

VENABLE[®]_{LLP}

Election-Year Activity: How Your Nonprofit Can Be Legally Active in the Political World

Thursday, May 19, 2016, 12:30 – 2:00 pm ET

Venable LLP, Washington, DC

Moderator

Jeffrey S. Tenenbaum, Esq.

Partner and Chair of the Nonprofit Organizations Practice,
Venable LLP

Speakers

Ronald M. Jacobs, Esq.

Partner and Co-Chair of Venable's Political Law Group,
Venable LLP

Lawrence H. Norton, Esq.

Partner and Co-Chair of Venable's Political Law Group,
Venable LLP



CAE Credit Information

***Please note that CAE credit is available only to registered participants in the live program.**

As a CAE Approved Provider educational program related to the CAE exam content outline, this program may be applied for **1.5 credits** toward your CAE application or renewal professional development requirements.

Venable LLP is a CAE Approved Provider. This program meets the professional development requirements to earn or maintain the Certified Association Executive credential. Every program we offer that qualifies for CAE credit will clearly identify the number of CAE credits granted for full, live participation, and we will maintain records of your participation in accordance with CAE policies. For more information about the CAE credential or Approved Provider program, please visit www.whatiscae.org.

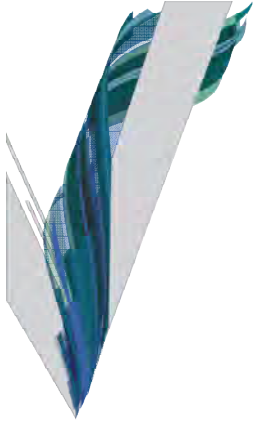
Note: This program is not endorsed, accredited, or affiliated with ASAE or the CAE Program. Applicants may use any program that meets eligibility requirements in the specific time frame toward the exam application or renewal. There are no specific individual courses required as part of the applications—selection of eligible education is up to the applicant based on his/her needs.



Upcoming Venable Nonprofit Events

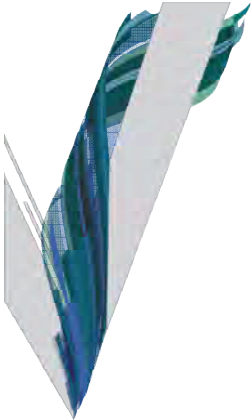
Register Now

- **June 21, 2016:** [Investigating Employee Misconduct in the Nonprofit Workplace](#)
- **July 11, 2016:** [Working Effectively with Outside Counsel: What Every Nonprofit Should Know](#)
- **August 17, 2016:** [Key Trademark and Copyright Developments Around the World: Implications for Nonprofits in China, Europe, Cuba, and Beyond](#)
- **September 20, 2016:** [How to Protect Nonprofits' Federally Funded Programs with Global Anti-Corruption Controls](#)



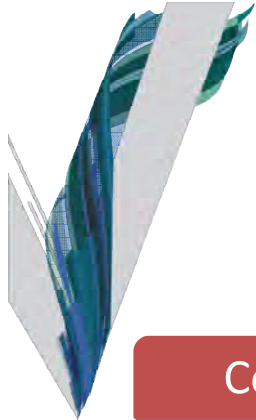
Agenda

- Overview of Issues
- 501(c)(3) Activity
- 501(c)(4) and (6) Activity
- Political Action Committees
- Super PACs



Overview of Issues

The Legal Framework



Basic Campaign Contribution Rules

Corporations

- Federal: may not give
- State: laws vary

Foreign Nationals

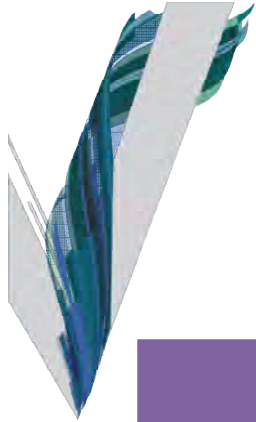
- Prohibited at federal, state, and local level
- May not control political activities

Contractors

- Federal: banned (but applies mostly to individuals)
- State: restricted by many state and local laws

Reimbursements

- Prohibited at federal, state, and local level
- Earmarking through other entities often restricted



Contribution Limits

	To a Candidate	To a National Party Committee	To State and Local Parties
Individual May Give	\$2,700 per election	\$33,400 per year*	\$10,000 per year
Multicandidate PAC May Give	\$5,000 per election	\$15,000 per year*	\$5,000 per year
Non-Multicandidate PAC May Give	\$2,700 per election	\$33,400 per year*	\$10,000 per year

*Additional amounts may be given to convention, building, and legal funds.

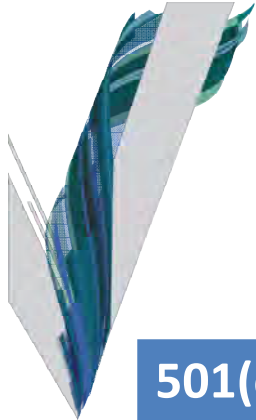
Contributions & Expenditures

Contribution

- Payment to candidate
- In-kind contribution
- Coordinated expenditure

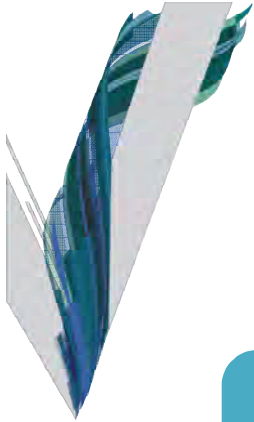
Expenditure

- Independent of candidate
- No coordination
- Unlimited



Nonprofit Organizations

501(c)(3): Public Charity	501(c)(6): Trade Association 501(c)(4): Social Welfare
No “campaign intervention” <ul style="list-style-type: none">• No endorsements• No contributions• No communications to support candidates	Campaign intervention limited <ul style="list-style-type: none">• May not be primary purpose• May contribute to candidates (if allowed under state law)• May form a PAC• May make communications to support candidates
Lobbying may not be substantial part of activities	Unlimited lobbying
Unlimited issue advocacy if not lobbying	Unlimited issue advocacy



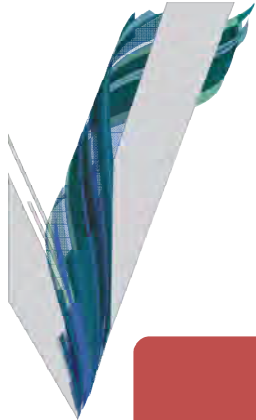
Defining the Terms

Lobbying

- Influencing legislation

Campaign Intervention

- Supporting/Opposing Candidates



Visits by Candidates in Official/Other Capacity

Reason

Other than candidacy

- Sitting official
- Expert
- Community leader

Organization

No mention of candidacy

- Communications refer to official position
- Invitations/introductions do not refer to candidacy

Guest/Speaker

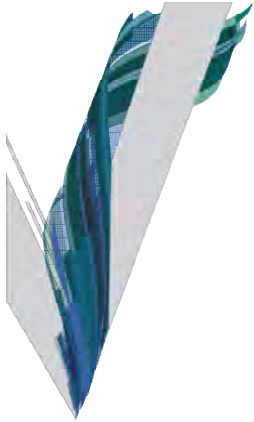
No mention of candidacy

- Speaks in other official role
- Does not talk about campaign

Event

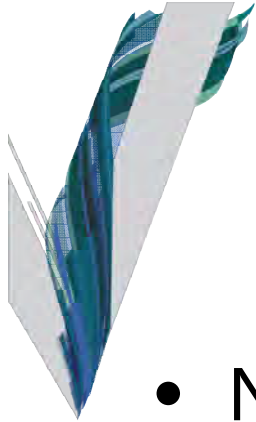
No campaign activity

- Non-partisan atmosphere
- No fundraising



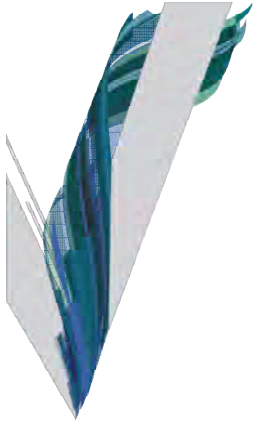
501(c)(3)s

Plenty to Do



Basic 501(c)(3) Rule

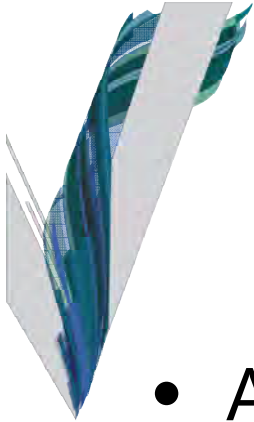
- No campaign intervention
 - ✘ No contributions to candidates
 - ✘ No use of corporate resources to support candidates
 - ✘ No events/activities designed to benefit a candidate
 - ✘ No endorsements



