right questions

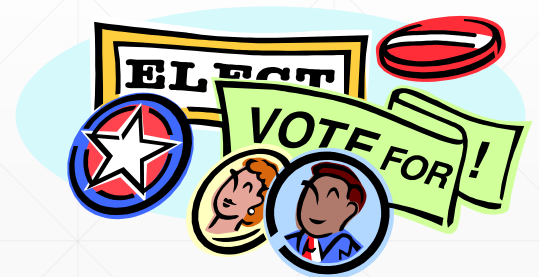
Who is spending?

- Individual human being?
- Group of two or more who have joined solely to promote the success or defeat of a referendum question?
- 501(c)(3)?
- 501(c)(4)'s and other non-profits, businesses, unions, or associations with pre-existing treasuries?
- Committee?



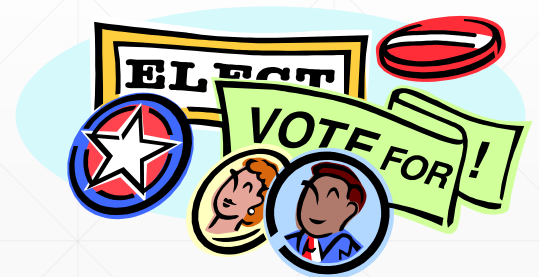
What vs Where?

- WHAT is the spending for? A CT referendum question at the local or state level?
- WHERE the spender is located is less important—they must follow CT rules.



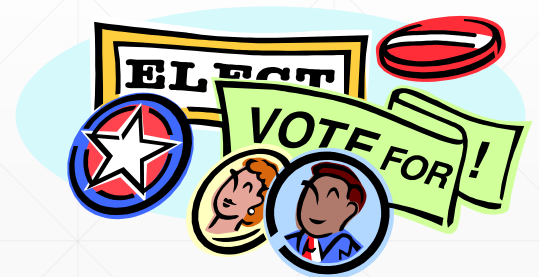
When?

- Local Referenda: WHEN the referendum is pending.
- Constitutional Referenda: WHEN the Constitutional question is on the ballot.



HOW MUCH?

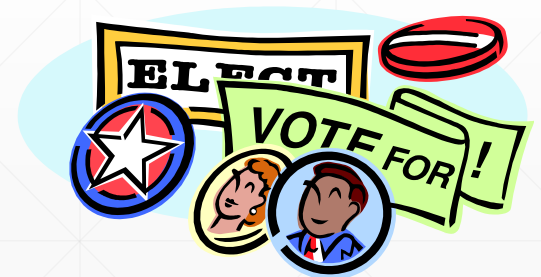
- \$1,000
- &
- Unlimited



Applying the Rules

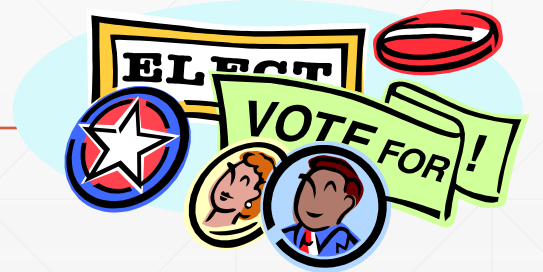
Permissible Political Activity for Individuals

- Individuals can spend their own money to advocate on referenda, i.e. make independent expenditures;
- They can contribute to political committees that advocate on referenda;
- They can volunteer for a group or a committee.



Individual Obligations When Spending Alone

- If you spend under \$1,000 and you are acting alone, you have no disclosure requirements.
- If you are acting alone and you spend over \$1000, you are required to file finance reports.
- Reports will be filed on Form 26 with SEEC or the town clerk--where you file depends on what type of referendum it is.
- If you spend, and you are acting alone, you do not have to put any attribution on your materials—you can be anonymous in your communication. You certainly **MAY** put on an attribution. (We encourage it!)
- If you spend over \$1,000, and you are acting alone, your reporting will reveal who you are anyway. That cannot be anonymous.

