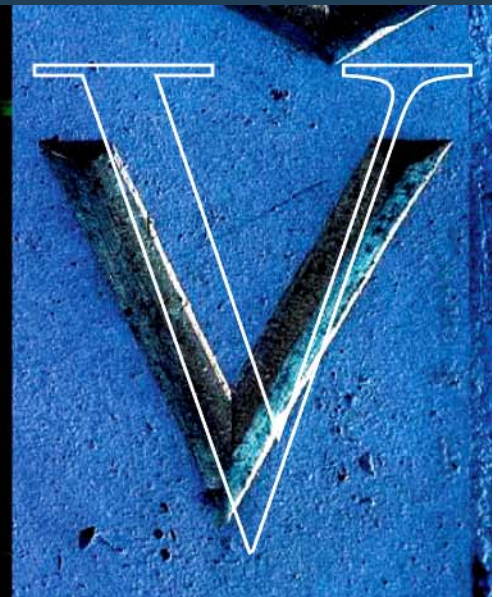
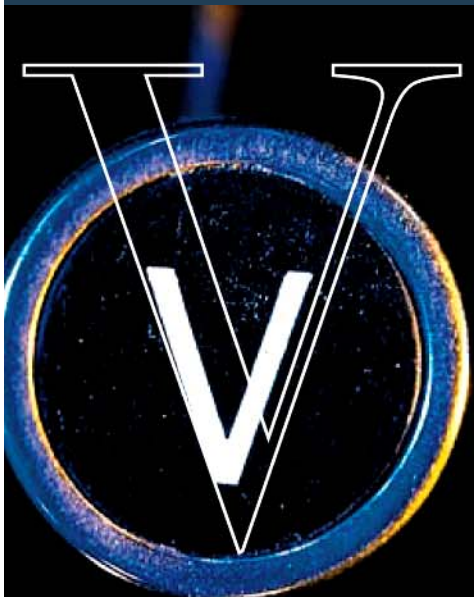


VENABLE[®]_{LLP}

legal issues in grassroots lobbying

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Overview of Grassroots Issues

- Disclosure
- Tax
- Campaign Finance
- Advertising



Disclosure Issues

- Lobbying Disclosure Act
 - Grassroots not disclosed on LDA reports
 - UNLESS reporting using Method B or C
- State Disclosure
 - State law often treats grassroots or “indirect” lobbying as lobbying
 - Some states have separate registration and reporting regimes for grassroots lobbying



Tax Issues

- Different Rules
 - Trade Associations
 - Must tell members what percentage of dues are nondeductible
 - 501(c)(3) Organizations
 - Limits on lobbying
 - Businesses
 - May not deduct lobbying expenses



Tax Issues

- Section 162(e)
 - Applies to associations and corporations
 - Lobbying broadly defined
 - Any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters, or referenda.



Tax Issues

- 501(c)(3) Organizations
 - Substantial part of activities may not be lobbying
 - Two methods
 - Facts and circumstances test – virtually no definition
 - 501(h) election – specific definition, hard-dollar caps



Tax Issues

- 501(h) Election Definition
 - A communication to the public that
 - (1) refers to specific legislation,
 - (2) reflects a point of view on the legislation, and
 - (3) encourages the recipients to *take action* with respect to the specific legislation by contacting their legislators.



Tax Issues

- 501(h) Election Exclusions
 - An organization's communication with its members about specific legislation – even if the communication takes a position on that legislation – is not considered direct or grassroots lobbying so long as the communication does not directly ask the organization's members or others to take action with respect to the legislation.



Tax Issues

- 501(h) Election Exclusions
 - An organization's communication with legislators about the organization's own existence, powers, or tax-exempt status is not direct lobbying.



Tax Issues

- 501(h) Election Exclusions
 - Only those activities upon which an organization spends money will count as lobbying for purposes of the expenditure test. Thus, lobbying by volunteers is considered a lobbying expenditure only to the extent that the nonprofit incurs expenses associated with the volunteers' lobbying.



Tax & Disclosure Issues

- If organization uses Methods B or C to report lobbying expenses, then it must include grassroots expenses
- Would include state grassroots expenses



Campaign Finance Issues

- Electioneering Communications
 - An electioneering communication is any broadcast, cable or satellite communication that fulfills **each** of the following conditions:
 - The communication refers to a clearly identified candidate for federal office;
 - The communication is publicly distributed 60 days before general or 30 days before primary election for the office that candidate is seeking; and
 - The communication is targeted to the relevant electorate (U.S. House and Senate candidates only).



Campaign Finance Issues

- Safe Harbor
 - The communication does not mention an election, candidacy, political party, opposing candidate, or voting by the general public;
 - The communication does not take a position on the qualifications, fitness for office, or character of a candidate; and
 - The communication focuses on a legislative, executive, or judicial issue and either urges the candidate to take a position or action with regard to that issue or urges the public to adopt a position and contact the candidate with respect to the issue.



Campaign Finance Issues

- Example
 - Call Senator X and tell him to vote no on S. 123.
 - Bob Smith, the Whatever Party candidate for Senate has said that he will starve poor children by voting yes on S. 123. Call him and tell him to vote no on S. 123.



Campaign Finance Issues

- What if a Communication is an Electioneering Communication?
 - May not be paid for with corporate funds
 - E.g., trade association general funds
 - E.g., corporate contributions
 - E.g., corporations themselves may not fund them



Advertising Issues

- Media
 - Must identify sponsor
- Email
 - Should not be a CAN-SPAM issue
- Phone
 - Calls to cell phones prohibited



Legal Issues in Grassroots Lobbying

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