Lots that can be done

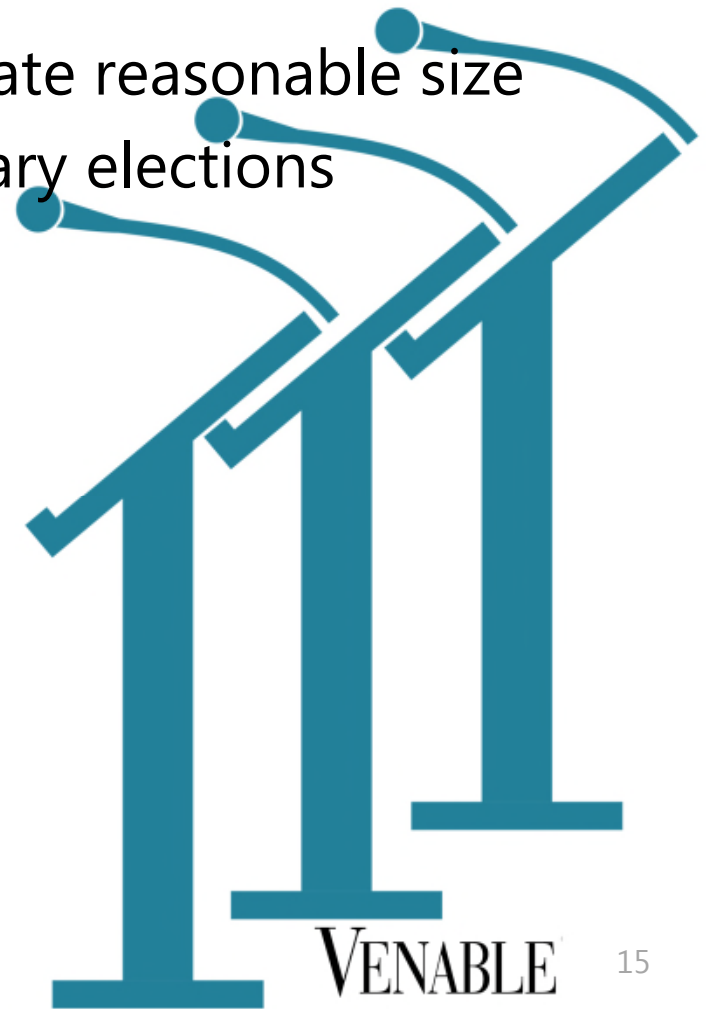
- Interact with officeholders who are candidates
- Host debates and forums
- Communicate on issues
- Send scorecards and questionnaires

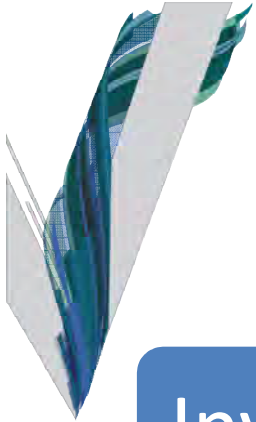




Debates

- All candidates invited
 - May use objective criteria to create reasonable size
 - May host for one party for primary elections
- Questions must be neutral
 - Variety of topics
 - May not favor one candidate
- No endorsements





Forums

Invite all candidates

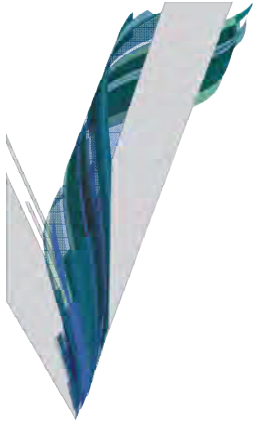
Equal time

Equally good time

Neutral questions

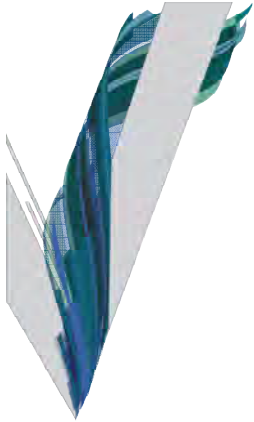
Variety of questions





Forums & Debate Issues

- Provide equal opportunity to respond/present views
- Don't use agree/disagree questions
- Don't comment on questions
- Don't imply approval or disapproval
- No fundraising
- Maintain neutral atmosphere



Candidate Questionnaires

Approach

- All candidates for office sent questionnaire
- Unbiased structure
- No endorsement
- No pledge of support
- No grading responses (+/-)

Questions

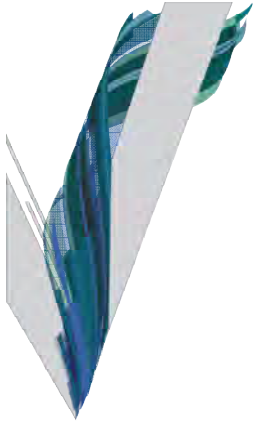
- Clear and unbiased
- Subjects cover major areas of interest
- Clear issue descriptions
- Don't ask to accept a pledge

Answers

- Reasonable time to respond
- If limited answers allowed (support/oppose), opportunity to explain position

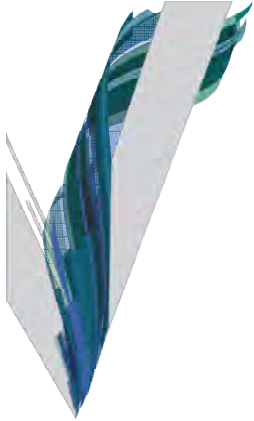
Format

- Questions the same in the guide as provided to candidates
- Answers the same as provided or edited for space only
- Answers presented close to the question



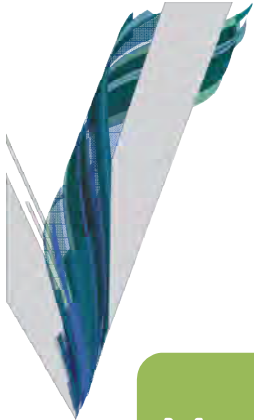
Scorecards

- Regular activity
 - Not timed with election
 - End of each legislative session
- Track a variety of issues
- Include all legislators
 - Don't include candidates who are not incumbents
 - Don't mention which incumbents are candidates
- Don't editorialize



Voter Registration

- Must be nonpartisan
- No mention of candidates, or include all candidates
- May not target voters of a particular party



Interacting with Candidates

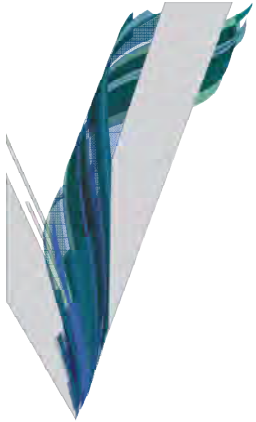
May urge candidates to support policies (“lobbying” candidates)

