

# 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:**

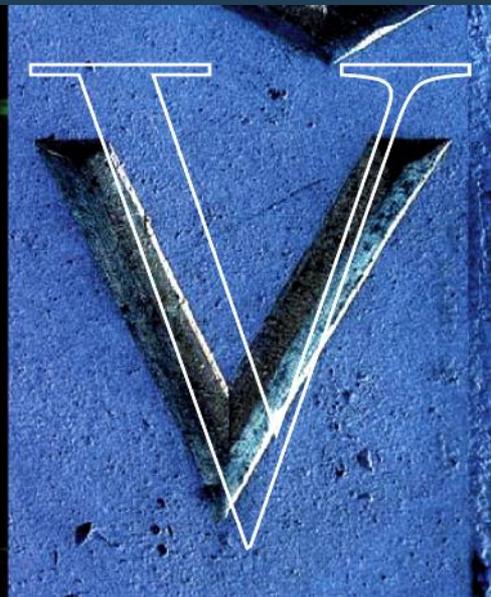
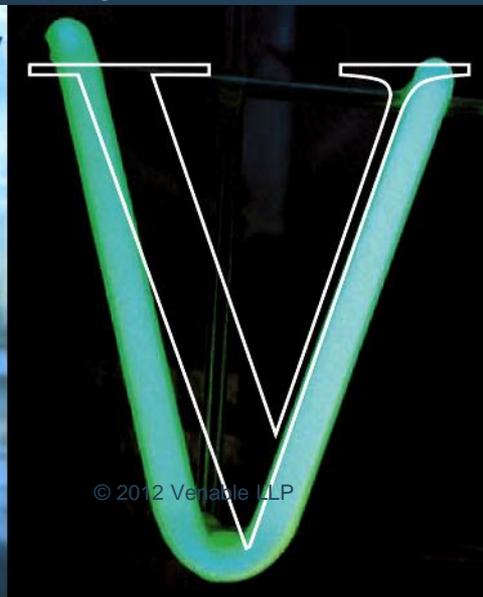
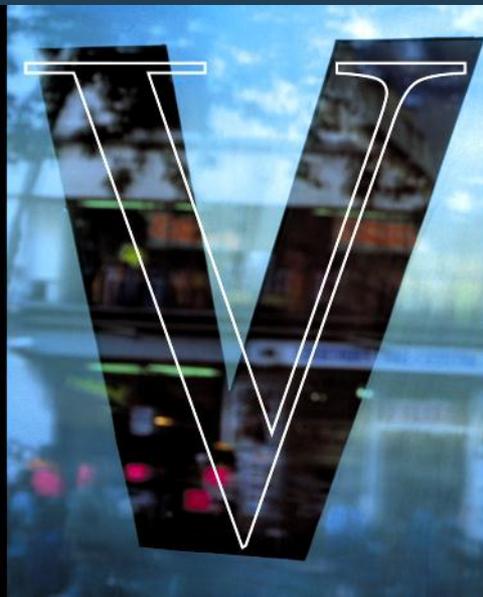
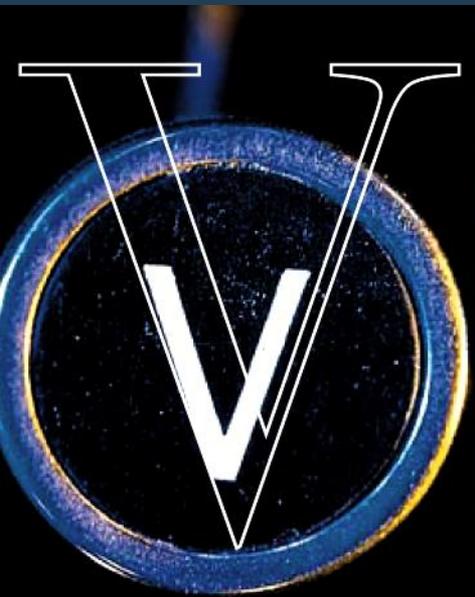
Jeffrey S. Tenenbaum

**Panelists:**

Ronald M. Jacobs

Jeffrey J. Hunter

Alexandra Megaris



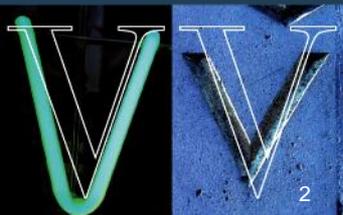
## Upcoming Events

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](http://www.Venable.com/Nonprofits/Events).



