

Election-Year Advocacy: Maintaining Your Nonprofit's Clear Message in Cloudy Legal Seas

Tuesday, April 29, 2014, 12:30 p.m. – 2:00 p.m. ET

Venable LLP, Washington, DC

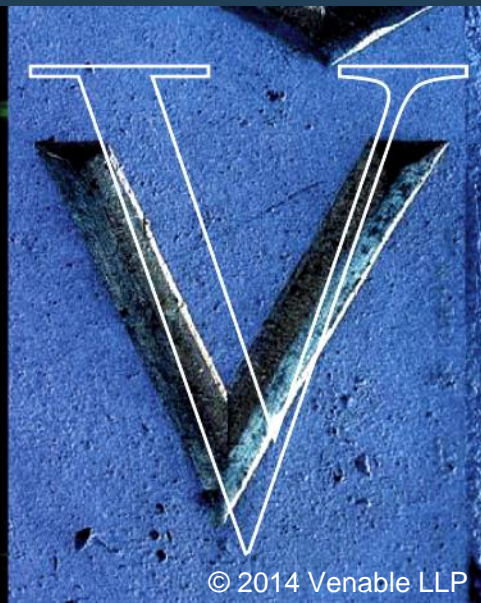
Moderator:

Jeffrey S. Tenenbaum, Esq., Venable LLP

Panelists:

Ronald M. Jacobs, Esq., Partner, Venable LLP

Lawrence H. Norton, Esq., Partner, Venable LLP



Upcoming Venable Nonprofit Events

Register Now

May 20, 2014 – [Surviving a Governmental Investigation without a Black Eye: Key Legal, Communications and Crisis Response Considerations for Nonprofits](#)

June 18, 2014 – [Performance Management and Discipline in Nonprofits: Common Pitfalls, Unique Challenges, Effective Solutions](#)



Upcoming Venable Nonprofit Events

Mark Your Calendars

July 17, 2014 – [Key Trademark and Copyright Rules for Nonprofits to Follow – and Break!](#)

August 13, 2014 – [Privacy and Data Security for Your Nonprofit: Understanding Your Legal Obligations and Insuring against Risk](#)

September 16, 2014 – [What's Ahead for 2015: Preparing Your Nonprofit's Group Health Plan for the Employer Mandate](#)



Agenda

- Pieces of the Puzzle
- The Tools of the Trade
 - Raising money for the PAC
 - Hosting fundraisers
 - Public communications
 - Member communications
 - Voter registration
 - Candidate appearances
 - Travel
- Putting the Pieces Together
 - Disclosure
 - Governance
 - Management
 - Fundraising
- Trends and Coming Attractions



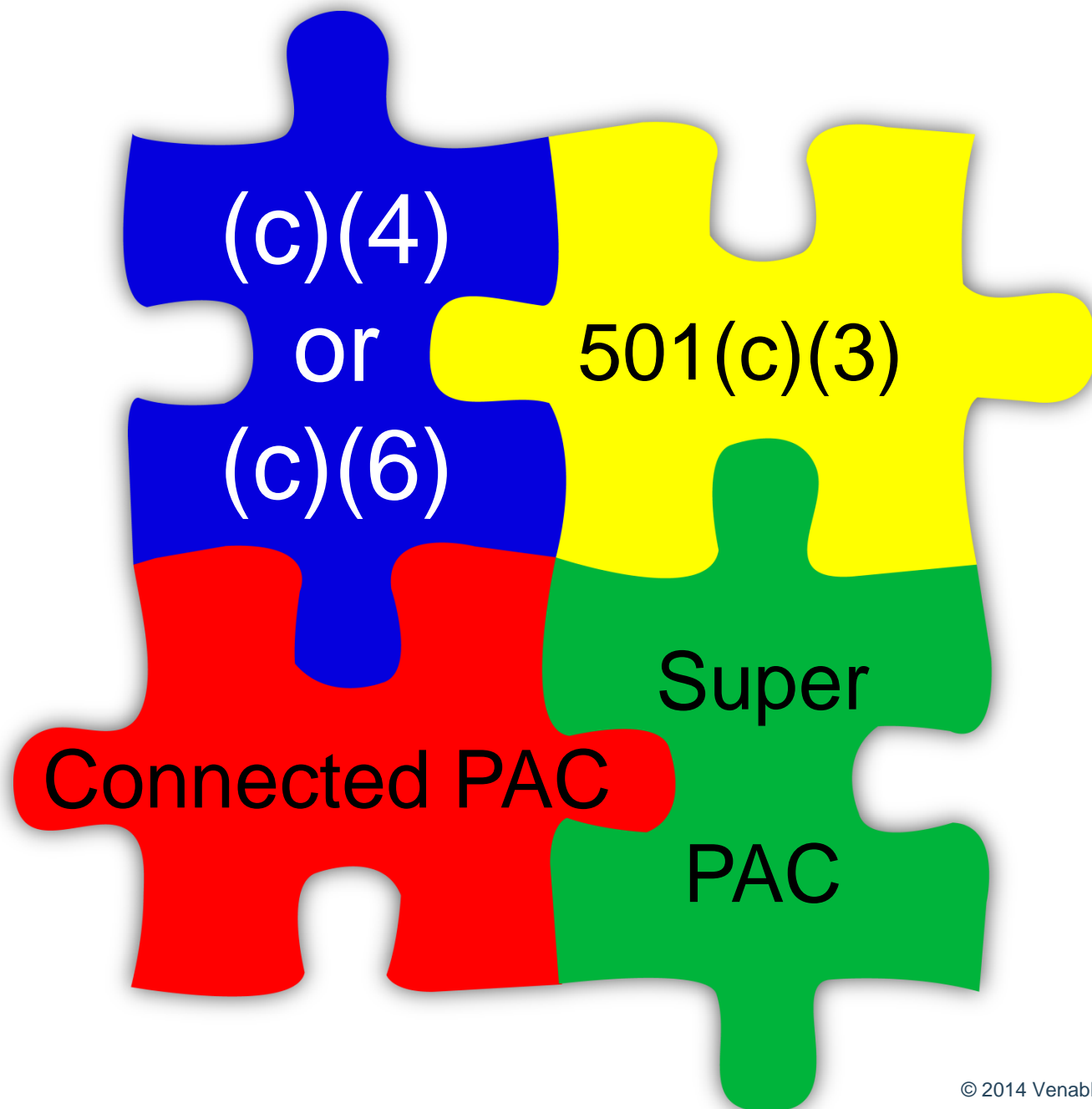
Applicable Law

FEDERAL \neq STATE



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Pieces of the Puzzle



What are they?