May not ask candidates to take a pledge

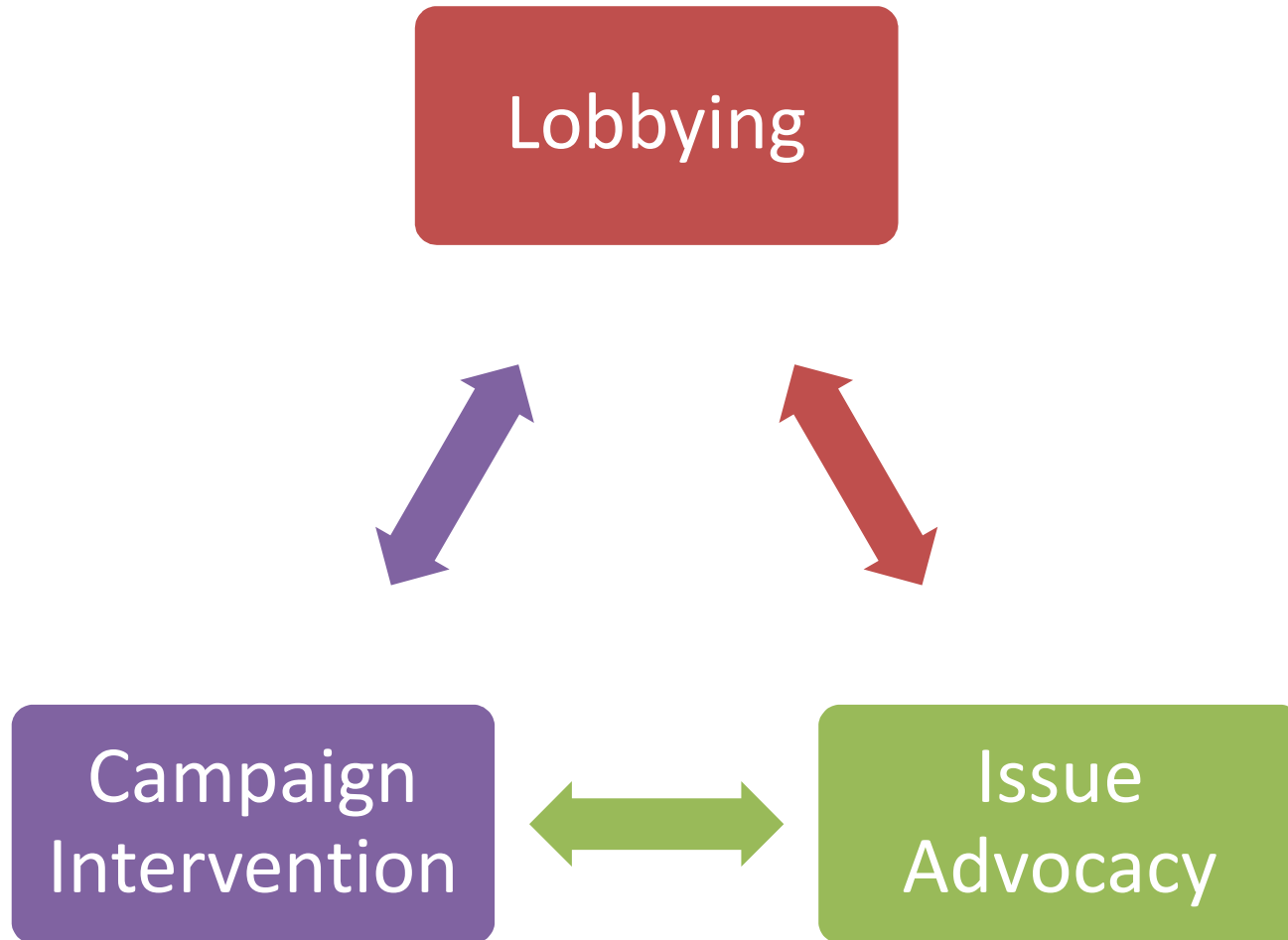
Should provide material to all candidates

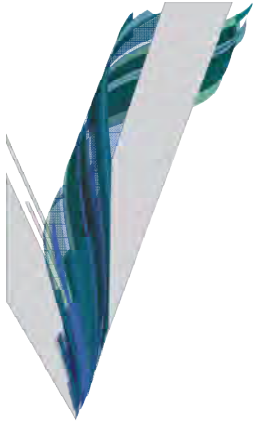
May provide policy papers and other materials

Should not create content at the request of candidates, unless it will be shared by all

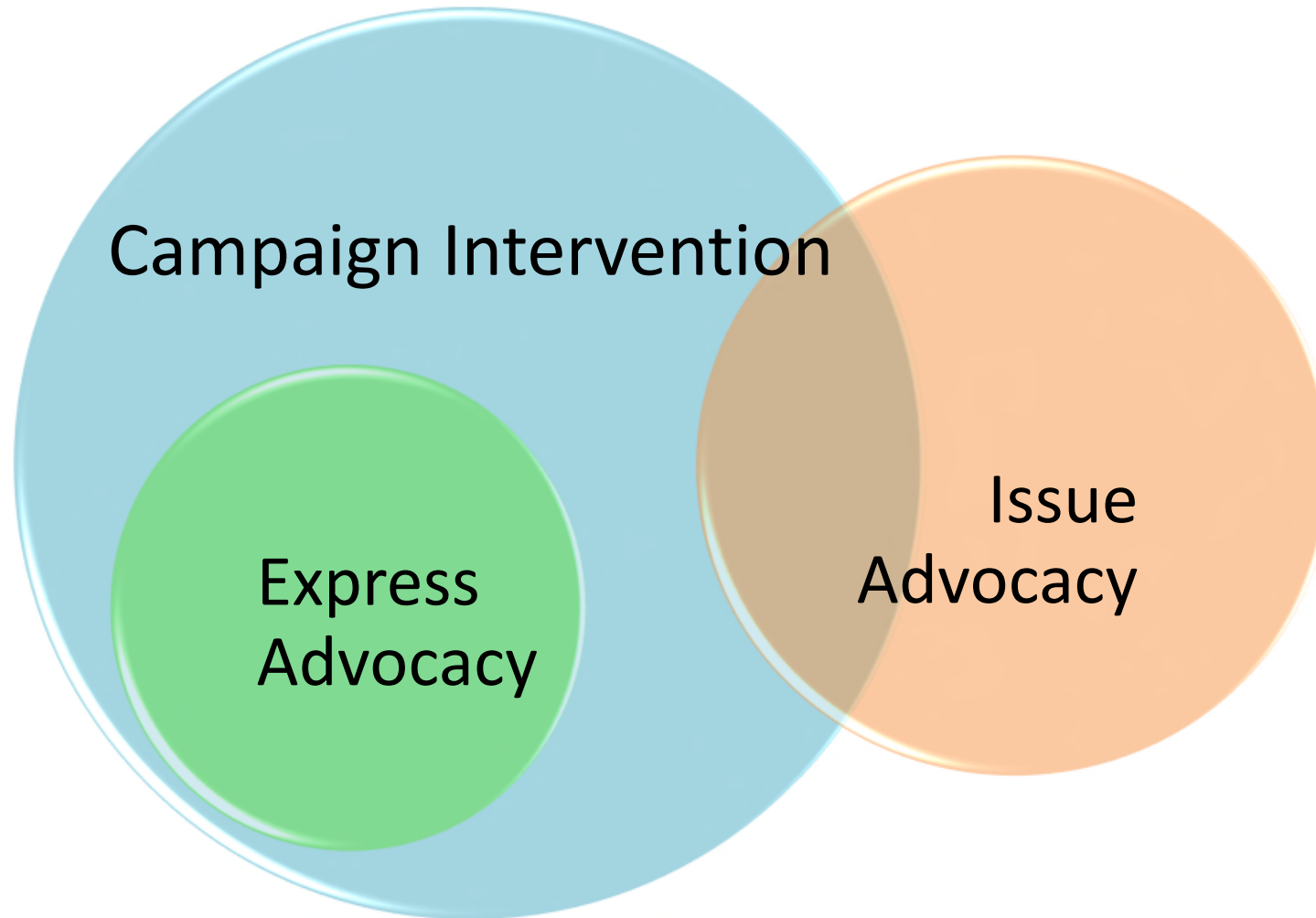


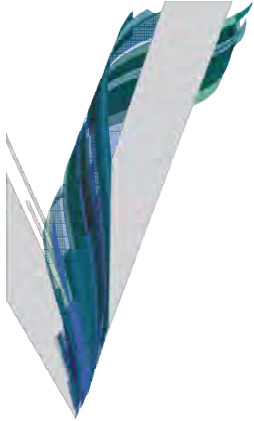
Communications





Scope of Intervention





Executive Activities

- Do not lose First Amendment rights
- Must act in personal capacity
- Must not use 501(c)(3) resources
- Position okay for identification purposes
- Include disclaimers
- May serve in advisory capacity in personal role

Examples of Disclaimers

DAILY NEWS OPINIONS & OP-EDS

...And so, that is why you should vote for Joe Blow for Mayor on Tuesday.