# What will we cover?

## Lobbying Disclosure

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

## Gifts & Entertainment

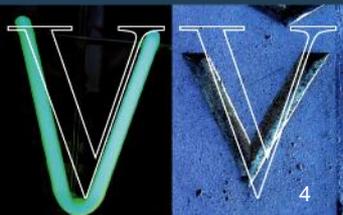
- Federal Rules
- State Issues
- Compliance

## Super PACs

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

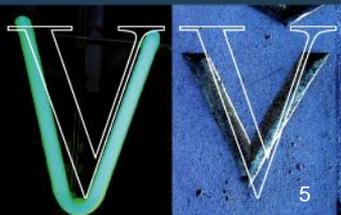


# Lobbying Disclosure



# 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



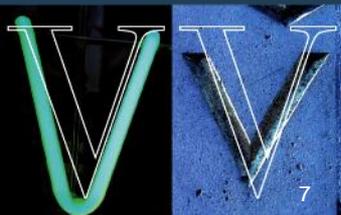
## Choosing a Definition

- **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 <sup>2</sup> most senior in agency

Yes and deputy

No

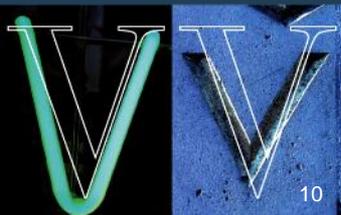
No

No



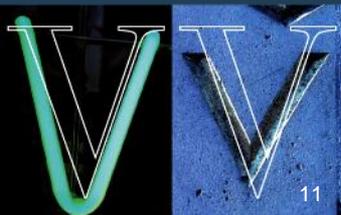
# Legislation

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



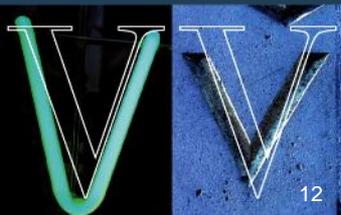
## 501(c)(3) Lobbying

- 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



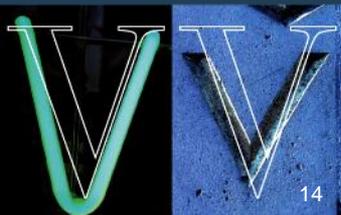
## 501(c)(6) Lobbying

- 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

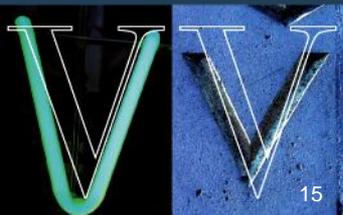


# LDA vs. IRC Pros/Cons

- 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

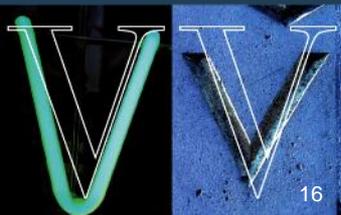


## Who is a Lobbyist?

- More than one lobbying contact

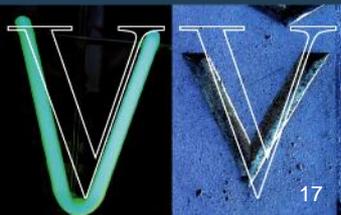
AND

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



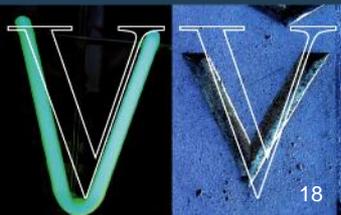
# Lobbying Activities

- 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



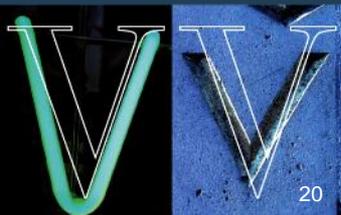
# The Amount Spent

- 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

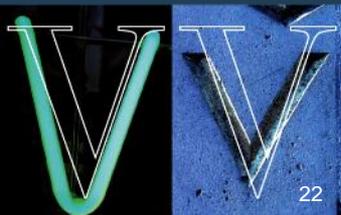
Federal Election Campaign Act

Honoring & Recognizing

Meetings

Presidential Library

Presidential Inaugural Committee



# Federal Election Campaign Act

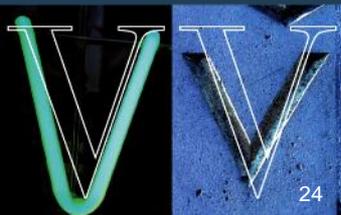
- All contributions aggregating \$200 or more during the semiannual period given to:
  - Federal candidates
  - Leadership PACs
  - Political parties
- Must report the date and amount of each contribution
- Does not include state candidates or PACs



# Meeting Expenses

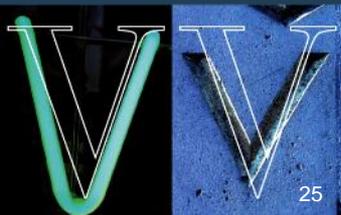
- To pay the costs of a
  - Meeting
  - Retreat
  - Conference
  - Other similar event

