



ANSWERS TO YOUR ELECTION QUESTIONS



By Matthew W. O'Neill

Election season is here. Again. Just when you thought the dust settled after the recall election, Wisconsin finds itself poised to be a swing state in the Presidential election and has a hotly-contested open Senate seat to boot.

As the non-stop campaigning wages on, you may be asking yourself some questions. Here are some answers to give you a head start.

Do I need an ID to Vote?

No. The Wisconsin Voter ID law - which was written to require all voters to show a photo identification before being allowed to cast a ballot - was ruled unconstitutional in two separate lawsuits. The appeals from those decisions are not expected to be resolved before the elections.

However, if you will be registering to vote on election day, you will need some document to prove your residency. A driver's license with your current address will suffice, as will a utility bill, lease, paystub, or any government-issued document showing your current address. You can check online to see if you are

currently registered (click the "Voter Public Access" link at www.gab.wi.gov).

Can I split parties?

Yes. At a general election, you can vote for any candidate in any race.

Can canvassers stuff literature in my mailbox?

No. It is a federal crime for anyone but your mail carrier to put communications in a mailbox. Canvassers can knock on your door, rubber band materials to your door handle or drop them on your porch, but they cannot use the mailbox or mail slot.

Can I stop or complain about political phone calls/robo calls?

There is no way to stop a pre-recorded robo-call. All you can do is hang up. For an actual, live call, you do have the advantage of hanging up before the call commences. Many computerized political call centers switch to a live person only after the phone is answered. There is a 1-2 second delay. If you don't recognize the number, and note a delay after you answer, you can hang up.

If you want to register a complaint, you must wait until calls

end to see who paid for the call. Then, you can complain to the federal election commission (www.fec.gov) or the Wisconsin Government Accountability Board (www.gab.wi.gov) if you think the call was improper or inaccurate. In a live "persuasion" call, once you ask who paid for the call, they have to tell you right then.

Can workers talk to me as I walk to the polls?

Wisconsin has a "buffer zone" of 100 feet around every polling place where it is illegal for anyone to communicate with a voter. On your way in, there may be people with signs or

shirts trying to persuade you. Once inside 100 feet, and always inside the polling place, you are safe from "electioneering." Most Chief Election Inspectors, who run the polling place, will caution voters to even avoid talking politics while waiting in line to vote.

Can I take a photo of my ballot, or of the crowds in the polling place?

Bad idea. It is against GAB rules to take any photos in a polling place, and it is a crime to publicize a completed ballot. A few political party leaders proudly Tweeted their ballots in the recall election, and were

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JACOB A. MANIAN JOINS FOS

FOS welcomes former Milwaukee County assistant district attorney and corporation counsel Jacob A. Manian to FOS' civil and criminal litigation practice team.

Jake's practice includes civil and criminal litigation. As an assistant district attorney, Jake tried over 40 criminal cases. Jake's extensive criminal prosecutorial experience is an excellent addition to the full range of legal services which FOS provides to its clients.

Jake, a Milwaukee native and Marquette University Law School graduate, is the grandson of former Milwaukee County Circuit Court Chief Judge and current Reserve Judge Victor Manian.

## KNOWING YOUR RIGHTS MEANS KNOWING WHEN THEY APPLY



By Jacob  
A. Manian

When I was in high school, I occasionally watched the popular 90's television medical drama "ER" with my mother. As a nurse, she had no qualms calling the writers of the show to task for taking liberties with reality for the sake of entertainment. "Oh, give me a break...that would never happen that way," she'd say. Well, it's come full circle. Nowadays, I scoff at the writers of most crime dramas as they shamelessly distort the truth to capture an audience.

There is no better example of this TV sham than when a police officer reads a suspect his or her Miranda rights at the time of arrest. Don't get me wrong, I love it in the old episodes of Law and Order when Detective Lennie Briscoe, played by the late Jerry Orbach, slaps the cuffs on some punk while simultaneously growling at him with utter disdain, "You have the right to remain silent," as he stuffs him into the squad car. Sorry Lennie, but this is not how it happens.

In the landmark 1966 United States Supreme Court case,

*Miranda v. Arizona*, the Court held that law enforcement must advise a suspect who is in custody of his or her right to consult with counsel and the right against self-incrimination. This must happen prior to any questioning from law enforcement.

However, law enforcement is not required to read the Miranda warnings at the time of arrest. So they don't. It would be quite foolish for police to offer a suspect of a crime the opportunity to remain silent or to have the services of a lawyer if the law does not require them to do so.