Sally Smith is the executive director of Neighborhood 501(c)(3). The views presented here are hers and not those of the organization.

CITIZENS FOR JOE BLOW

Dear Bob:

* * *

Join us on Tuesday to support Joe Blow.

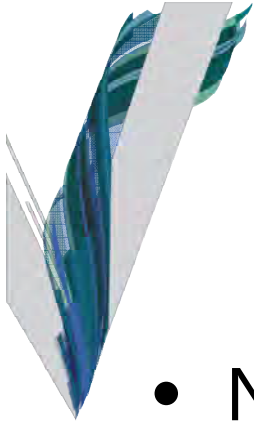
Sincerely,

Ben Baloney
President
Save the Shrews

Kent Conrad
Chairman
Slay the Shrews

Titles provided for identification purposes only.

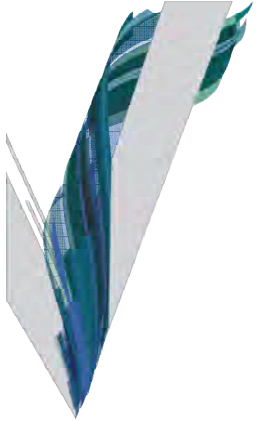




Fundraising by Executives

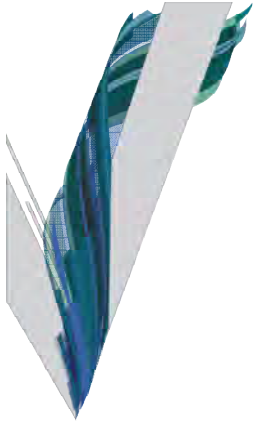
- No use of 501(c)(3) resources
 - No facilities/space
 - No mailing lists/email lists
 - May use personal contacts
- Home fundraisers
 - FEC: \$1,000 per person per candidate for food and beverage, above that in-kind contribution
 - States: varies
 - Candidate may pay





501(c)(4) and (c)(6) Organizations

Allowed to Intervene



Some Limits

Federal Law

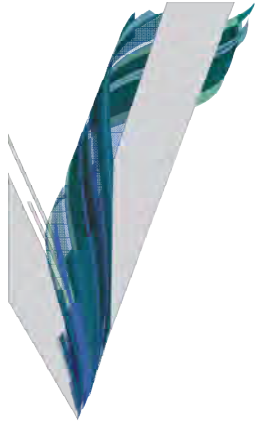
- No contributions, only expenditures

State Law

- May have limits

Tax Law

- May not be primary purpose



Primary Purpose: (c)(4)

Social
Welfare

Political

Education

Coalitions

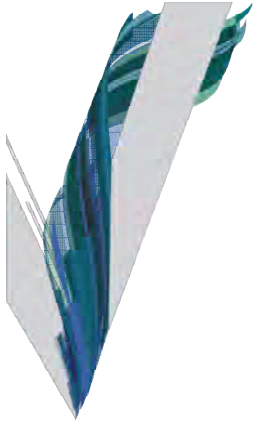
Grassroots

Lobbying

Independent
Expenditures

Contributions

Safe Harbor: 60%/40%



Primary Purpose: (c)(6)

Advancing Industry or Profession

Political

Education

Training

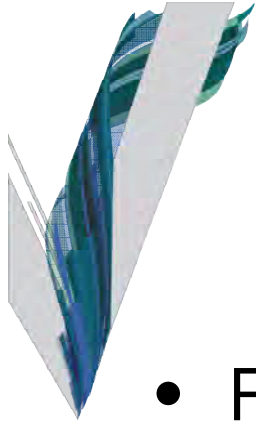
Regulatory

Lobbying

Independent Expenditures

Contributions

Safe Harbor: 60%/40%

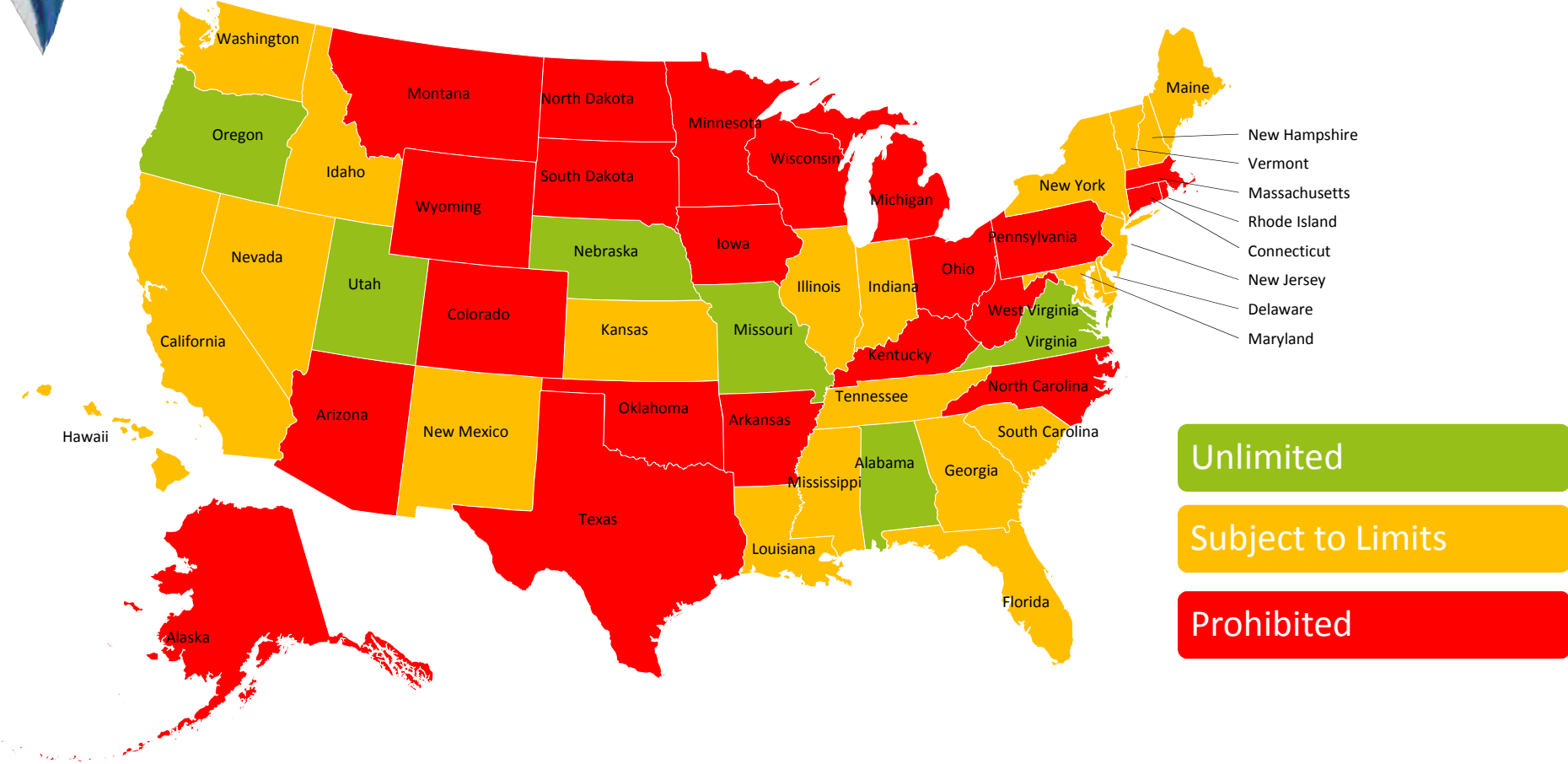
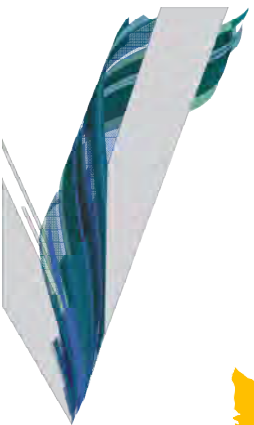


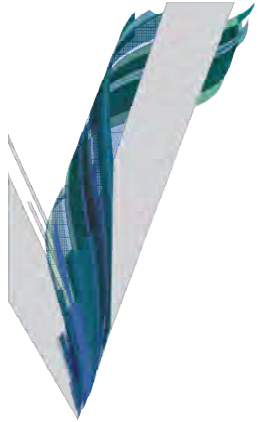
What Is Campaign Intervention?