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



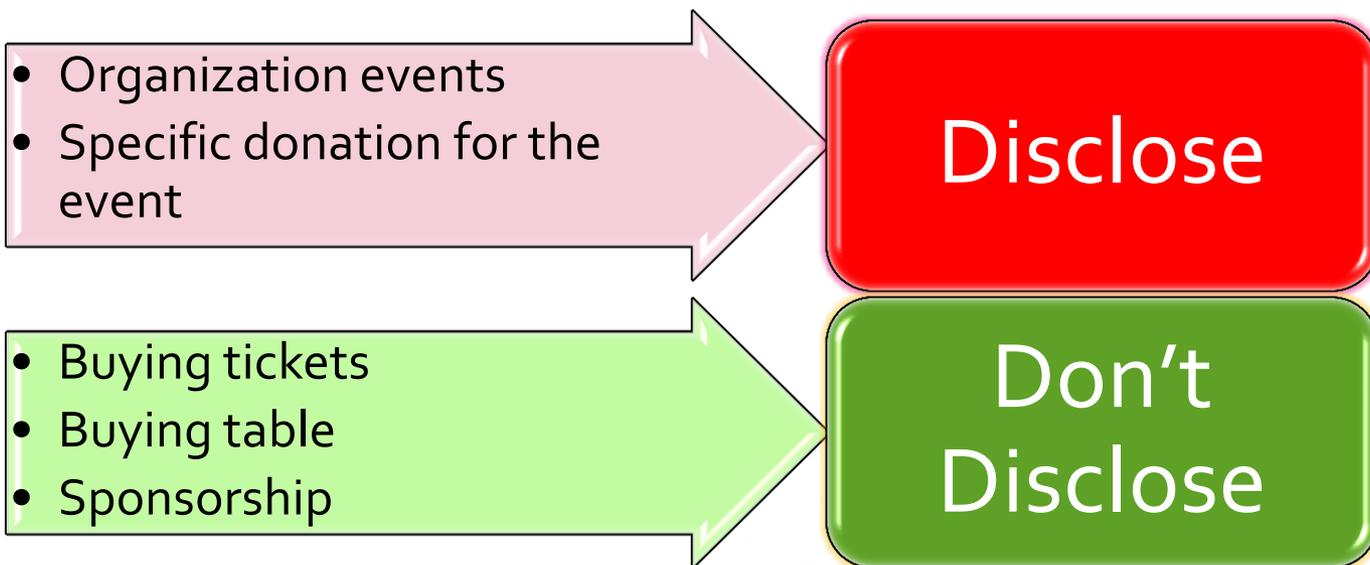
# Honorary Expenses

- 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



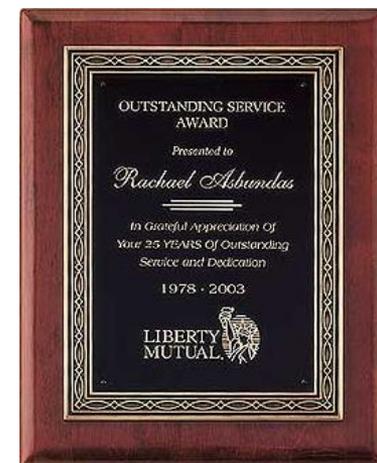
## Things Not Disclosed

- 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

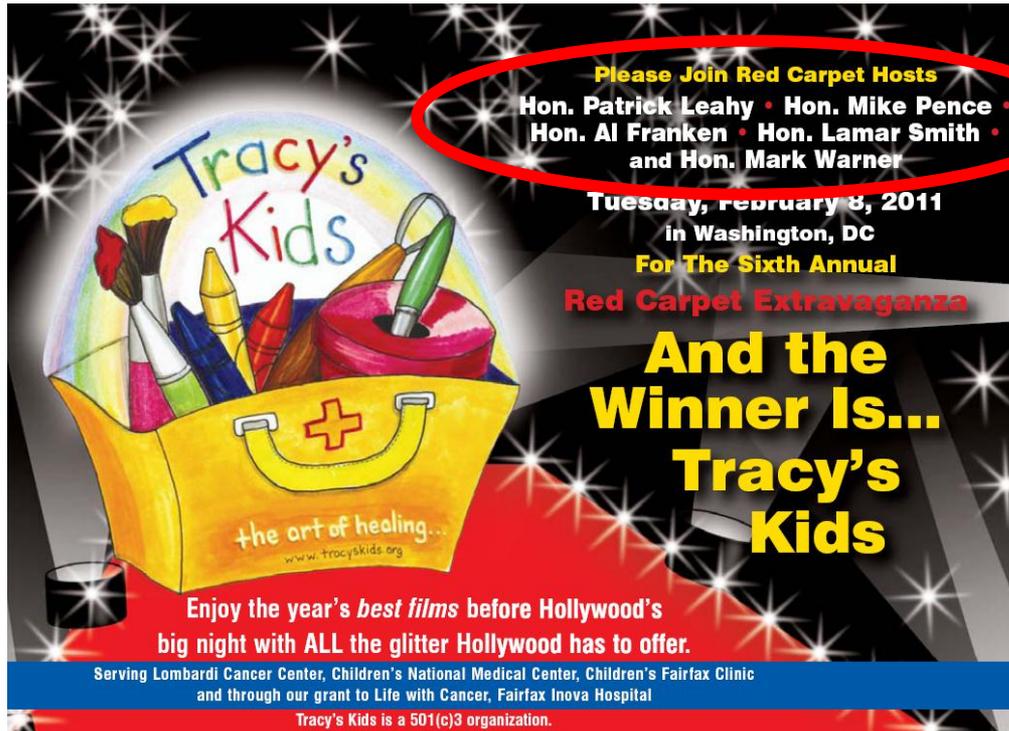


# What is Reported?

- 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



The poster features a yellow bag with a red cross on the front, filled with various art supplies like brushes, crayons, and markers. The text on the bag reads "Tracy's Kids" and "the art of healing... www.tracyskids.org". To the right of the bag, the text reads: "Please Join Red Carpet Hosts Hon. Patrick Leahy • Hon. Mike Pence • Hon. Al Franken • Hon. Lamar Smith • and Hon. Mark Warner". Below this, it says "Tuesday, February 8, 2011 in Washington, DC For The Sixth Annual Red Carpet Extravaganza And the Winner Is... Tracy's Kids". At the bottom, it says "Enjoy the year's best films before Hollywood's big night with ALL the glitter Hollywood has to offer." and "Serving Lombardi Cancer Center, Children's National Medical Center, Children's Fairfax Clinic and through our grant to Life with Cancer, Fairfax Inova Hospital Tracy's Kids is a 501(c)3 organization."

**Please Join Red Carpet Hosts**  
Hon. Patrick Leahy • Hon. Mike Pence •  
Hon. Al Franken • Hon. Lamar Smith •  
and Hon. Mark Warner

**Tuesday, February 8, 2011**  
in Washington, DC  
**For The Sixth Annual**  
**Red Carpet Extravaganza**

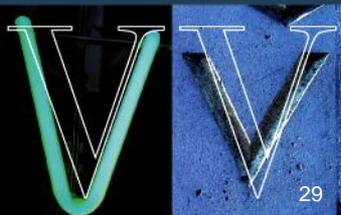
