

Lobbying & Political Activities: Rules of the Road for Nonprofits

Thursday, April 12, 2012
12:30 p.m. – 2:00 p.m. EDT
Venable LLP, Washington, DC

Moderator:

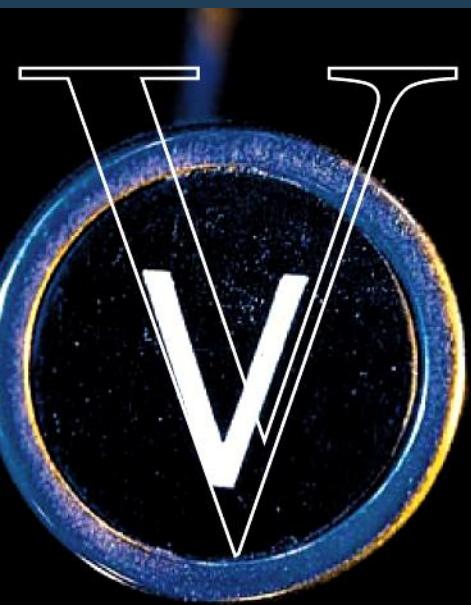
Jeffrey S. Tenenbaum

Panelists:

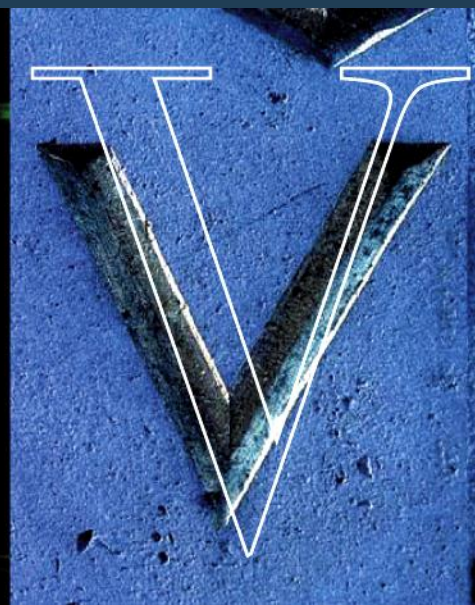
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Upcoming Events

April 20, 2012 – Good Counsel: Meeting the Legal Needs of Nonprofits (Book Event and Cocktail Reception)

May 17, 2012 – Nonprofit Contracts: Best Practices, Negotiation Strategies, Practical Tips, and Common Pitfalls

June 13, 2012 – Ten Best Practices for Protecting Your Nonprofit's Intellectual Property

For more details, please visit www.Venable.com/Nonprofits/Events.



What will we cover?

Lobbying Disclosure

- Counting Lobbying Activity
- Other LDA Reporting Issues
- State Reporting

Gifts & Entertainment

- Federal Rules
- State Issues
- Compliance

Super PACs

- History
- What is a Super PAC
- Reporting
- Coordination
- Nonprofit Contributions
- Nonprofit Independent Expenditures



Lobbying Disclosure



Tracking Lobbying Costs

- Two purposes:
 - Report on LDA
 - Tax
- Three definitions of lobbying activity:
 - Lobbying Disclosure Act
 - Tax code limits on lobbying by charities
 - Nondeductibility for businesses and associations



Choosing a Definition

- **LDA:** Any organization may use the LDA method
- **IRC Section 4911(d):** Only a 501(c)(3) that has made the 501(h) election
- **IRC Section 162(e):** Only a business, 501(c)(5), or 501(c)(6)



Three Lobbying Definitions

| Type of Lobbying | LDA | Charities | Ass'n |
|------------------|-------|-----------|--------|
| State | No | Yes | Yes |
| Grassroots | No | Yes | Yes |
| Legislative | Yes | Yes | Yes |
| Executive | Broad | No | Narrow |
| International | No | Yes | Yes |



LDA Lobbying

- Communications with covered official regarding:
 - Formulation, modification, or adoption of Federal legislation (including legislative proposals)
 - Formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government
 - Administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license)
 - Nomination or confirmation of a person for a position subject to confirmation by the Senate