501(c)(4) or (6)

- Social welfare
- Trade/professional association

501(c)(3)

- Public charity
- Education

Connected PAC

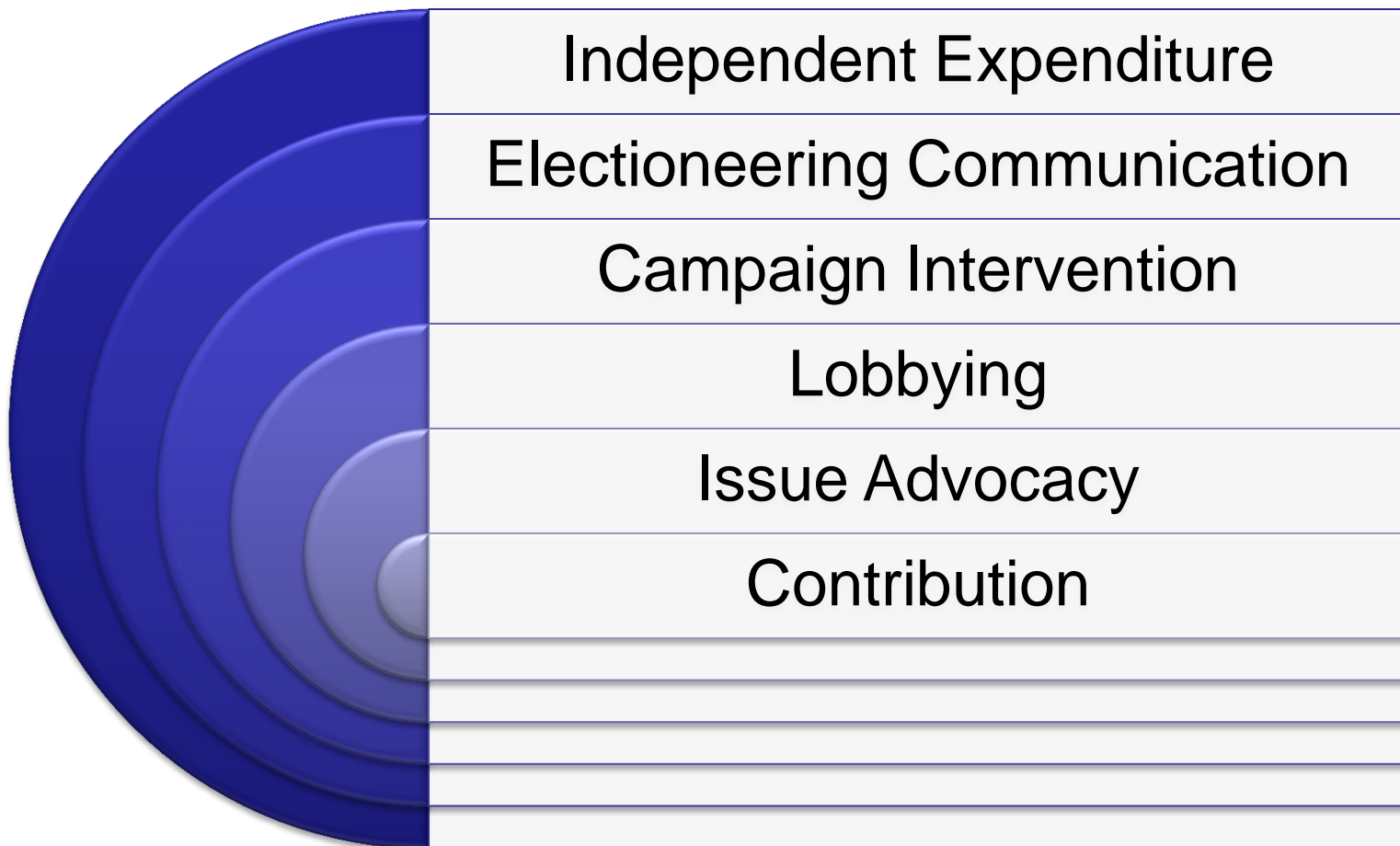
- Contributions to candidates
- Independent expenditures

Super PAC

- Independent expenditures



The Lingo



Independent Expenditures

- Expressly advocate the election or defeat of a candidate
- Communication refers to candidate by name, image, or other unambiguous reference
- No coordination with the candidate



Direct Contributions

- Money given to a candidate or other political committee
- In-kind services provided to a campaign
- Expenditures that are coordinated with a candidate or agent of candidate's campaign



Differences

Direct Contribution

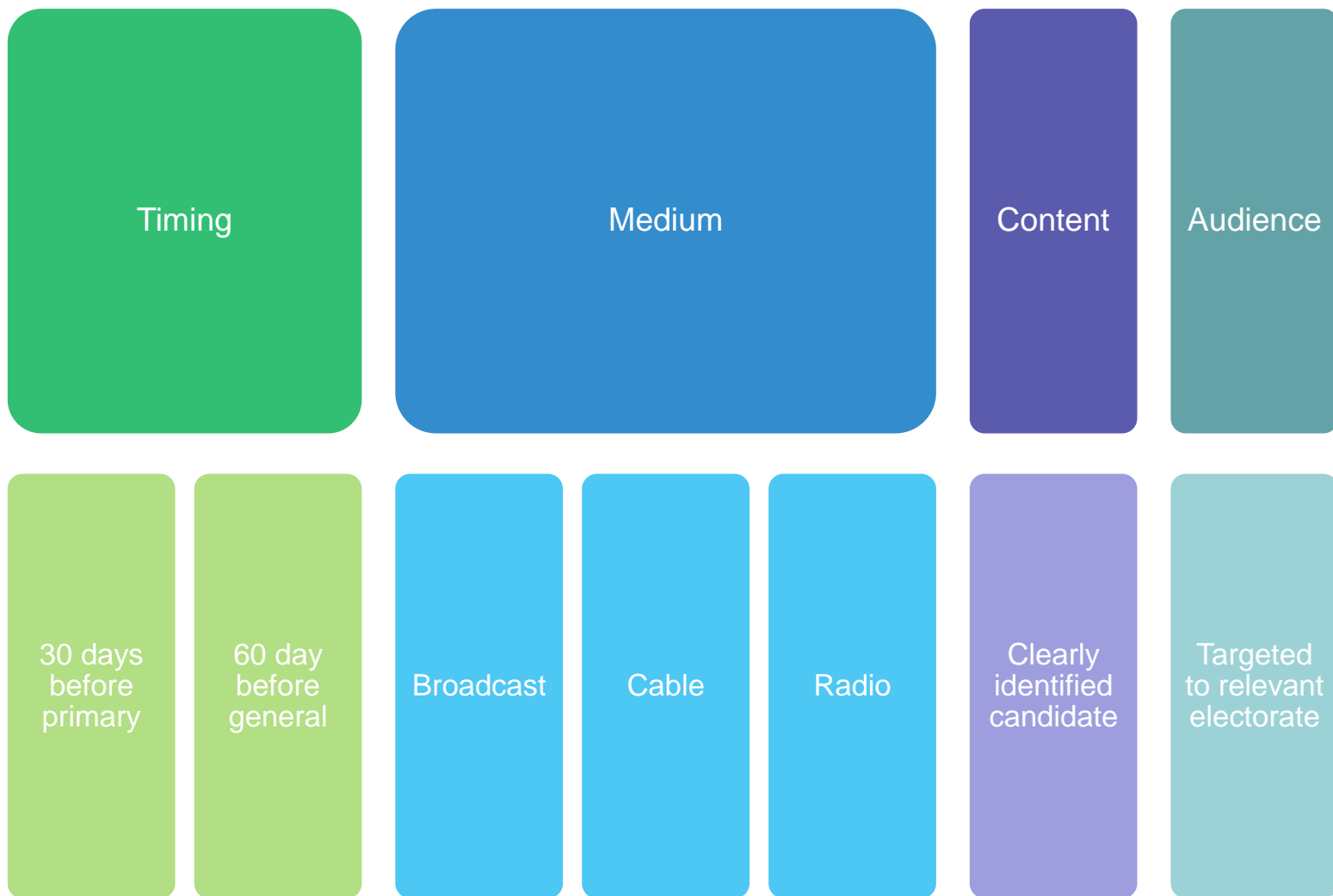
- Highly regulated
- No corporate
- Limited