**And the Winner Is...  
Tracy's Kids**

Enjoy the year's *best films* before Hollywood's  
big night with **ALL** the glitter Hollywood has to offer.

Serving Lombardi Cancer Center, Children's National Medical Center, Children's Fairfax Clinic  
and through our grant to Life with Cancer, Fairfax Inova Hospital

Tracy's Kids is a 501(c)3 organization.

- 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

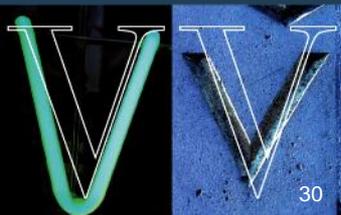
LUCKY STRIKE RESTAURANT ADJACENT TO THE VERIZON CENTER (IN THE REGAL THEATRE GALLERY PLACE BUILDING)

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)



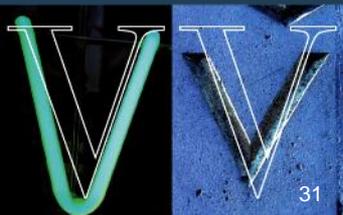
# Examples



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

Ticket purchase or contribution? Not careful phrasing

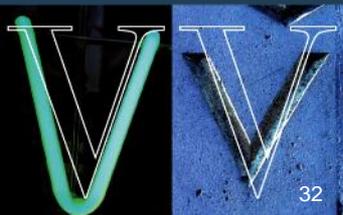
- STUDIO HEAD ★ \$100,000**
  - ★ Corporate logo prominently displayed as a *STUDIO HEAD* on event signage.
  - ★ Corporate logo and identification prominently displayed at event.
  - ★ Acknowledgment during Speaking Program.
  - ★ Acknowledgment and corporate logo in the events section of the Tracy's 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.



# 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**

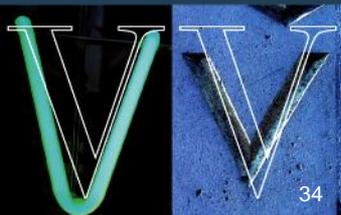
**SUGGESTED MINIMUM  
CONTRIBUTION \$20**

**Date:** Monday June 23, 2008  
**Time:** 6:00-8:00  
**Location:** 101 Constitution Avenue, NW,  
Rooftop, Washington, DC  
**Questions:** [social@iowasociety.org](mailto:social@iowasociety.org)