Administrative Contacts

Official

President

VP

WH Office of EOP

EOP

ES Level 1

ES Levels 2-5

Flag Officers

Schedule C

LDA

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Ass'n

Yes

Yes

Yes

Yes ² most senior in agency

Yes and deputy

No

No

No



Legislation

| Officials | LDA | Charities | Ass'n |
|----------------------------------|-----|-----------|-------|
| Reps & Senators | Yes | Yes | Yes |
| Congress-Staff | Yes | Yes | Yes |
| LDA Covered Officials | Yes | Yes | Yes |
| Other Government | No | Yes | Yes |
| State Legislators & Staff | No | Yes | Yes |
| State Executive Branch Officials | No | Yes | Yes |



501(c)(3) Lobbying

- Attempting to influence specific legislation
- Disclosure -
 - **Costs to the IRS:** Federal, State, Local, International, and Grassroots
 - **Lobbyists, Issues, and Contacts to Congress in LDA Reports:** Federal



501(c)(3) Lobbying

- “No substantial part” test:
 - Vague, facts and circumstances test
 - Strict sanctions
 - revocation of exempt status
 - excise tax on organization and its managers (5% of lobbying expenditures)
- 501(h) expenditure test:
 - Lobbying activity measured solely by the amount of money spent on lobbying
 - Lobbying will not be considered “substantial” provided organization does not exceed expenditure cap
 - Clear definitions of lobbying and exclusions for specific activities
 - Must affirmatively elect to use by filing IRS Form 5768
 - Flexible sanctions
 - 25% tax on amount spent over the cap
 - No tax penalties imposed on organization managers for exceeding the limits
 - Revocation of exempt status results only if the organization exceeds 150% of the cap over a four-year consecutive averaging period



501(c)(6) Lobbying

- Attempting to Influence Specific Legislation
- Intervening in Elections
- Grassroots
- Administrative Actions or Positions
- Disclosure -
 - **Costs to the IRS and Members:** All Legislation, Grass-roots, Administrative Action, and Election Intervention
 - **Lobbyists, Issues, and Contacts to Congress in LDA Reports:** Federal



LDA vs. IRC Pros/Cons

■ LDA Definitions

- **Pro:** Simple, same definitions and covered officials
- **Con:** May require more disclosure

■ IRC Definitions

- **Pro:** Calculate expenditures only once
- **Pro:** Most agency lobbying is not LDA-reportable
- **Pro:** Likely fewer employee lobbyists
- **Con:** Complicated, must still use LDA definitions for Capitol Hill lobbying
- **Con:** Inflated expenditures



Lobbying Reports



Who is a Lobbyist?

- More than one lobbying contact

AND

- More than 20% of time on lobbying activities in three-month period



Lobbying Activities

- Contacts + efforts in support of contacts:
 - Preparation and planning activities
 - Research and other background work intended for use in contacts (at the time it is performed)
 - Coordination of lobbying activities



Quarterly LD-2 Reports

- Amount spent on lobbying
 - Rounded to nearest \$10,000
- Individual lobbyists who lobbied
- Issues lobbied
- House of Congress or agency lobbied



The Amount Spent

- Employee Time
- Direct Costs
- Outside Lobbyists
- Lobbying-Related Dues
- Overhead



Employee Time

- Will depend on method used
- Time spent on lobbying, which includes:
 - Legislation (Federal (LDA) and state (IRC))
 - Grassroots Lobbying (IRC)
 - Executive Branch Lobbying
 - Political Activities (e.g., PAC) (IRC)
 - All Supporting Activities
- This includes all employees, even those not listed as lobbyists



Semiannual LD-203 Reports

- Semiannual disclosure of “political” contributions
- Certification of Gift Rule compliance
- By whom:
 - Organization
 - Each registered lobbyist must file the report
- Online system



What Gets Reported

Federal Election Campaign Act

Honoring & Recognizing

Meetings

Presidential Library

Presidential Inaugural Committee



Federal Election Campaign Act

- All contributions aggregating \$200 or more during the semiannual period given to:
 - Federal candidates
 - Leadership PACs
 - Political parties
- Must report the date and amount of each contribution
- Does not include state candidates or PACs



Meeting Expenses

- To pay the costs of a
 - Meeting
 - Retreat
 - Conference
 - Other similar event

held by, or in the name of, one or more covered legislative or executive branch officials