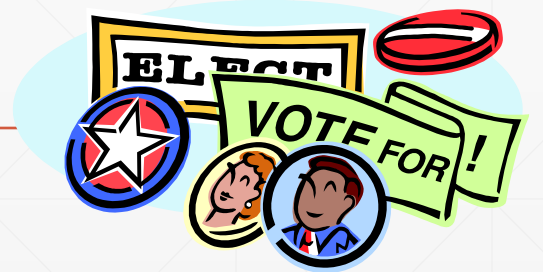


Groups of two or more individuals who have joined solely to promote the success or defeat of a referendum question

- Not required to register a committee or make financial statement filings if spend \$1000 or less.
- Attribution required on written materials:

Paid for by [name of group], [name and address of group's agent].

- No registration requirement.



Incidental Spenders: Businesses, Unions, (most) Nonprofits Spending from Treasury

- Businesses, Unions and other groups that spend from a ***bank account established for other purposes*** are what we call “incidental spenders.” They are not raising funds specifically to spend on the referendum.
 - Not required to register as a committee.
 - No financial statement filings if spend \$1000 or less.
 - If spend over \$1,000 ***from pre-existing treasury***, file financial statements on the same schedule as a committee on a Form 26.
 - More detailed attribution required on written materials:
 - Name of entity and the name of chief executive officer;
 - The top five donors over \$5,000 and, in some cases, the top five donors of the top five;
 - Statement that more information about the entity can be found at the SEEC website.
-

Permissible Activity by Incidental Spenders

- These groups may make expenditures directly in support or opposition to referendum.
- Groups may also make contributions from their treasury to *independent expenditure-only political committees*, such as referendum committees.
- They may NOT raise contributions specifically to spend on referendum. (Or rather, they may but first they would need to form a committee.)
- They may NOT make contributions to party committees or traditional political committees or candidate committees.



Independent Expenditure Examples

- Unlimited “**independent expenditures**” for referenda may be made by anyone;
 - These can be advertisements;
 - They can be other mass communications;
 - They can be GOTV efforts that promote or oppose the question;
 - None of these things can be coordinated with a party committee, traditional political committee, or candidate committee!
-

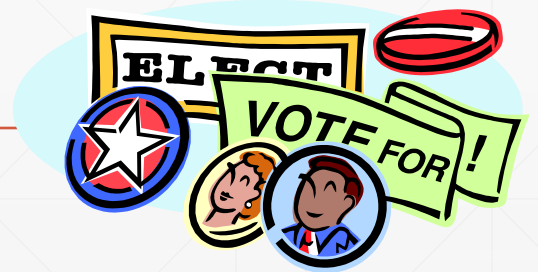
Special Exception: 501 (c) (3) Spending

- For non-profits that have received a 501 (c) (3) status from the IRS, any communication that is lawfully made by them is NOT considered an expenditure, independent or otherwise.
 - Therefore, no reporting or attribution would be required for such communication, even if it advocated for a particular outcome on a referendum.
 - ONLY applies to 501 (c) (3)'s and no other types of groups that are spending.
-

When to Form a Committee:

Businesses, Unions, & Associations or Groups Raising Money to Support or Oppose Referenda

- Businesses, Unions, & Associations or non-profits raising ANY money to support or oppose referenda must form a committee;
- Individuals acting together that raise over \$1,000 to support or oppose referenda must form a committee;
- If they register as a traditional committee on Form 3 they may also contribute to candidates;
- If they are only spending on referendum or independently of candidates and other committees, they may register as an independent expenditure political committee on Form 8 and then file financial statements on Form 40.
- Attribution will include the committee and treasurer names.



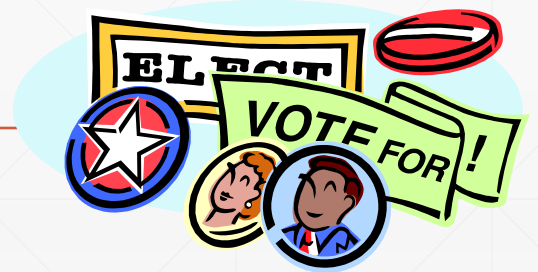
How to Form a Political Committee

- When forming a political committee to make expenditures on referenda, you have choices to make as to what type best suits your needs.
- In many cases, an independent expenditure only political committee is the best option.
- Call our compliance attorneys and they can help you choose the right committee for your purposes.
- It's easy to do! File a little paperwork, get a treasurer and a bank account, and you're up and running!