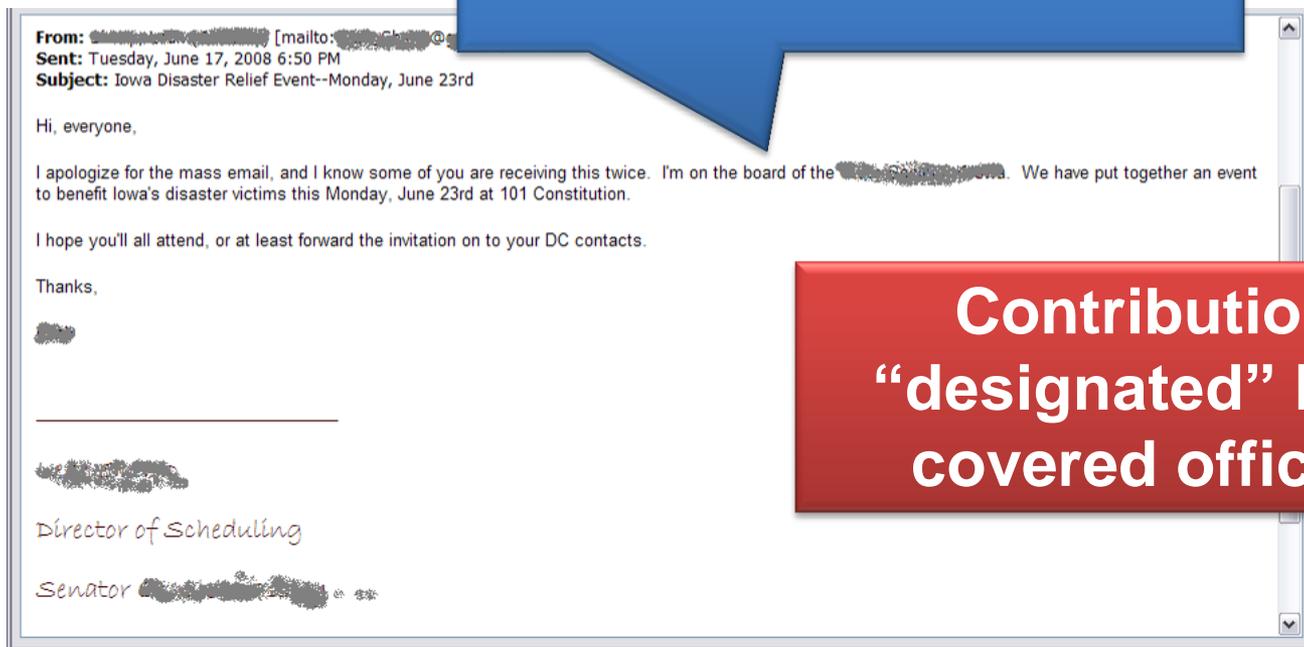
All proceeds will be given to the relief efforts  
The State Society of Iowa is a 501(c)(4) tax-exempt organization  
Tax deductible charitable giving options are available

**Just honorary co-hosts**

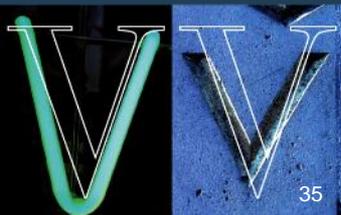


# Examples

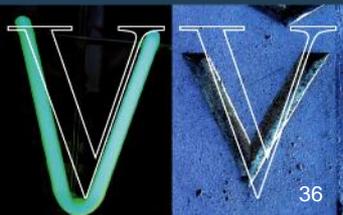
I'm on the board



Contribution  
 "designated" by a  
 covered official



# State Lobbying Issues

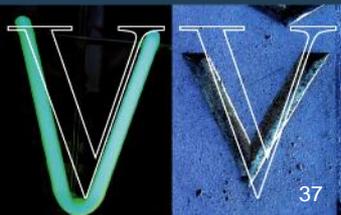


## State Lobbying

Frequent  
Changes

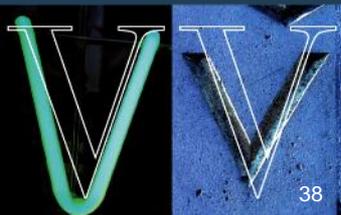
No Uniform  
Rules

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



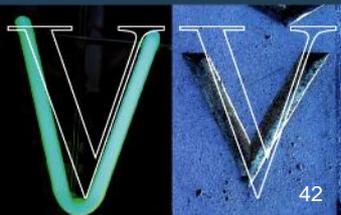
# Reporting

- 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

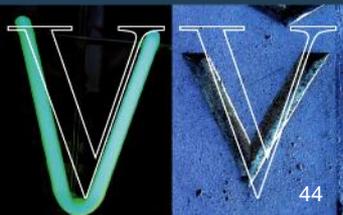


# Reporting

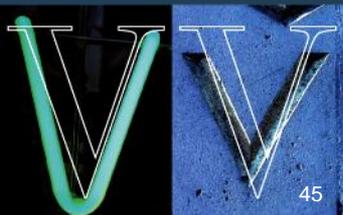
- Issues lobbied
  - May require some detail
- Contacts made
  - Again, may go into detail
- Amount spent on lobbying
  - Internal costs
    - E.g., salary, travel, etc.
  - Gifts given



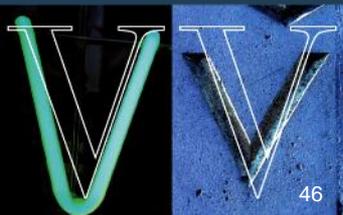
# QUESTIONS?