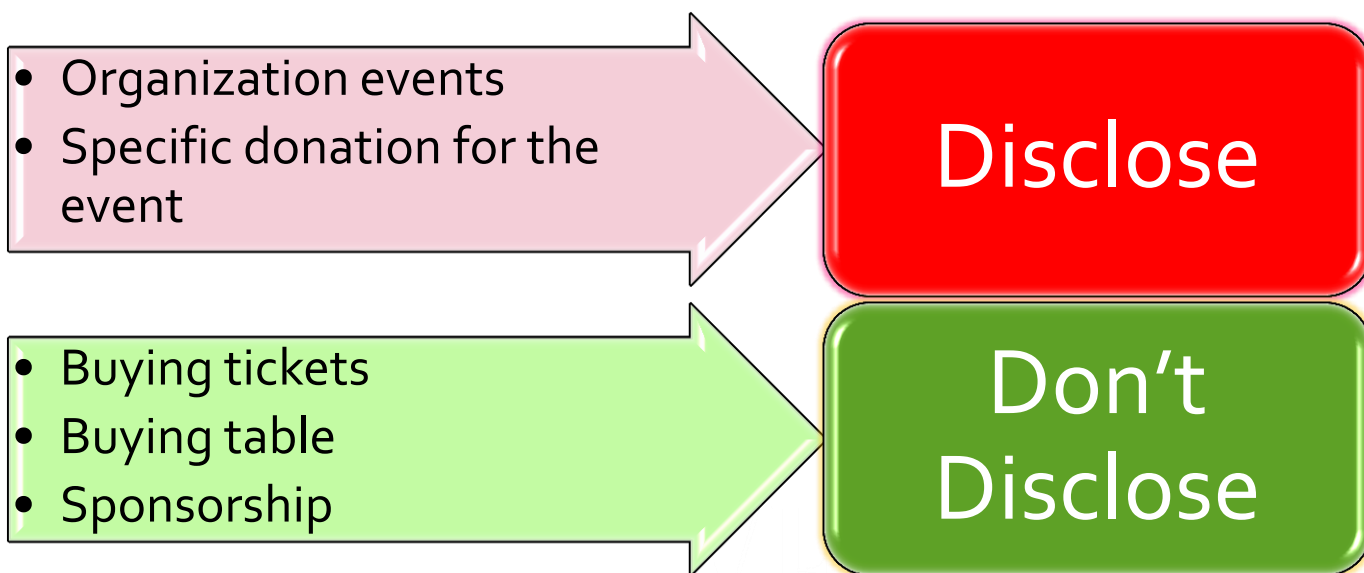
Honorary Expenses

- Payments to entity named for covered legislative branch official
 - Endow a chair
- Payment in recognition of legislative official
 - Honorarium to charity
- Does not include covered executive officials



Honoring & Recognizing

To pay the cost of an event to **honor** or **recognize** a covered executive or legislative branch official



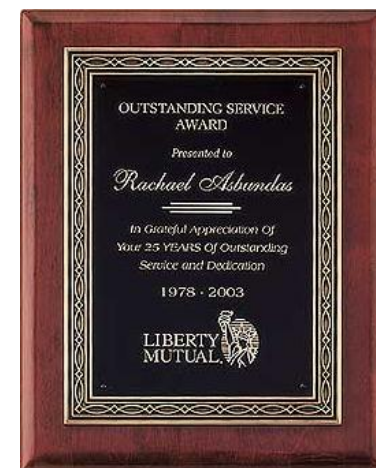
Things Not Disclosed

- Things that do not make an event one to honor or recognize a covered official
 - Honorary co-hosts
 - “The Honorable”
 - Speaking events
 - Attendee or special invitee



What is Reported?

- Costs of specific items (plaques, awards, etc.)
- Costs of the event
 - May not segregate costs
 - Dinner versus reception
- May list payee as “various vendors”
 - Must specifically list costs for gifts



Examples



- Honorary Hosts
- “The Honorable”
- Not an event to honor or recognize
- No Disclosure

Examples

An event to honor or recognize:
If your event, disclose

PLEASE JOIN

PRODUCERS
David L. Cohen • Matt Gerson • Preston Padden

OUR RED CARPET HOST
Hon. Patrick Leahy • Hon. Mike Pence • Hon. Al Franken •
Hon. Lamar Smith • Hon. Mark Warner