Independent Expenditure

- No limits
- Corporate permitted



Electioneering Communication



Campaign Intervention

Facts & Circumstances

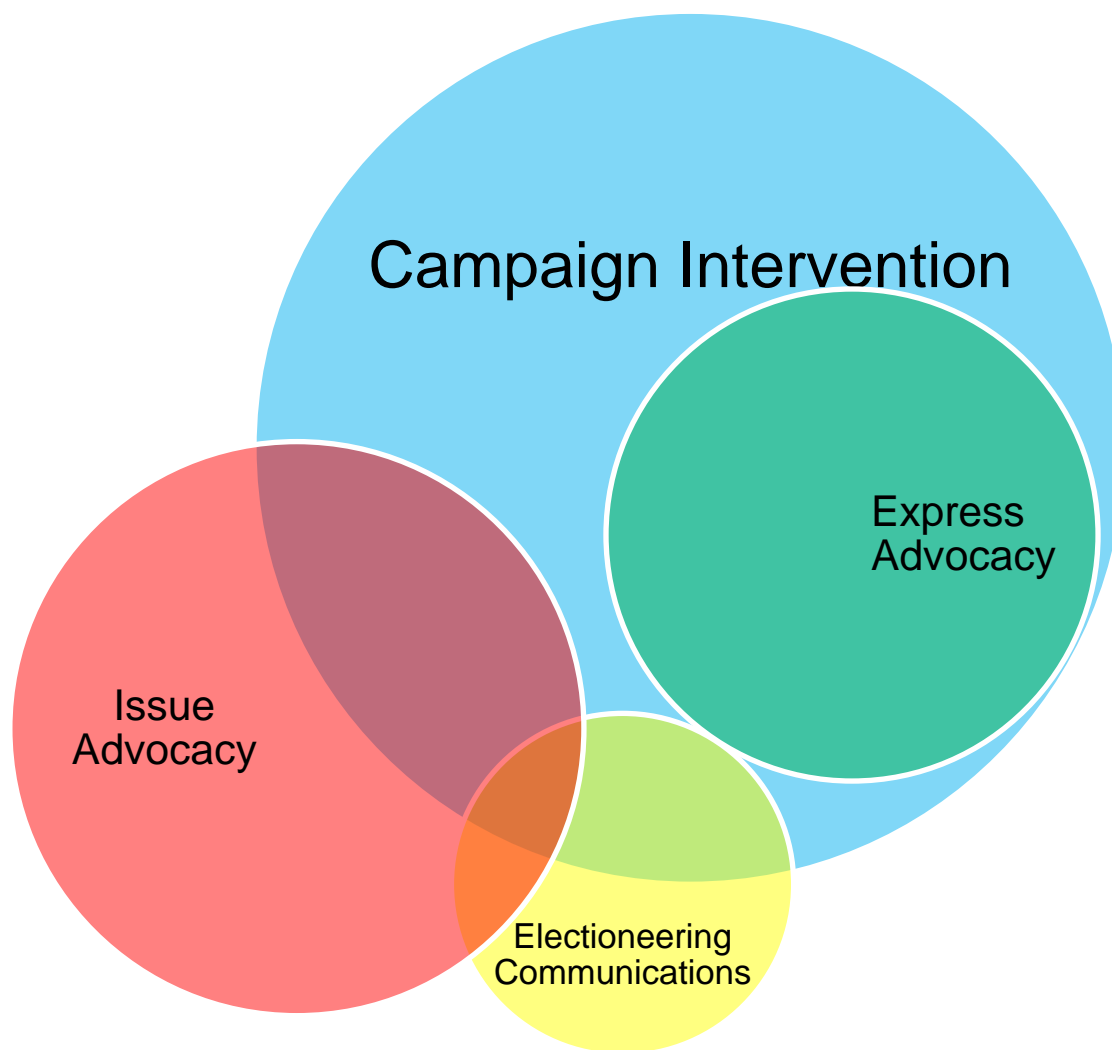
Timing

Content

Background



Fitting It All Together



Grassroots Lobbying

- Specific legislation
- Call to action
- Regulated by states
 - Often broader definitions than IRS
- State registration/disclosure