# 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

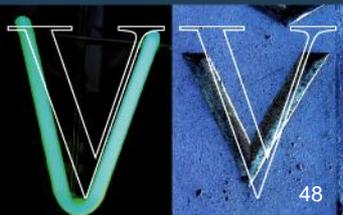


## Administration

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

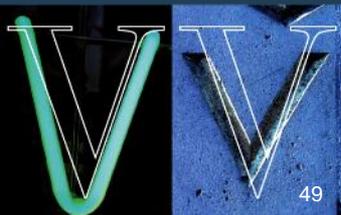


# Exemptions for Gifts



# 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

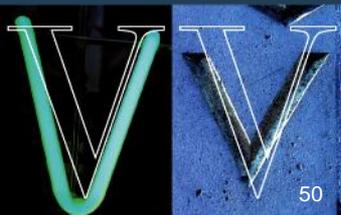
If not sponsor, more than 100; if sponsor, no number

## 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



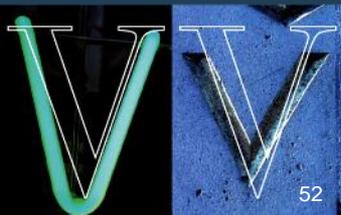
## Administration/Career

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



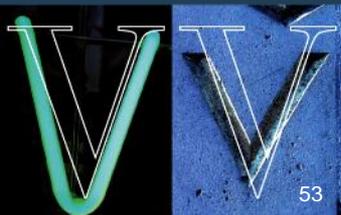
**No limit on number of attendees**

**May not be one-on-one**

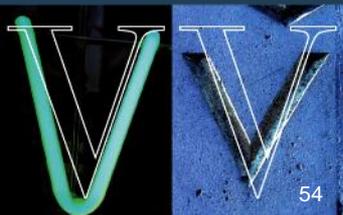