AND THE
Tracy's Kids Steering Committee

FOR A

Premiere Event
Featuring films nominated for Hollywood's Most Prestigious Awards

AND THE

Presentation of the 6th Annual Courage Award

TO
The Honorable Sue Myrick

Tuesday, February 8, 2011

RECEPTION * 6:00 PM BUFFET DINNER * 6:30 PM

LUCKY STRIKE RESTAURANT ADJACENT TO THE VERIZON CENTER (IN THE REGAL THEATRE GALLERY PLACE BUILDING)

SCREENINGS * 7:30 PM *PROMPTLY*
REGAL THEATRE GALLERY PLACE

701 7TH STREET, NW, BETWEEN G AND H STREETS * WASHINGTON, DC (NEXT TO THE VERIZON CENTER)
Validated parking at the Gallery Place Parking Garage (located on 6th Street, NW, between G and H Streets)



Examples



*I/we will contribute to **And the Winner Is... Tracy's Kids** as a*

☐ **STUDIO HEAD ★ \$100,000**

- ★ Corporate logo prominently displayed as a **STUDIO HEAD** on event signage.
- ★ Corporate logo and identification prominently displayed at event.
- ★ Acknowledgment during Speaking Program.
- ★ Acknowledgment and corporate logo in the events section of the Tracy's Kids website.
- ★ **100 TICKETS TO THE RED CARPET RECEPTION, AWARD CEREMONY AND SCREENINGS.**

☐ **PRODUCERS ★ \$50,000**

- ★ Corporate logo prominently displayed as a **PRODUCER** on event signage.
- ★ Acknowledgment during Speaking Program.
- ★ Acknowledgment and corporate logo in the events section of the Tracy's Kids website.
- ★ **50 TICKETS TO THE RED CARPET RECEPTION, AWARD CEREMONY AND SCREENINGS.**

☐ **DIRECTORS ★ \$25,000**

- ★ Corporate name listed as a **DIRECTOR** on event signage.

Ticket
purchase or
contribution?
Not careful
phrasing



Solicitations by Officials

- To an entity:
 - Established
 - Financed
 - Maintained
 - Controlled
 - Designated by

Covered executive or legislative branch officials



Solicitations by Officials

- “Designated” by a covered official
 - Must have some role in governance
 - “Honorary” or “ex officio” does not equal controlled
 - Voting Board membership is enough
 - Organization established before becoming covered official need not be reported (if no ongoing relationship)



Examples

THE STATE SOCIETY OF IOWA
In conjunction with
 The Capital Area Iowa Club University of Northern Iowa Alumni Association
 Iowa State University Alumni Association Drake University National Alumni Association

Event Sponsors
 American Cancer Society Life Insurers
 Honeywell
 National Beer Wholesalers Association

With Honorary Hosts
 Governor Chet Culver
 Senator Chuck Grassley
 Senator Tom Harkin
 Congressman Leonard Boswell
 Congressman Tom Latham
 Congressman Steve King
 Congressman Bruce Braley
 Congressman David Loebsack

Invite you to

IOWA
Disaster Relief
2008

**A FUNDRAISER TO BENEFIT
 THE VICTIMS OF IOWA'S RECENT FLOODS AND
 TORNADOES**

**SUGGESTED MINIMUM
 CONTRIBUTION \$20**
Date: Monday June 23, 2008
Time: 6:00-8:00
Location: 101 Constitution Avenue, NW,
 Rooftop, Washington, DC
Questions: social@iowasociety.org



All proceeds will be given to the relief efforts
 The State Society of Iowa is a 501(c)(4) tax-exempt organization
 Tax deductible charitable giving options are available

Just honorary co-hosts



Examples

I'm on the board

From: [REDACTED] [mailto:[REDACTED]]
Sent: Tuesday, June 17, 2008 6:50 PM
Subject: Iowa Disaster Relief Event--Monday, June 23rd

Hi, everyone,

I apologize for the mass email, and I know some of you are receiving this twice. I'm on the board of the [REDACTED]. We have put together an event to benefit Iowa's disaster victims this Monday, June 23rd at 101 Constitution.

I hope you'll all attend, or at least forward the invitation on to your DC contacts.

Thanks,

[REDACTED]

 [REDACTED]
 Director of Scheduling

Senator [REDACTED]

Contribution
 "designated" by a
 covered official



State Lobbying Issues



State Lobbying

Frequent
Changes

No Uniform
Rules

Different
Triggers



Scope of Lobbying

- Definition of “lobbying”
 - Legislative
 - Applies to virtually all states
 - Scope may be narrow or broad
 - Executive
 - May be limited to legislation
 - May include most administrative functions
 - Procurement



Who Registers?