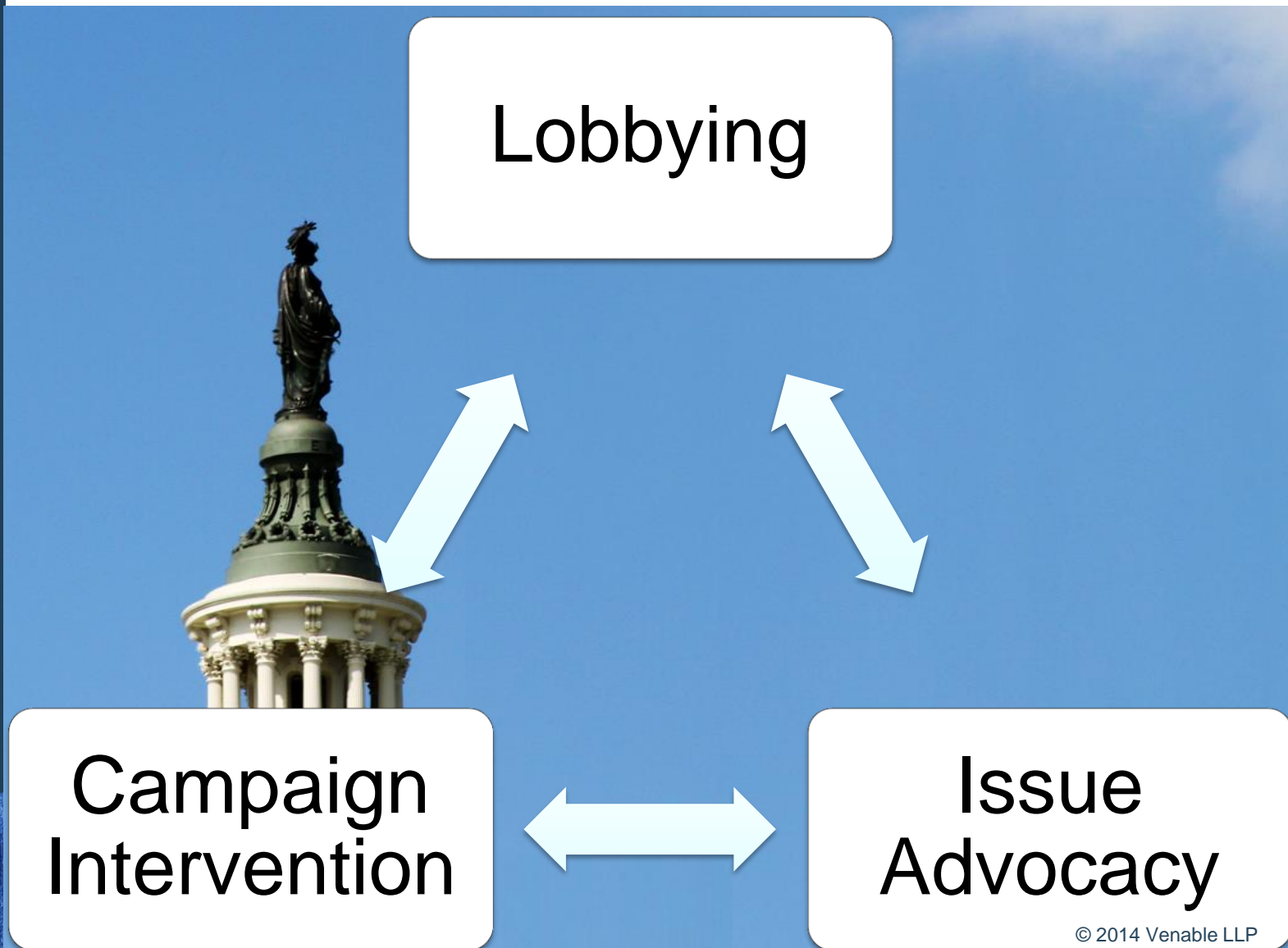


Setting the Stage

	Issue Speech	Lobbying	Campaign Intervention	Disclosure
(c)(3)	Unlimited	Limited	No	No
(c)(4) /(6)	Unlimited	Unlimited	Limited	Maybe
Super PAC	Unlimited	Not Typical	Unlimited	Yes
PAC	Unlimited	Not Typical	Unlimited	Yes



Fine Lines Between Categories



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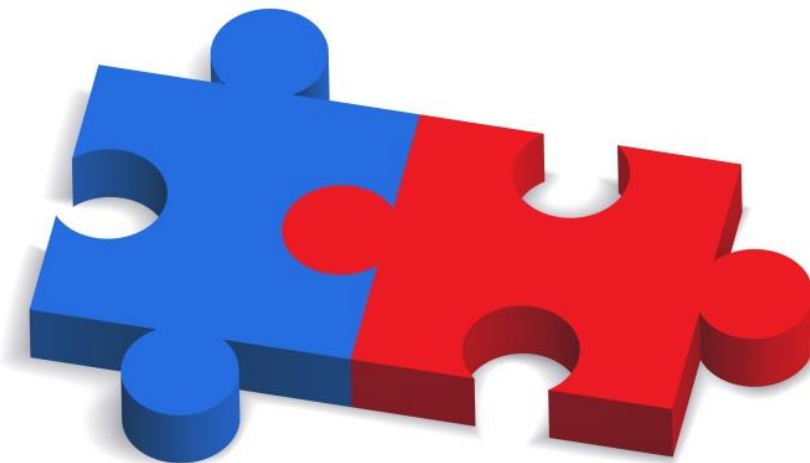
Tools of the Trade