More about Political Committees

- Traditional political committees have contribution limits, IE committees do not. All register and report contributions in financial disclosure statements.
- Traditional political committees register on a Form 3. They file financial reports on a Form 20. They have contribution limits.
- Independent Expenditure Political Committees register on a Form 8 and file financial reports on a Form 40. Far fewer limits on contribution sources and amounts.
- Attribution for a political committee just name of committee and treasurer.



Summary

| | Committee registration req'd? | Financial Statement Filings Req'd? | Attribution for Written Communications |
|--|-------------------------------|------------------------------------|---|
| Individual acting alone | No | Only when over \$1000 | None |
| Grassroots Group raising or spending under \$1000 | No | None | Name of group name of agent |
| 501 (c) (3) spending only on referendum communications from pre-existing treasury | No | None | None |
| 501 (c) (4) spending only on referendum communications from pre-existing treasury | No | Only when over \$1000 | Group and CEO Names Top five donors over \$5000 |
| Business, Union or Association spending from pre-existing treasury | No | Only when over \$1000 | Group and CEO Names Top five donors over \$5,000 In some cases, the top five donors to those donors |
| Grassroots Group raising or spending OVER \$1000 | Yes | Yes | Committee and treasurer names |
| Business, Union, Association or Non-Profit raising any amount to spend on referendum | Yes | Yes | Committee and treasurer names |



Calculating a Thousand

There are numerous exceptions to the definitions of expenditure or contribution:

- Creation by uncompensated volunteers of electronic or written communications or digital photos or video for social media or emails
- Use of personal property attendant with residency that doesn't exceed \$100 in calendar year
- Communication made by any corporation, organization or association solely to its members, owners, stockholders, executive or administrative personnel, or their families;
- Nonpartisan voter registration and get-out-the-vote campaigns by any corporation, organization or association aimed at its members, owners, stockholders, executive or administrative personnel, or their families



Calculating a Thousand

There are also things you should remember DO have value and should be counted:

- The value of mailing lists, email or text included.
- The use of space provided by a business or union.
- Postage.
- Social media that has been paid for, e.g., through the purchasing of boosts, enhanced “Likes” or “Followers” and otherwise not-truly-free social media platforms.



Mixed Messages and Mixing Groups

Mixing Messages

- So far we have talked about spending on referenda and only referenda—but what if your group wants to make independent expenditures for candidates too?
 - So for example, if the group wants to send out post cards saying Vote Yes on the Referendum and the post card also says Vote For Candidate X, then you don't just have to follow referendum rules, you have to follow the election rules too.
 - Referendum advocacy has its own obligations (filing, attribution, etc.), but the election component creates other obligations on the group as well.
 - These include different, more robust, filing requirements and (possibly) different attribution requirements.
 - Call us!
-

More Mixed Messages: Coordinated Expenditures with Candidate Committees

- If you coordinate with a candidate on your referendum advocacy, you should AVOID making expenditures to advocate for that candidate's election.
 - This type of coordination would likely turn the expenditure into a contribution—something groups cannot make for candidates.
 - If your group forms a political committee, that committee may be able to make contributions (including coordinated expenditures) to SOME committees but not ALL committees (and never CEP committees).
 - A CEP candidate committee may NOT accept contributions from a group or a committee (only from individual human beings).
 - A CEP candidate may not accept in-kind contributions from anyone.
-

Coordinating With Other Groups

- What if two or more groups want to pool their resources on some message that results in an expenditure?
 - What types of groups are they, first of all?
 - If they are two IE committees, this is probably ok, with proper reporting.
 - If they are two non-committees, they may need to form an independent expenditure-only political committee.
 - Different combinations may have different permutations. Call us!
-

Other Questions

- Our Compliance Team is available to help you navigate what activity your group wishes to pursue—we're here to help.
- We like to say that the devil is in the details, so our analyses always start with the FACTS. We're happy to go over your particular set of facts to steer you in the right direction.



SEEC Contact Information

- **Address:**
 - 55 Farmington Avenue, Hartford, CT
- **E-mail:**
 - SEEC@.ct.gov
- **Telephone:**
 - (860) 256-2940 (General)
 - (860) 256-2925 (Compliance)
- **Website:**
 - www.ct.gov/seec