- Outside lobbyists
- In-house lobbyists
- The organization itself
 - For its own employees
 - For its contractors as a “lobbyist principal” or “lobbyist employer”



Thresholds for Registration

- Amount of time
 - Percentage
 - Hours worked
- Amounts of money
 - Portion of salary spent on lobbying
 - Amount spent on gifts



Reporting

- Timing of reports
- Method of reports
- Content of the reports
- Approval of the reports



Reporting

- Who reports?
 - Individual lobbyist
 - Lobbyist employer
 - Outside lobbyist
- All may need to approve the reports of the others



Reporting

- Issues lobbied
 - May require some detail
- Contacts made
 - Again, may go into detail
- Amount spent on lobbying
 - Internal costs
 - E.g., salary, travel, etc.
 - Gifts given



QUESTIONS?



Gifts and Entertainment



Federal Rules



Giving Gifts:



Congress

- Organization:
 - No, unless exception
- Lobbyist:
 - No, unless exception
- Others:
 - <\$50 or exception



Career

- Organization:
 - \$20 or exception
- Lobbyist:
 - \$20 or exception
- Others:
 - \$20 or exception



Administration

- Organization:
 - No, unless exception
- Lobbyist:
 - No, unless exception
- Others:
 - \$20 or exception



Exemptions for Gifts



Personal Friendship

- Cannot expense gifts
- Look to history of relationship
 - Mutual exchange of gifts
 - Duration and formation
 - Similar gifts to others
- Allows gifts up to \$250 (without waiver) for legislative branch—no limit on executive



Widely Attended Events

Invitee



Congress

Administration



Career

Event

Speaker at the event
or determine that
attendance is related
to official duties

Speaker

In the interest of the agency
because it will further agency
programs and operations or
speak at the event

Number of People

More than 25
non-Hill

If not sponsor,
more than 100;
if sponsor, no
number

If not sponsor,
more than 100;
if sponsor, no
number

Audience

Individuals from throughout
an industry or profession or
represent a wide range of
persons interested in a given
matter

Diversity of
views or
interests will be
present

Diversity of
views or
interests will be
present



Widely Attended Events

- Allows for full meal
- Entertainment that is part of the event
 - Excludes entertainment that is collateral to the event
- Waiver of attendance fees (limit on executive branch)
- Examples:
 - Conferences
 - Trade Shows
 - Seminars



Receptions



Congress

- Food or drink of nominal value
- Offered other than as part of a meal



Administration/Career

- Modest refreshments
- Not part of a meal
- Coffee, donuts, etc.

No limit on number of attendees

May not be one-on-one



Charitable Events

- House & Senate
 - Charitable fundraiser
 - Not just “congratulatory” celebration
- Executive
 - No special rule, look to widely attended
- Invitations
 - House: allows for suggestions; no direct contact
 - Senate: harder line



State Rules



Vary Widely

- Exemptions
- Limits
- Lobbyist Gift Bans
- Lobbyist Registration
- Reporting
- Notifying Recipients



Compliance with Gift Rules

- Know state rules
- Include on receipts/reimbursement forms:
 - Reimbursement for employee's portion of meal only; guest paid for own meal
- Review lobbying firm bills for meals/gifts
 - Include provisions in contracts
- Train Accounting to prevent reimbursement
- Train employees



QUESTIONS?