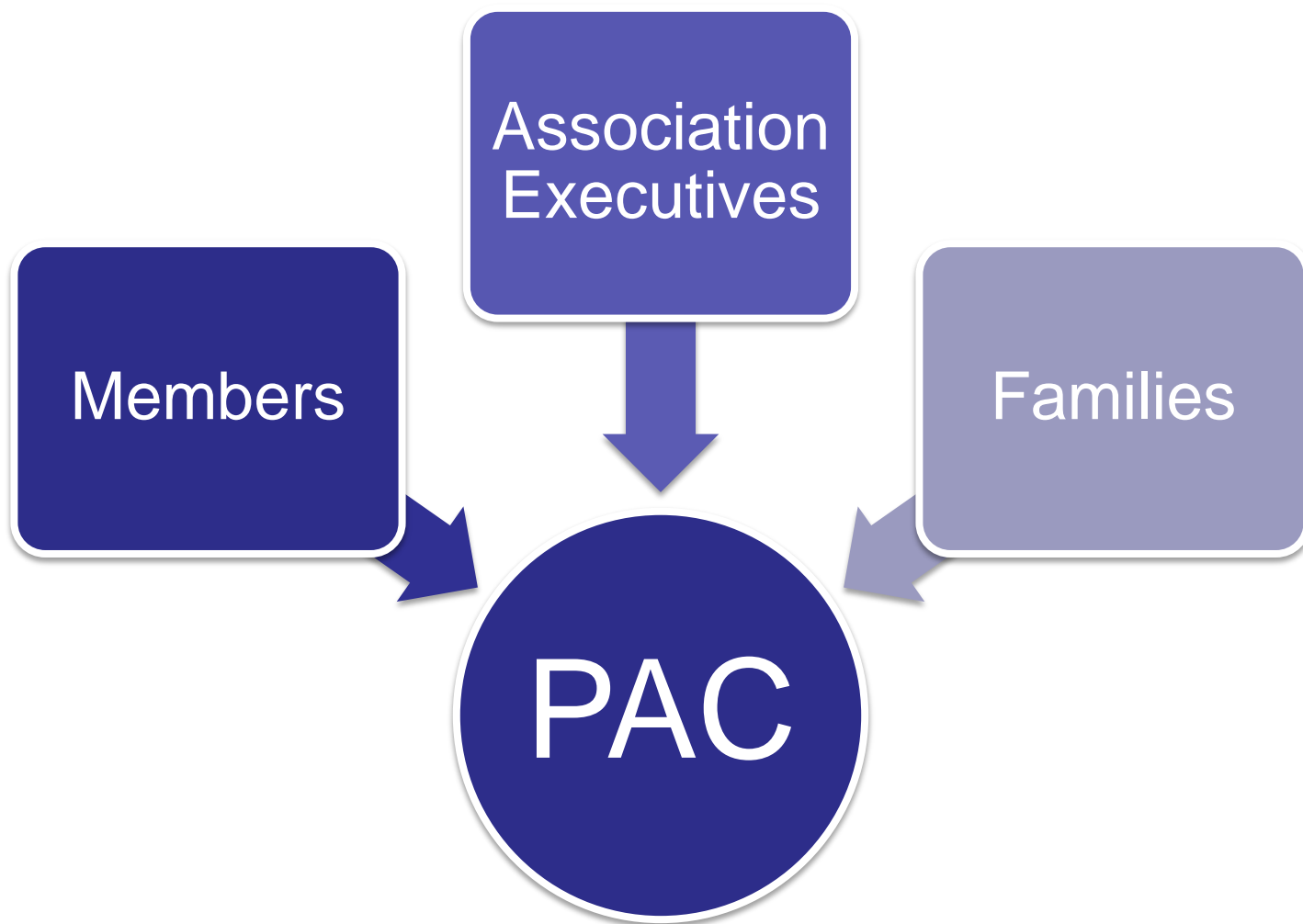
Political Action Committees

Connected PAC

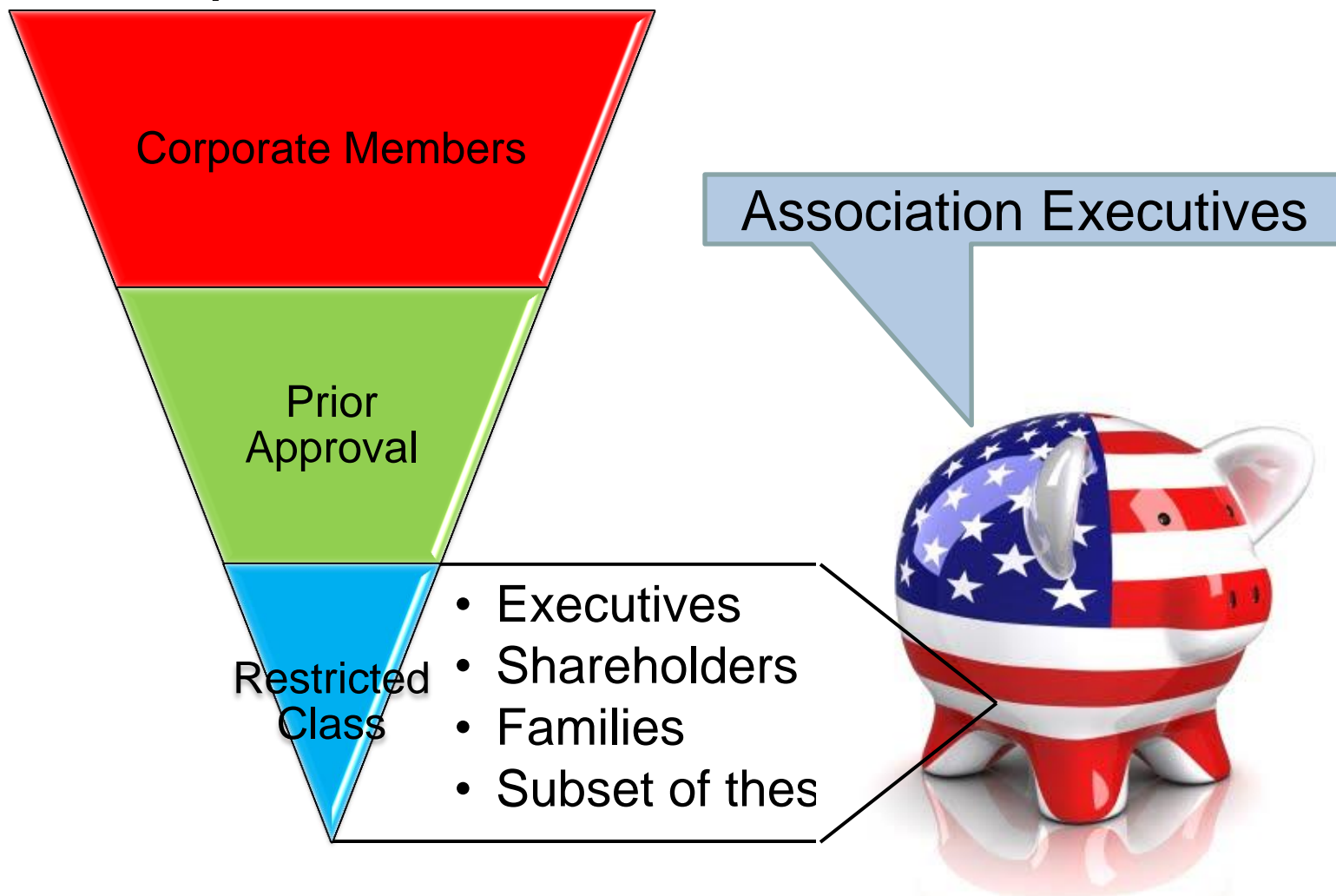
- Separate segregated fund
- Organization's name
- Organization pays administrative costs
- Voluntary contributions from individuals



Sources of Funding: Individual Members



Sources of Funding: Corporate Members



Prior Approval

- Written
- Signed for each year
- Only one association per year



Successful Prior Approval

- Simple
- Friendly
- Limited
- Explain the PAC
 - Ask is not for money
 - Ask is approval to solicit



What is a solicitation?

- Explicit request for money
- Publicizes right to accept unsolicited contributions
- Provides information on how to contribute
- Encourages support



What is not a solicitation?

- Announce the existence of PAC
- Explain legal rules
- Information about receipts
- Information about disbursements



PAC Administrative Costs

- Paid for by “connected organization”
- May accept donations from corporate members
 - “Administrative Fund”
 - Not for contributions to candidates



Incentives

- Drawings for prizes
- Trinkets
- Entertainment other than food



No members?

- Consider non-connected PAC
- Cannot pay support costs
- Solicit any U.S. citizen
- All costs must come from the PAC





Hosting Fundraisers

Hosting a Fundraiser: Restricted Class

- Association
- Association pays (candidate could pay)
- If more than \$2,000 per election must report
- Do not collect checks



Hosting a Fundraiser: Others

- Non-corporate source pays
 - PAC
 - Individual
 - Candidate
- In-kind reporting
- Limited use of staff unless PAC event
 - In which case PAC must pay for staff



Hosting a Fundraiser: Personal Events

- \$1,000 per person at home costs
 - Above will be in-kind unless candidate pays
- Must not use corporate resources
 - Caution: support staff is a frequent trip-up