# Charitable Events

- 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

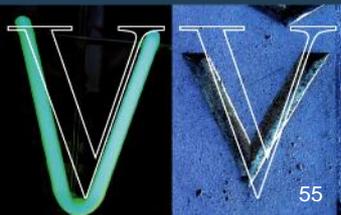


# State Rules



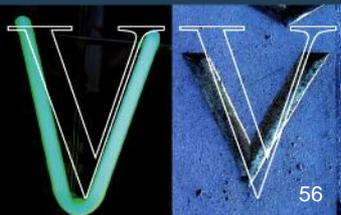
## Vary Widely

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

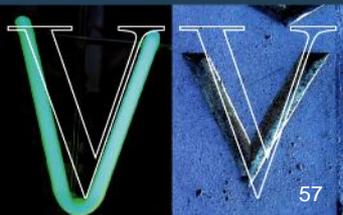


# Compliance with Gift Rules

- 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

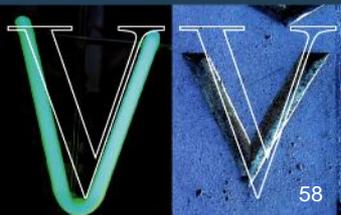


# QUESTIONS?

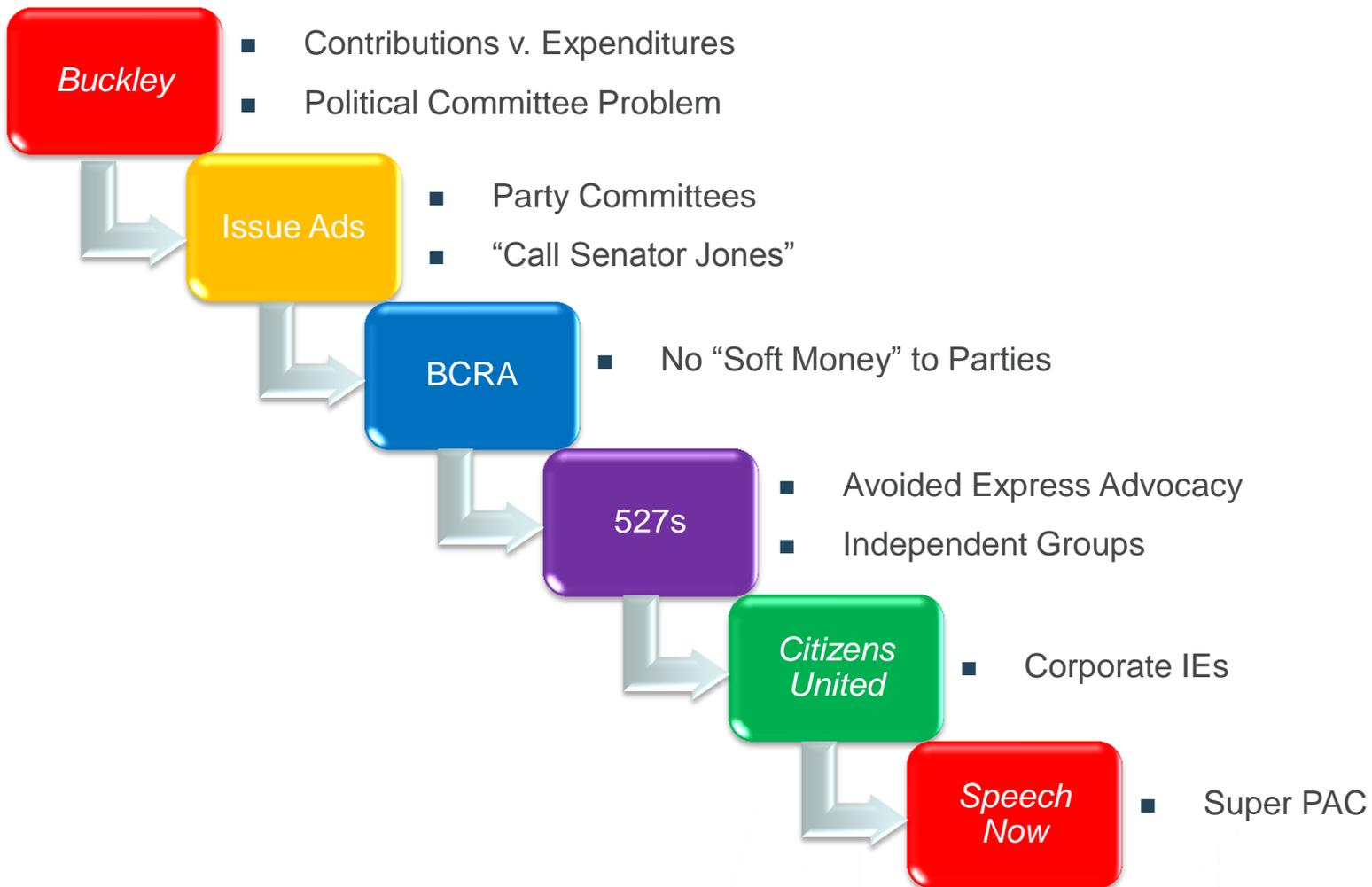


# The legal overview

## SUPER PACS



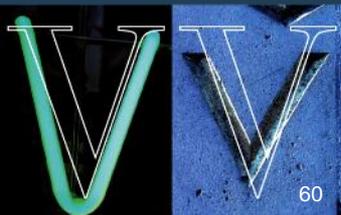
# History





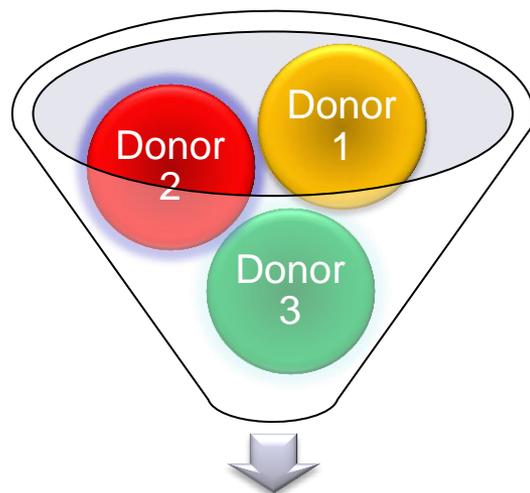
## What is an IE Committee?