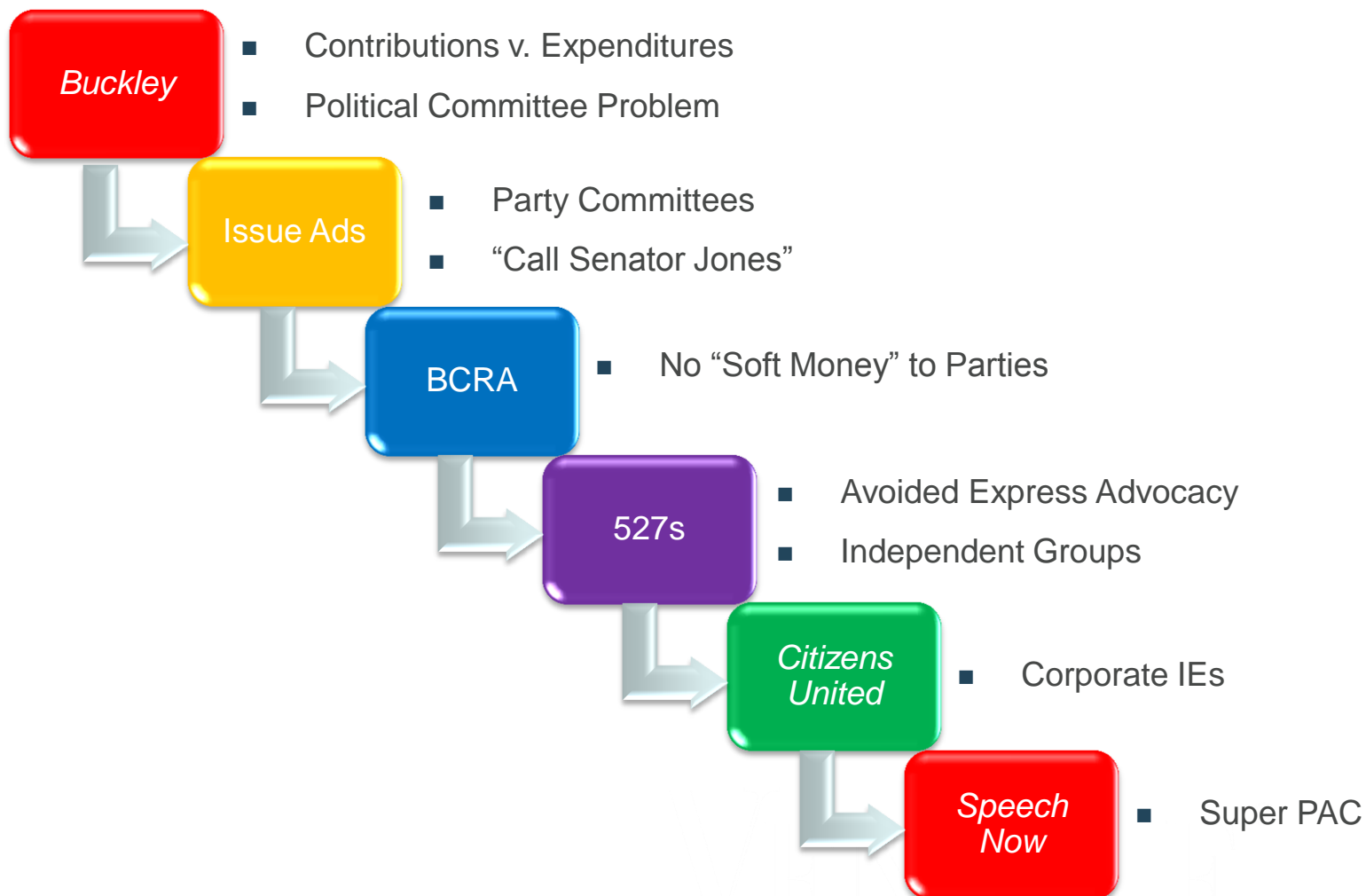


The legal overview

SUPER PACS



History





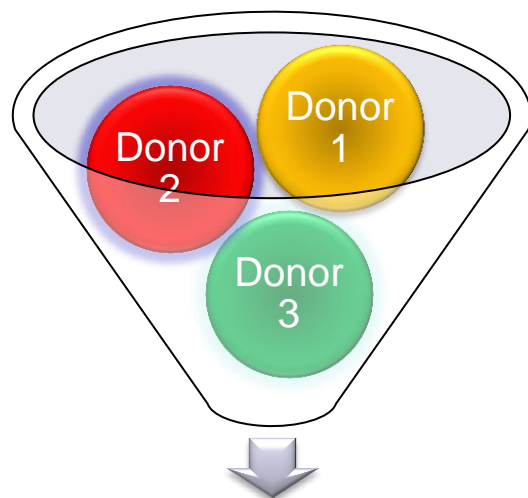
What is an IE Committee?