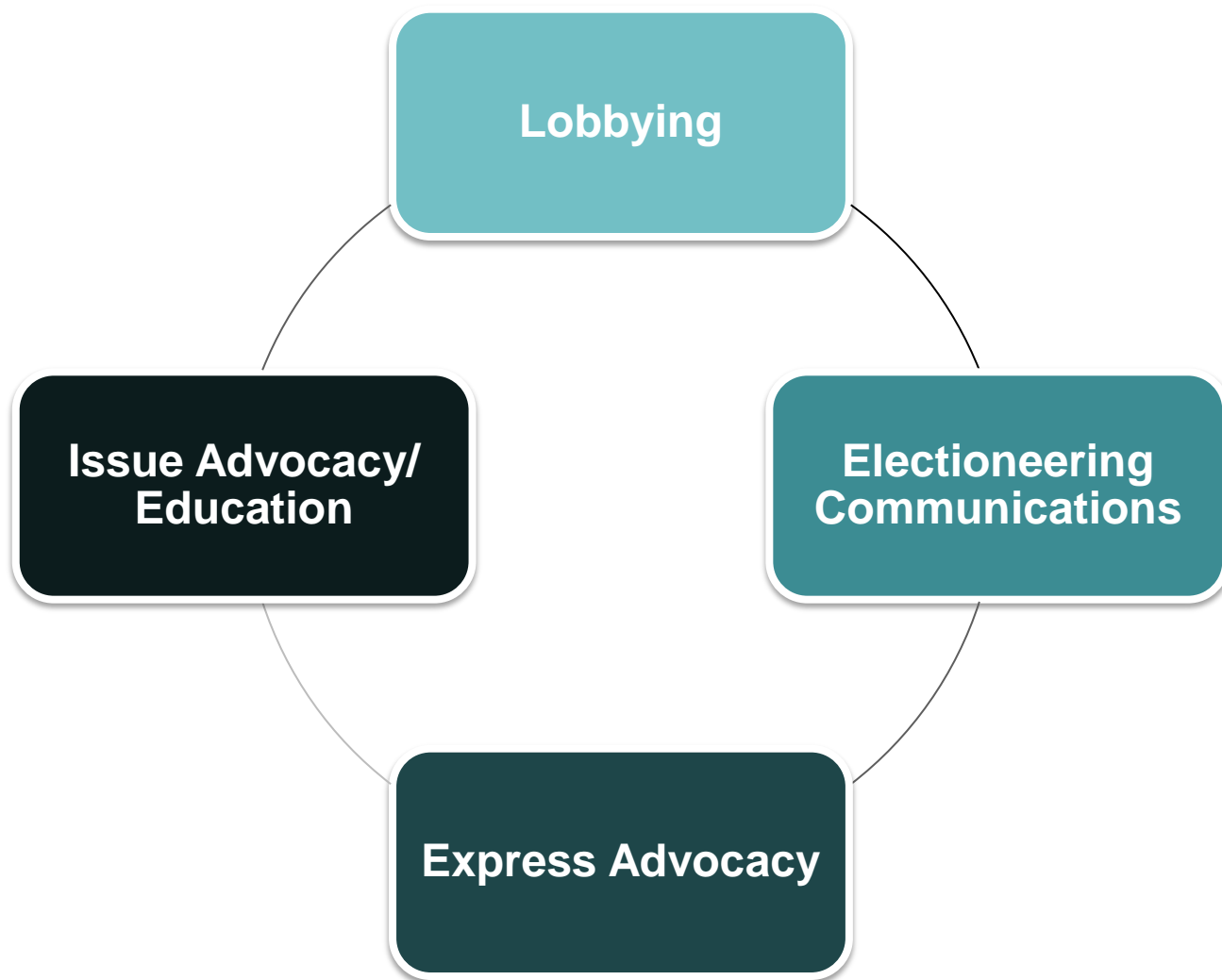


Public Communications

What are public communications?



Determine What It Is



Determine Which Entity

	Issue	Lobbying	EA	EC
(c)(4) or (6)	Yes	Yes	Yes	Yes
(c)(3)	Yes	Yes	No	Maybe
PAC	Probably not	Probably not	Yes	Yes
Super PAC	Probably not	Probably not	Yes	Yes



Disclaimers/Disclosure

- IE/EC Reports
- “Paid for by”
- FCC rules for sponsor ID
 - Political file information
- State grassroots registration and/or reporting





Communications to Members

“Campaign” Communications

- May be coordinated with candidate
- Limited disclosure
- Paid for with corporate funds



Grassroots Lobbying

GDDirectots





Voter Registration and Education

Options: Voter Registration/Education

501(c)(3)

- Nonpartisan

501(c)(4)/(6)

- Partisan
- Nonpartisan

PAC/SuperPAC

- Partisan





Candidate Appearances

Sitting Official

- May attend events in official capacity
- Campaign finance rules not implicated
- IRS proposed rules would treat as candidate activity
- Gift rule considerations for food



Debates

- Invite all candidates
- Nonpartisan questions
- Equal time
- No commenting on questions



Candidate Appearances

Restricted Class

- Ask for vote
- Ask for contributions
- Pick candidates

Others

- All candidates
- Equal opportunity
- No solicitation



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Travel

Current Officials

LDA Registrants

- 1-day trips
- Travel, food, lodging
- Minimal lobbyist involvement
 - May attend events, but not travel with officials
- Prior approval

Non-LDA Registrants

- No lobbyist involvement
- Longer trips
- Prior approval



Campaign Travel

- Very limited opportunities to pay for campaign travel
- Will have to come from the PAC





Putting the

**Pieces
Together**

Disclosure

■ Lobbying

- Tax
- State disclosure laws
- Federal Lobbying Disclosure Act
- Gift disclosure rules