- Facts and circumstances
 - Timing, content, background
- IRS tried to define it in rulemaking
- Intervention includes:
 - Express advocacy/independent expenditures
 - Campaign contributions
 - Endorsements
 - Supporting a connected PAC

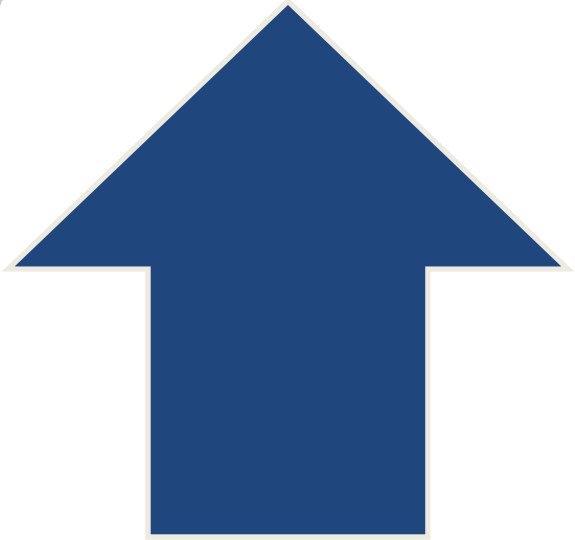


State Corporate Contributions to Candidates



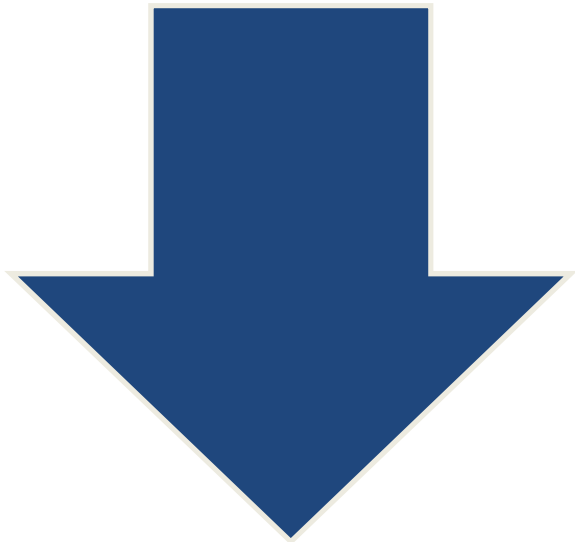


Making Independent Expenditures

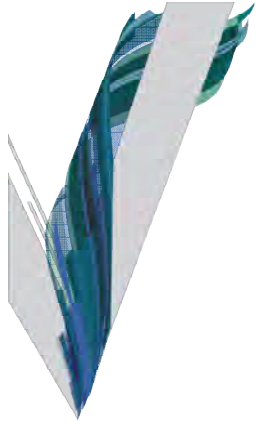


Supporting Candidates

TV, radio, web, email, GOTV

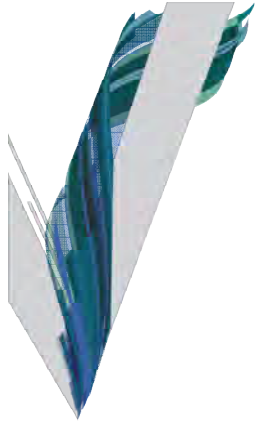


Opposing Candidates



Must be Independent





Coordination

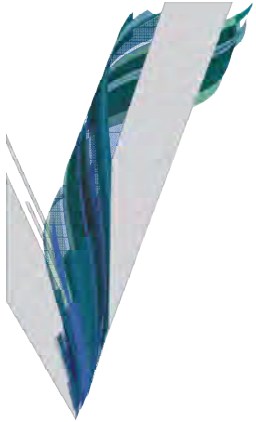
Request

Suggestion

Discussion

Common
Vendor

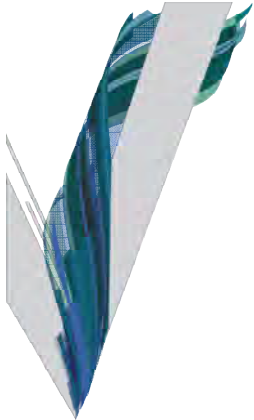
Former
Employee



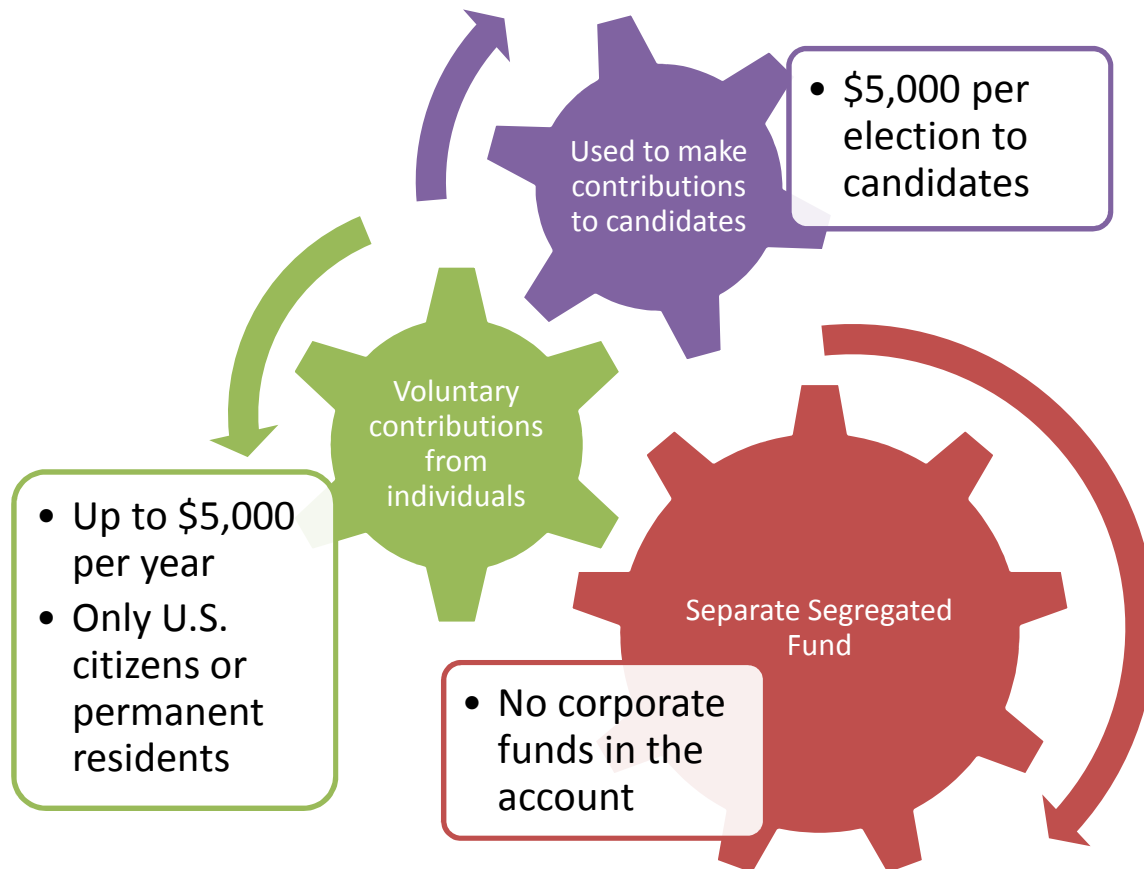
Political Action Committees

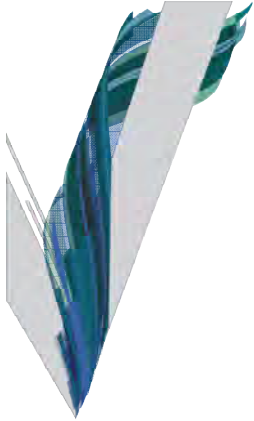
Giving to Candidates





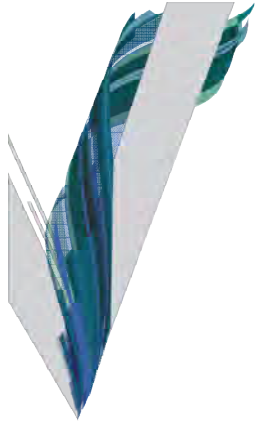
Political Action Committees





Dispelling Myths

- PACs don't buy influence
- PACs are highly transparent
- PACs do provide opportunities to interact with lawmakers
- PACs help to elect and retain members who understand and support the PAC's positions