So, when does the law require police to advise a suspect of the Miranda warnings? There are two factors. Whenever a person is 1) in custody and 2) the police want to interrogate that person regarding the circumstances of the arrest, they must first advise the person of their Miranda rights. In Wisconsin, law enforcement officers typically read the following warnings:

"You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to consult with a lawyer

before questioning, and to have a lawyer present with you during questioning. If you cannot afford to hire a lawyer one will be appointed at public expense before or during any questioning if you so wish. If you decide to answer any questions now without a lawyer present, you have the right to stop the questions and remain silent at any time you wish and the right to ask for and have a lawyer at any time you wish, including during the questioning. Do you understand each of the rights that I have just explained to you?"

As to the first factor, the arrested person need not be rotting in a cell, scraping a tin cup across the metal bars to be considered in custody. Depending on the circumstances, a person may be considered in "de facto" custody while in the back of a squad car or even while in their own home during, for example, the execution of a search warrant. If a court finds that a suspect was in "de facto" custody, any incriminating statements could be suppressed if law enforcement did not advise the person of their Miranda rights prior to any questioning.

As to the second factor, Miranda warnings are only required if law enforcement wants to interrogate a person who is in custody. This means that if a suspect blurts out an incriminating statement while in custody - without inducement from law enforcement - you have just made law enforcement very happy. That statement is fair game and will be highlighted in giant bold letters in a police report and used against you regardless of whether you were read the Miranda warnings.

So, although it makes for better TV drama, the reality is that law enforcement officers do not read a person his or her Miranda rights as the cuffs are slapped on. And why would they? Many suspects can't help but try to talk their way out of trouble and often will incriminate themselves either as they are being arrested, while in the back of the squad or during the "booking" process before any interrogation takes place. Trained law enforcement officers know this, so they will leave the drama to Lennie, opting instead to wait until the law actually requires them to read the Miranda rights before they do so.

### Election

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Tweeting red-faced apologies the next day when notified they had broken the law.

### How much can I individually give to a candidate? Can I give that amount to more than one candidate?

In the Presidential and Senate races, the limits are \$2,500 per election. The primary and the

general election are considered separate elections, so you can give a total of \$5,000 to a federal candidate over the course of the election (assuming he or she wins a primary election). You can give to multiple candidates, as long as your total contributions to all federal candidates do not exceed \$30,800.

In Wisconsin, you can contribute \$1,000 to a State Senate candidate and \$500 to an Assembly candidate. You can contribute to

multiple candidates, as long as your total contributions to Wisconsin candidates (excluding early recall contributions, before the election was certified on March 30) for the calendar year do not exceed \$10,000.

### What does the Supreme Court "Citizens United" decision mean to me?

It means you will see a lot of television ads touting how so-and-so has ruined the world by

killing jobs or taking away rights. Basically, the decision opened up political advertising to unlimited spending by corporations.

Unfortunately, having been given the First Amendment green light, all indications are that corporations, unions and other large donors will likely blind us with repetitive negative ads rather than meaningful dialogue.

## THE REAL TAXES IN THE NEW HEALTH CARE LAW



By Allan T.  
Young

The U.S. Supreme Court recently upheld the constitutionality of the Patient Protection and Affordable Care Act on the basis that the individual mandate is a tax. Whether or not the mandate is a tax is debatable.

But to help pay for health care reform, the PPACA does impose two new taxes on individuals. Both new taxes are effective on January 1, 2013.

The first new tax is an additional 0.9% employee Medicare tax on compensation and self employment income received in excess of \$200,000 for single filers and \$250,000 for joint filers. These thresholds are not indexed for inflation. Over time, more and more taxpayers will be subject to the tax.

If an employee's compensation exceeds the threshold, the employer must withhold the addi-

tional 0.9% Medicare tax. However, for married employees, the employer may ignore compensation received by the employee's spouse. In that case, the tax is paid with the couple's federal income tax return.

For example, if one spouse earns \$200,000 and the other earns \$100,000, their combined salaries are \$300,000. That exceeds the \$250,000 threshold. \$50,000 of joint salaries is subject to the additional 0.9% Medicare tax.

However, because neither spouse's salary exceeds the threshold, neither employer is required to withhold the additional 0.9% Medicare tax. Instead, the couple will pay the additional tax on \$50,000 of salary when they file their federal income tax return.

Also next year, a new Medicare tax will be imposed on investment income at a rate of 3.8%. The tax is imposed on investment income of single filers with income greater than \$200,000 and joint filers with

income greater than \$250,000. Again, the thresholds are not indexed for inflation. This tax is calculated on a taxpayer's federal income tax return.