■ Campaign Finance

- Federal Election Campaign Finance Act
- State campaign finance laws

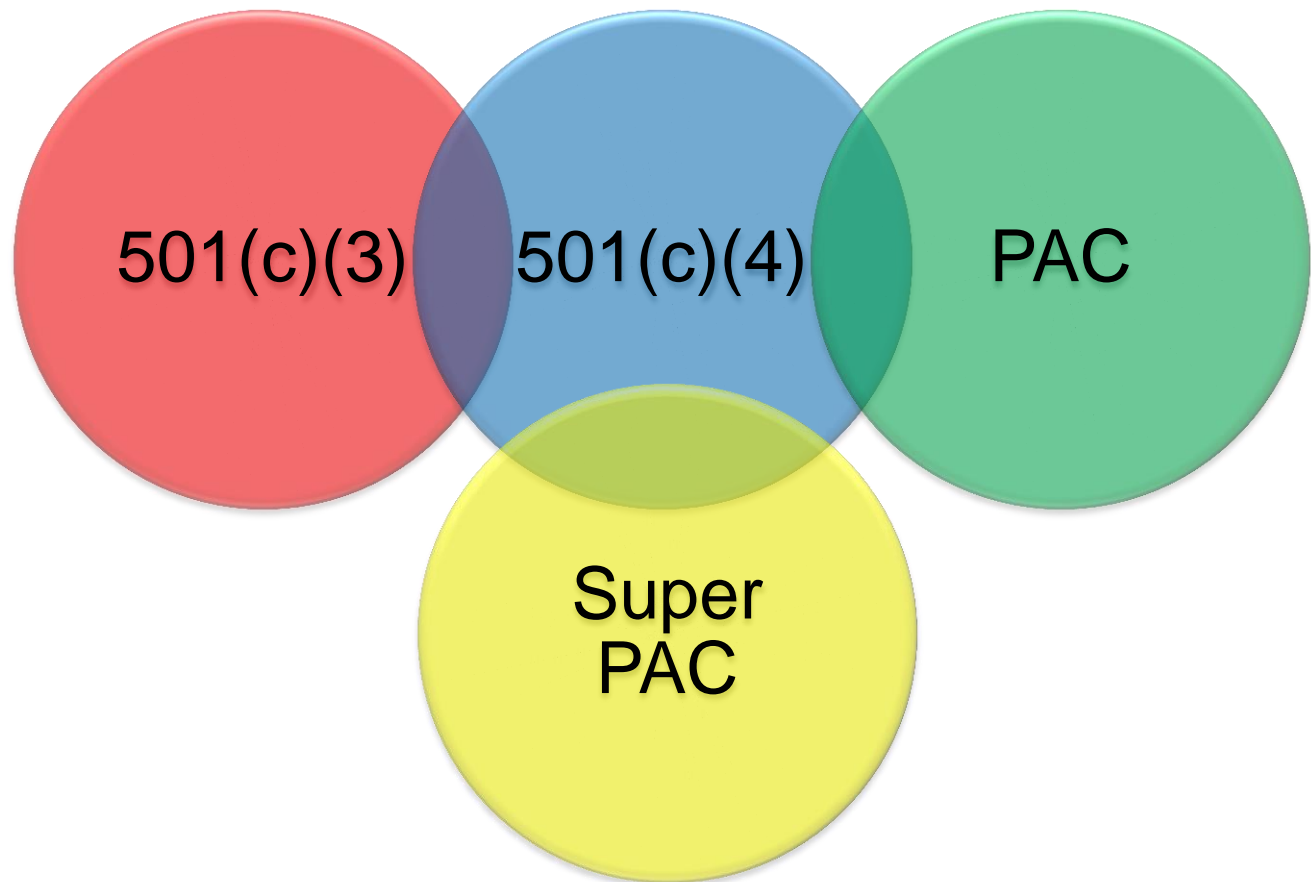


Members

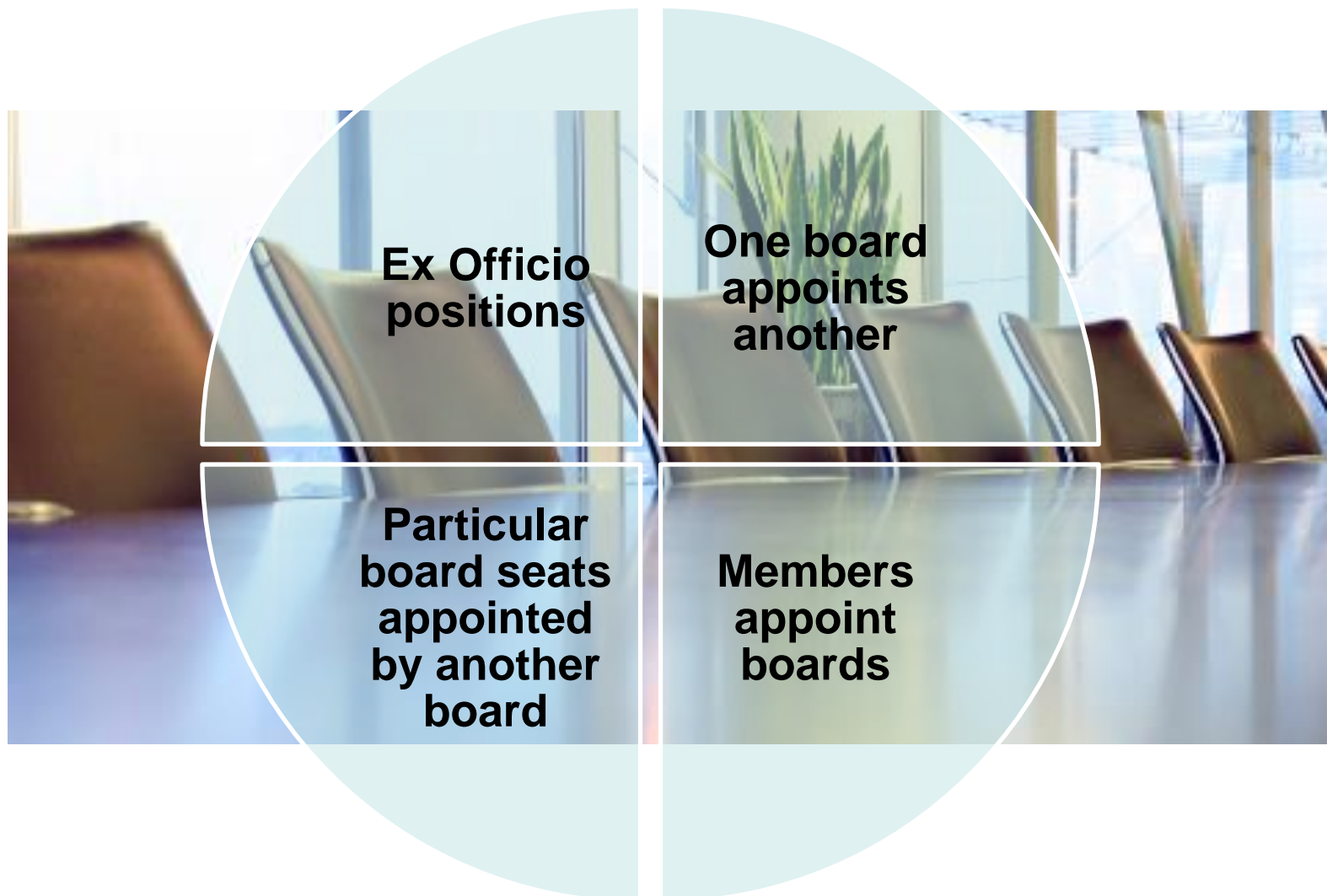
- Joint members
 - Process for joint membership
- Important for PACs
- Members of just 501(c)(4) or (6)
- 501(c)(3) membership less important



Boards: Membership



Boards: Appointment



Employees

- Separate employees
 - Not for a PAC
- Leased employees
- Joint employees
 - Time sheets become essential
 - Typically handled through a lease



Management

- CEO serves in multiple organizations
- Other organization managers report to CEO
 - Particularly in leased employee situations
 - Consider fiduciary obligations
- Multiple CEO's that report to boards