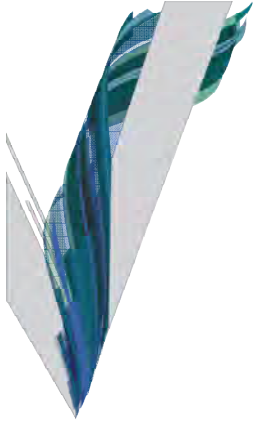
Connected versus Non-Connected

Non-Connected

- No related corporation
- May solicit any U.S. citizen
- All administrative and fundraising costs paid by PAC

Connected

- Related corporation
- May pay for administrative costs
 - Fundraising costs
 - Compliance costs
- May only solicit restricted class
- May accept contributions from any U.S. citizen

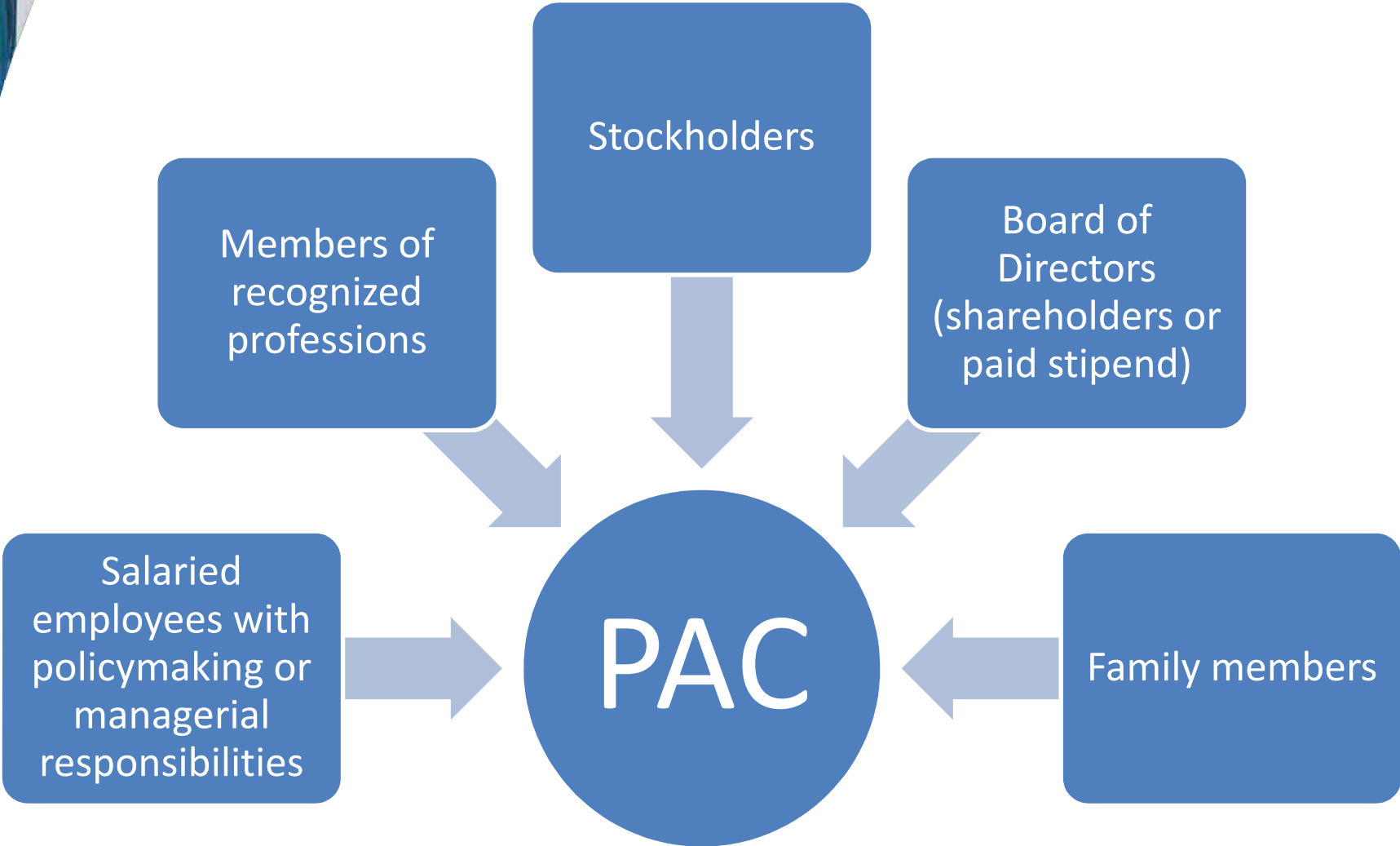


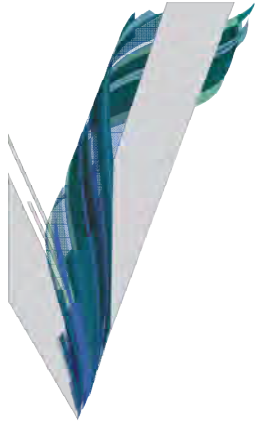
Restricted Class

- The individuals who may be solicited to make contributions to the PAC
- Varies by type of connected organization:
 - For-profit corporation
 - Membership organization
 - Trade or professional association