Investment income means taxable interest, dividends, royalties, rents, net capital gains from property not used directly in a trade of business, and net income from passive activities.

The tax applies to the lesser of a taxpayer's investment income or the amount of total income in excess of the threshold.

For example, if a couple has \$300,000 of salaries and \$100,000 of capital gains, the tax will be imposed on \$100,000 of capital gains. If the couple has \$200,000 of salaries and \$100,000 of capital gains, the tax will be imposed on \$50,000 of capital gains.

Income from S Corporations and LLCs will be subject to the tax if the taxpayer does not materially participate in the business.

Generally, a taxpayer materi-

ally participates in a business if he or she works 500 hours in the business during the tax year.

There are also some secondary tests. The most useful, for a recently retired individual who still owns an interest in a business, is that the individual will be considered to materially participate for the current year if he or she worked 500 hours in the business during any five of the previous ten tax years.

Depending on the outcome of the fall elections, it is conceivable that these taxes could be repealed or amended.

But for now, to avoid or minimize paying these new taxes consider accelerating compensation to this year, triggering capital gains this year, deferring losses and deductions to next year, converting a traditional IRA to a Roth IRA this year, adding tax free bonds to your investment portfolio next year and maximizing contributions to 401(k) plans and IRA's next year.

### WALK OR RUN WITH FOS

Please join us in celebrating the life of Karen Fox by supporting the "Karen Fox Trotters," FOS' team for the 2012 Susan G. Komen Race for the Cure.

FOS will participate in the walk/run, originating from Milwaukee's Lakefront on Sunday, September 23. We are participating in memory of Karen Fox.

To support our team, go to: [www.komenmilwaukee.org](http://www.komenmilwaukee.org) and search for the "Karen Fox Trotters" team in the

"Komen Race for the Cure" area of the website.

Please contact Team Captain, Judy Janetski, at (414) 273-3939, or [jkjanetski@foslaw.com](mailto:jkjanetski@foslaw.com) for more information.

**FOS will be closed November 22nd and 23rd for the Thanksgiving Holiday.**



### FOS ON THE MOVE

FOS associate Laurna A. Jozwiak has been elected to the board of directors for the Milwaukee Young Lawyers Association (MYLA).

MYLA focuses on local charitable and educational activities, advancing the professional education of young attorneys, and promoting fellowship.

Laurna focuses her practice at FOS on family law, business law and civil litigation.



FOS shareholder Diane Szmowitz was honored as one of the 2012 Women in the Law by the Wisconsin Law Journal on June 21, 2012

The celebration dinner, attended by over 300 people, was held at the Pfister Hotel.

To see the video honoring Diane, which was played during the festivities, go to:

<http://www.youtube.com/watch?v=EiR8Iek0SSs>.



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**ARE FAMILY LIMITED PARTNERSHIPS FOR YOU?**

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By Peter J.  
White

With the estate tax exemption amount uncertain after the end this year, it is more important than ever to think about planning techniques to minimize potential estate tax liability. One technique is creating what is known as a family limited partnership ("FLP").

FLPs are used to transfer wealth from one generation, typically an older generation, to another generation, to potentially reduce estate taxes. They are particularly useful in transferring a family business, real estate, or an investment portfolio.

At the onset, the senior generation transfers asset(s) to the FLP. An FLP usually has a general partner and limited partners. The general partner, usually a corporation or limited liability company owned by the senior generation, controls the FLP and its assets.

The limited partners, usually children and perhaps grandchildren, do not have a management stake in the FLP; however, they have a profit interest in the FLP based on their number of shares.

Tax savings come in the form of a discount on the value of the limited partnership interests. Because they do not have management or control rights, the limited partnership interests cannot be liquidated on their

own. As a result, these interests lack marketability and resale ability, which leads to the interests being valued at a discount.

For example, a husband and wife transfer \$500,000 of securities to an FLP that has one general partner (50% interest) and one limited partner (50% interest). They own the general partner interest and they gift the limited partner interest to their child.

Due to the lack of marketability and control, the limited partner interest will be valued at less than \$250,000 (the outright value of the gift). The result is tax savings on the difference between \$250,000 and the fair market value of the limited

partner interest.

Especially this year, it is never too early to start future estate/tax planning.

If you own assets, particularly income producing assets, that you want to pass to family members with reduced tax consequences, FOS attorneys can help you achieve your goal.

**QUESTIONS?**

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