- Contributions In
 - Unlimited
 - Corporate
- No Contributions Out
- Disclosed to FEC
- No Coordination



Disclosure

- 24- and 48-Hour Reports of Expenditures
- Quarterly or Monthly Reports of Contributions and Expenditures



**CONTROVERSIAL
DONORS**

501(c)(4) disclosed as donor



Coordination

| |
|------------|
| In General |
| |

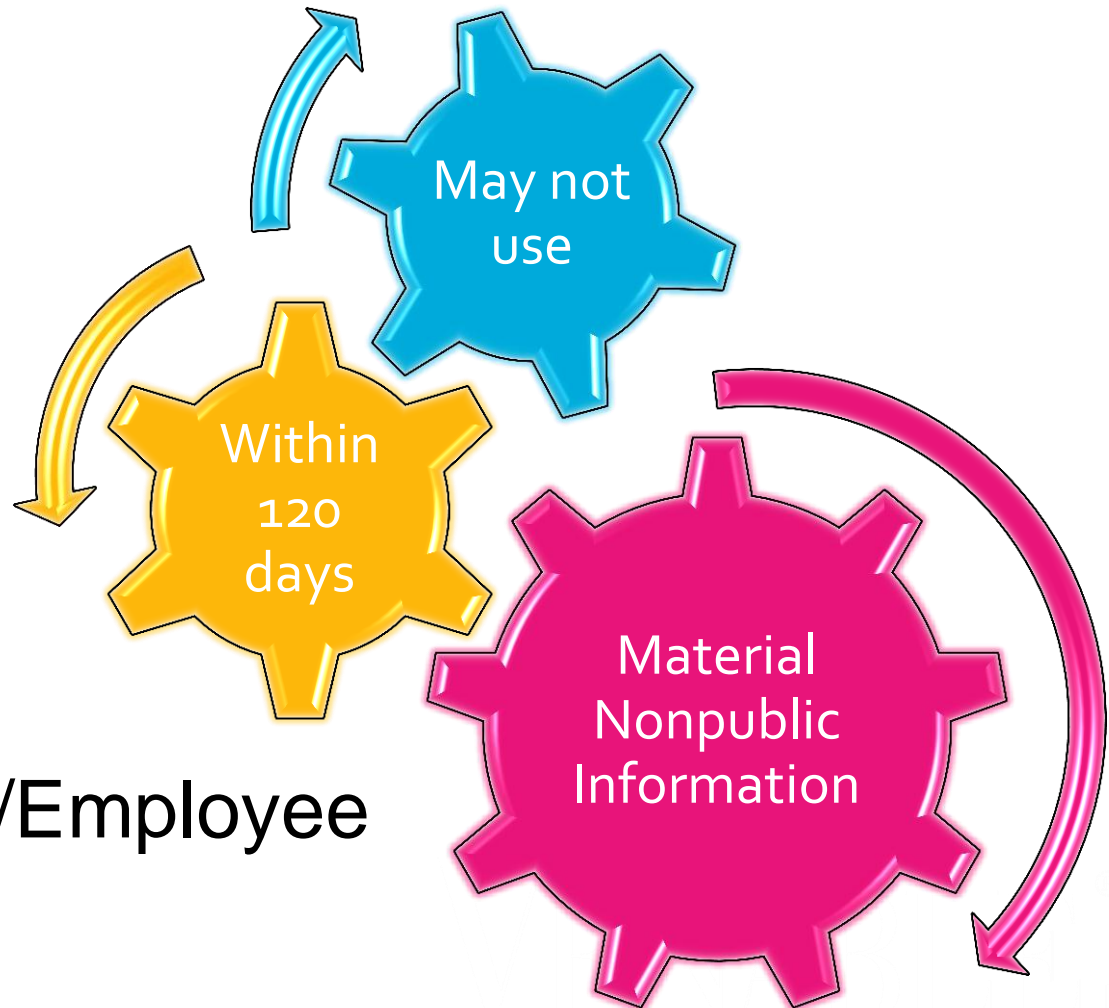
Request
or
Suggestion

Material
Involvement

Substantial
Discussion



Coordination



Vendor/Employee



Candidate Fundraising

- Appear at events
- Call donors
- Share contributor information
- Cannot ask for more than legal limits



Paying for IEs Directly

- Cannot be done by 501(c)(3)s
- Disclosure
 - IE Reports
 - EC Reports
- Donor Issues
- Tax Limits
- Political Committee



Contributing to IEs

- Tax limits
- Donor disclosure
- Solicitations



QUESTIONS?

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