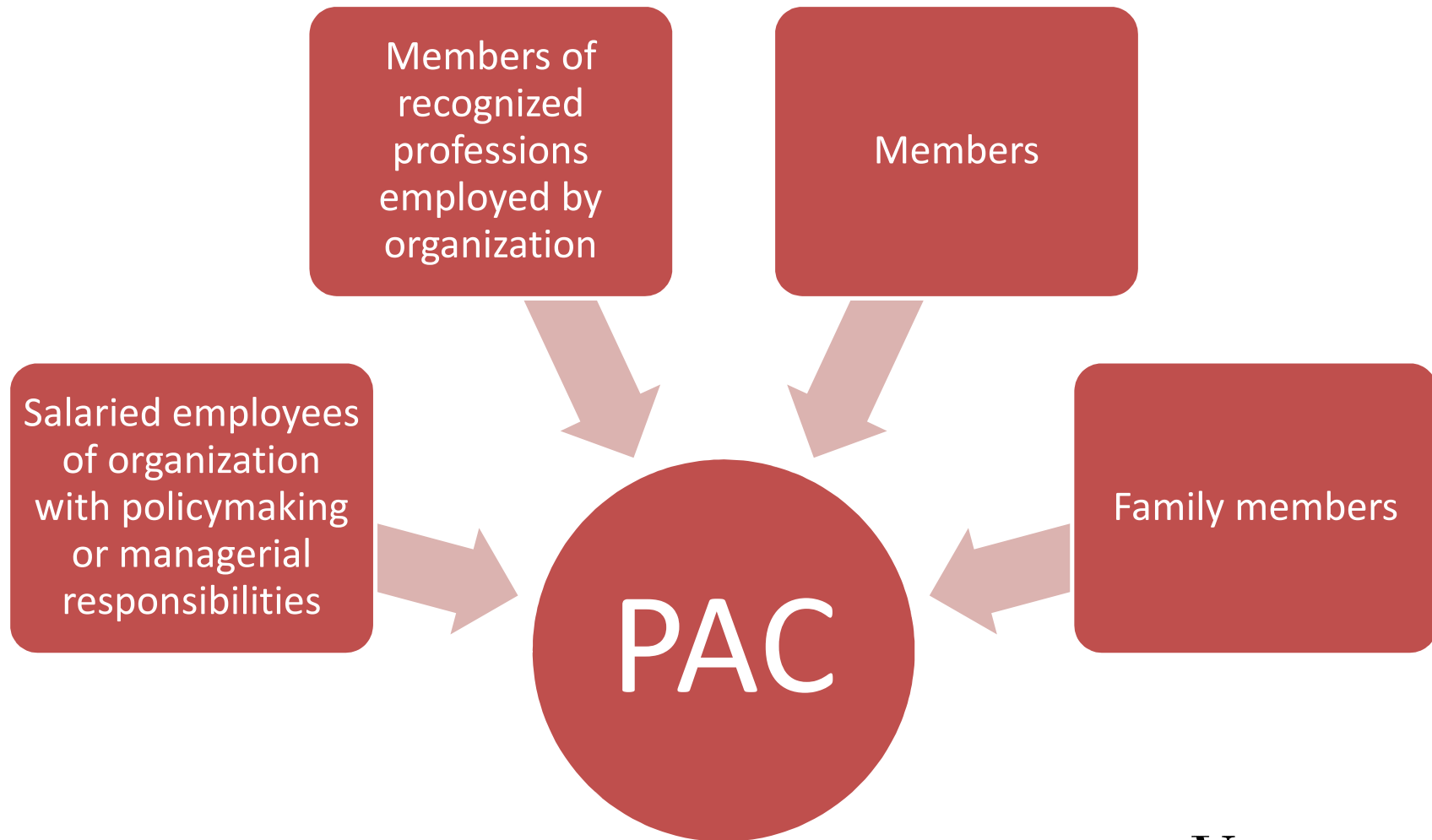


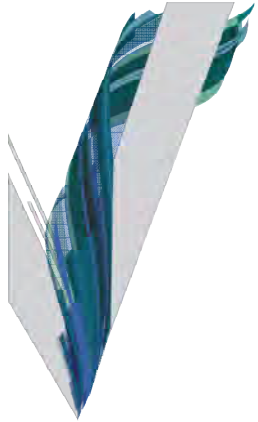
Corporation Restricted Class



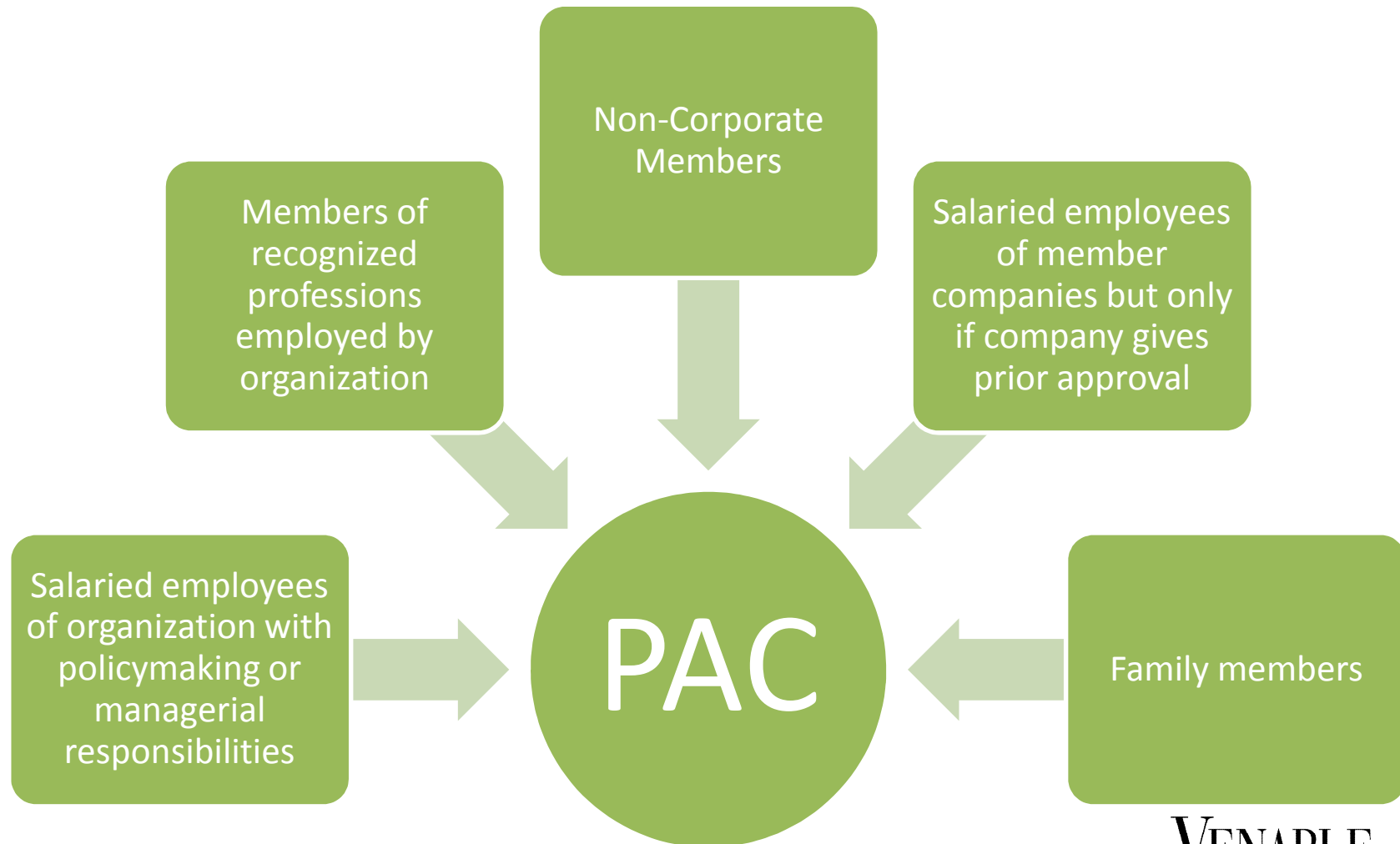


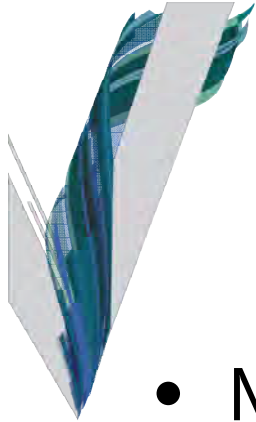
Individual Membership Organization Restricted Class





Corporate Membership Organization Restricted Class

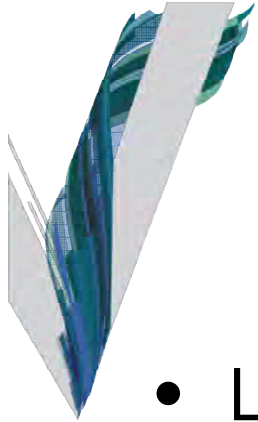




Trade Association Solicitation

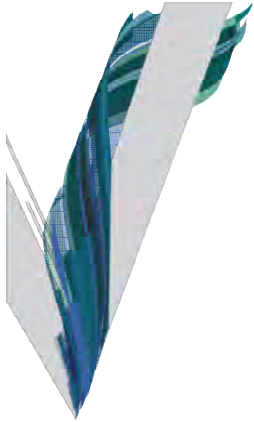
- May solicit executives of member companies only if the member gives prior approval
- Only one association per company per year
 - Applies to member company, not parent or subsidiary
- Must be in writing
- Company may limit scope
- May include sample solicitation