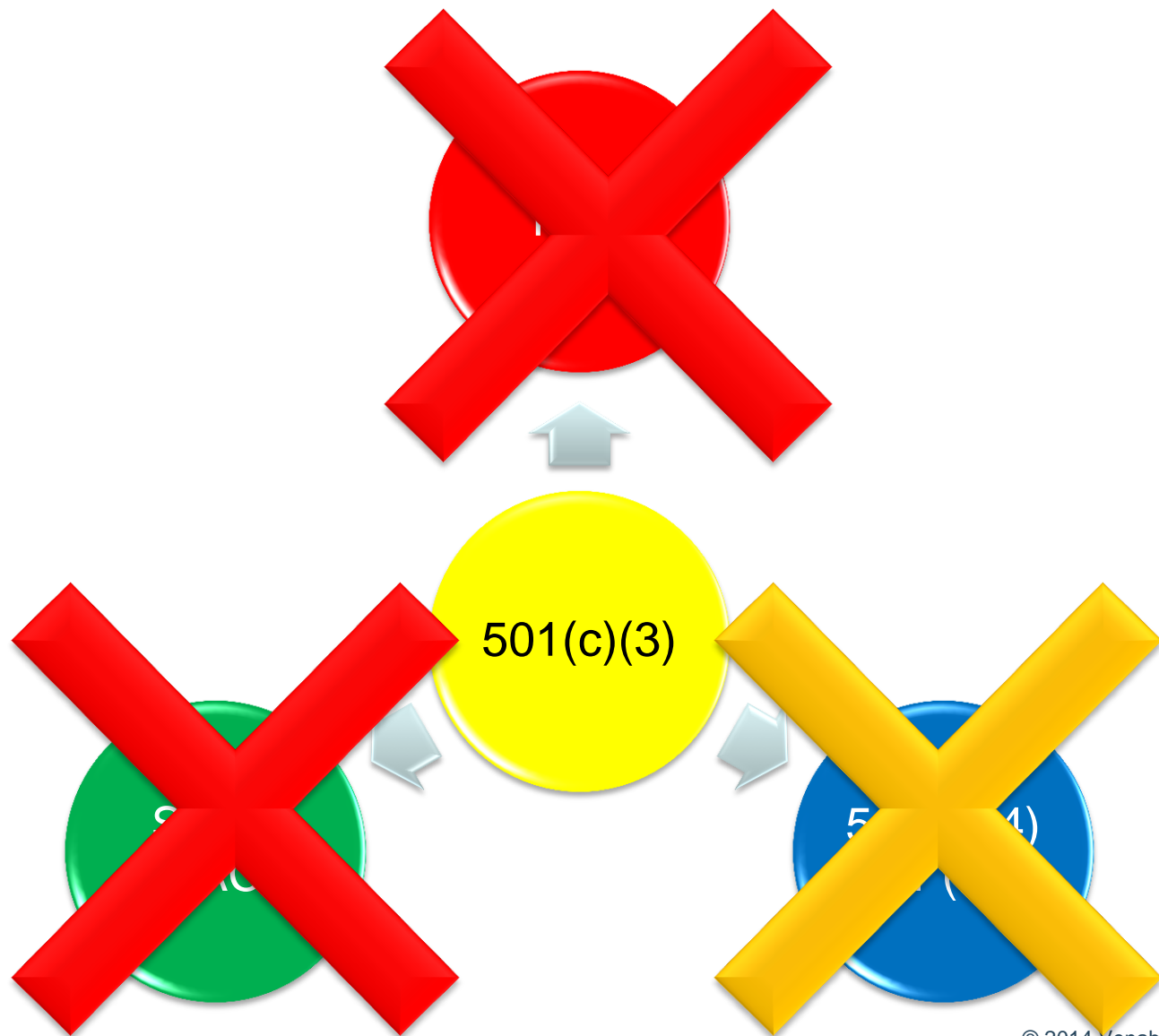


Firewalls

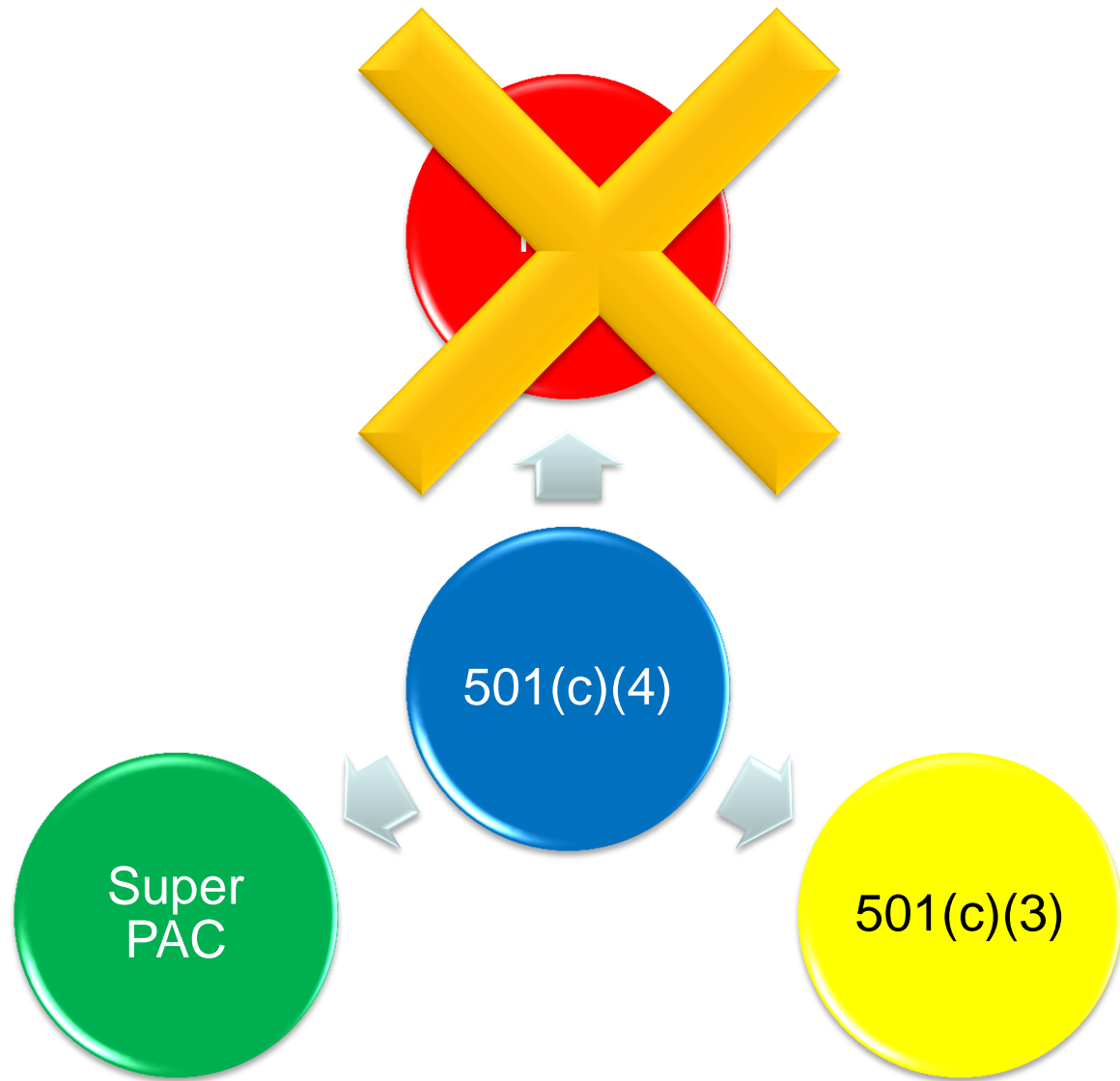
- Protect the Super PAC from:
 - Lobbying interactions
 - PAC contribution decisions
 - Coordinated activity



Payments and Resources



Payments and Resources



Fundraising

- Cannot use 501(c)(3) resources to raise money for other organizations
- Other organizations can raise money for 501(c)(3)
- PAC fundraising limited to restricted class
- Charitable registration
- Payments to fundraisers



Intellectual Property

- Which entity owns the IP
- Licenses
- Source of control
- May be in-kind contribution
- Restrictions on 501(c)(3) giving to other organizations





Trends and Coming Attractions



Aggregate Contribution Limits: No More

Base Individual Contribution Limits

	To a Candidate	To a National Party Committee	To State and Local Parties	To Other Political Committees
Individual May Give	\$2,600 per election	\$32,400 per year	\$10,000 per year	\$5,000 per year
Multicandidate PAC May Give	\$5,000 per election	\$15,000 per year	\$5,000 per year	\$4,000 per year



McCutcheon Case

\$123,200

\$74,600 to
candidates

\$74,600 to
any other

\$48,600 to PACs
and Local Parties



Practical Application

No tracking for large donors

Ability to give to more candidates

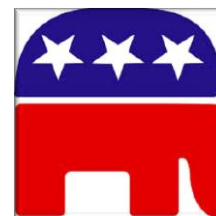
Ability to give to more political party committees



Political Parties

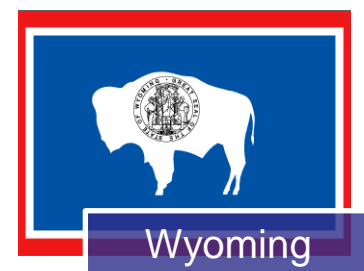
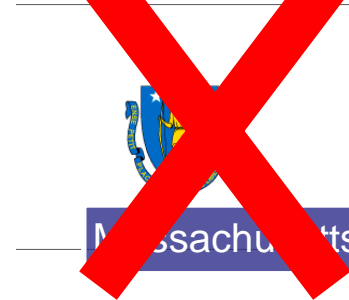
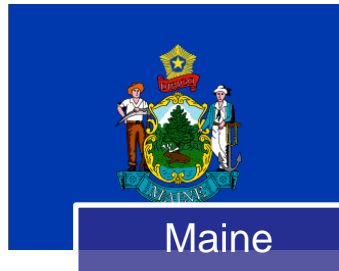


- DNC
- DSCC
- DCCC
- States



- RNC
- NRSC
- NRCC
- States

State Law





IRS Rulemaking

Candidate Related Political Activity

- Very broad definition
 - Debates
 - Candidate appearances
 - Mentions of candidates within 30 or 60 days
- No percentages
- Questions about whether to apply more broadly





Compelled Disclosure

State Disclosure Lawsuits

- California
- Washington
- Idaho



State Disclosure

- New York AG Rules
- California “Schedule B” disclosure



Shareholder Disclosure

- Contributions
- IEs
- Lobbying
- Trade association payments



Questions?

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