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



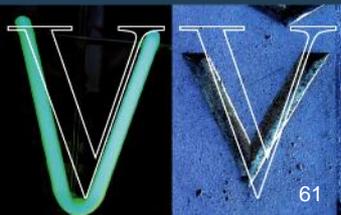
# Disclosure

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



**CONTROVERSIAL  
DONORS**

501(c)(4) disclosed as donor



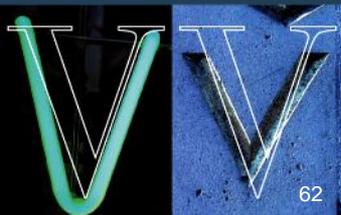
# Coordination

In General

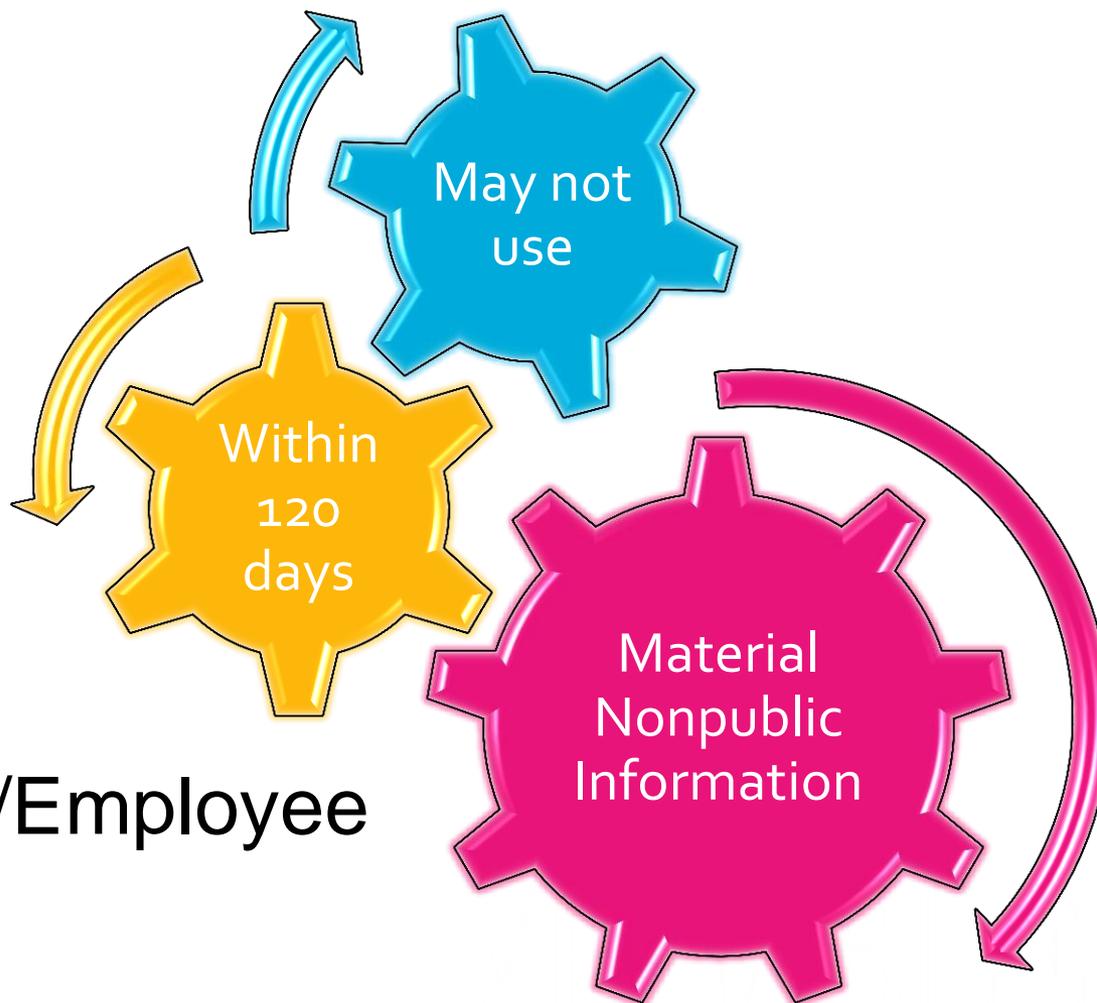
Request  
or  
Suggestion

Material  
Involvement

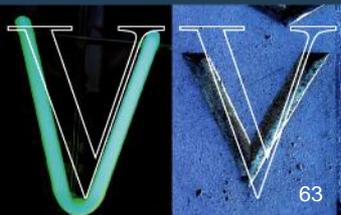
Substantial  
Discussion



# 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?

Venable LLP  
575 7<sup>th</sup> Street, NW  
Washington, DC 20004  
[www.Venable.com/nonprofits](http://www.Venable.com/nonprofits)

Jeffrey S. Tenenbaum

[jstenenbaum@Venable.com](mailto:jstenenbaum@Venable.com)

t 202.344.8138

Jeffrey J. Hunter

[jhunter@Venable.com](mailto:jhunter@Venable.com)

t 202.344.4467

Ronald M. Jacobs

[rmjacobs@Venable.com](mailto:rmjacobs@Venable.com)

t 202.344.8215

Alexandra Megaris

[amegaris@Venable.com](mailto:amegaris@Venable.com)

t 212.370.6210

To view Venable's (searchable) index of articles, events, PowerPoint presentations, and recordings on nonprofit legal topics, see [www.Venable.com/nonprofits/publications](http://www.Venable.com/nonprofits/publications), [www.Venable.com/nonprofits/recordings](http://www.Venable.com/nonprofits/recordings), and [www.Venable.com/nonprofits/events](http://www.Venable.com/nonprofits/events).