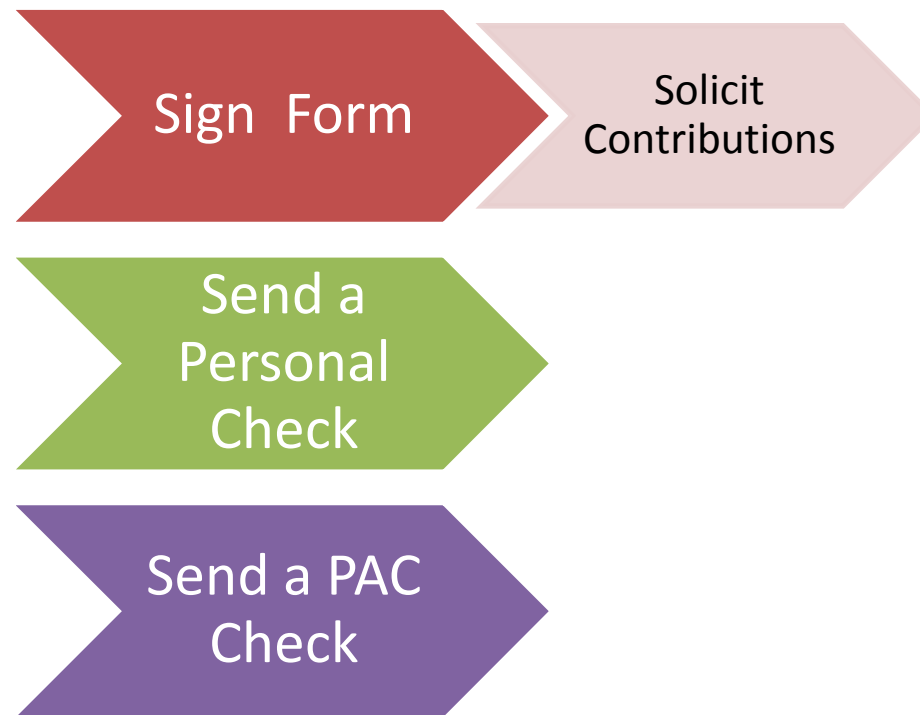


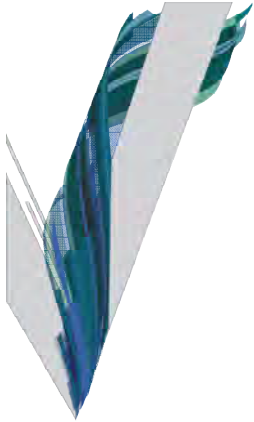
Prior Approval in Practice

- Limits ability to communicate with corporate members
- All requests must be focused on prior approval
- May communicate with association leadership



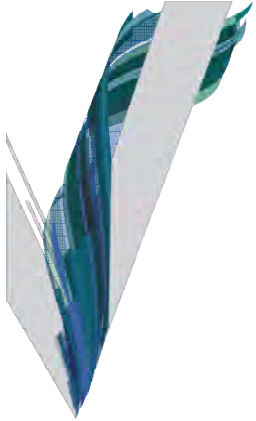
Responses to Prior Approval





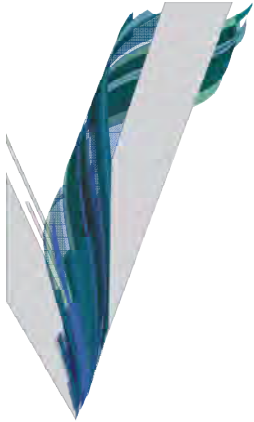
Dealing with Prior Approval

- Individual Members
 - Create individual members
 - Create related organization with individual members
- Requirements
 - Affirmation of membership
 - One of the following:
 - Pay annual membership dues
 - OR
 - Role in governance



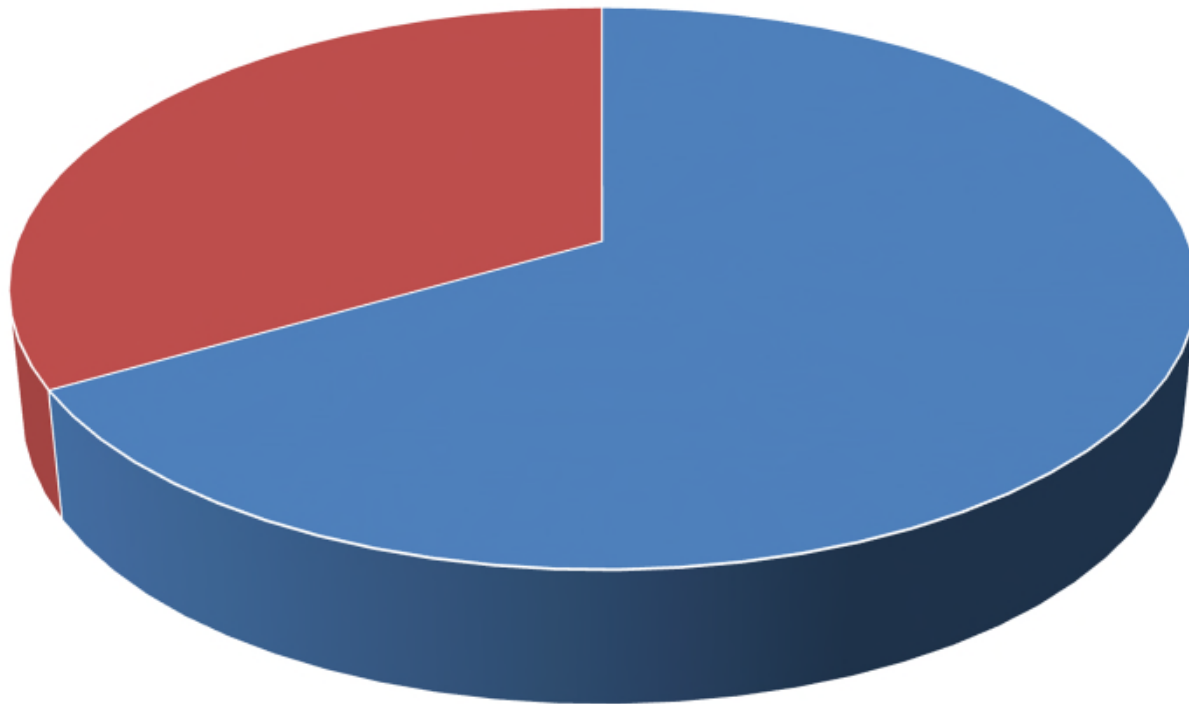
PAC Incentives

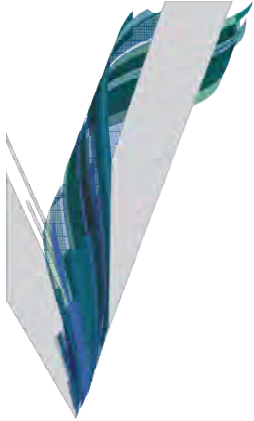
- Receptions/dinners with senior leadership
- Trinkets
- Prizes
- Charitable match



One-Third Rule

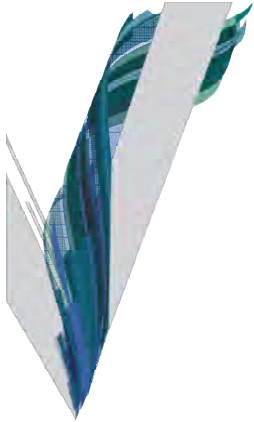
- Value of prize < $1/3$ value of contribution
- PAC must pay excess
- Universe of contributions is important





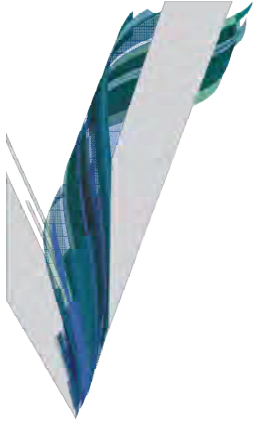
Examples

- Raffle:
 - \$1,200 in contributions
 - Prize worth no more than \$400
- Gifts:
 - \$10 per
 - Contribution must be more than \$30



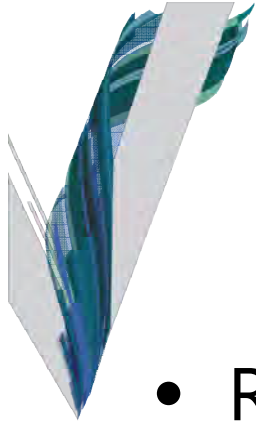
Prizes and Awards

- Subject to 1/3 Rule, paid for by the connected organization
- If trade association, member companies using corporate funds, may donate prizes
 - 1/3 Rule requires reimbursement to association if value exceeds 1/3 of contribution



Charitable Match

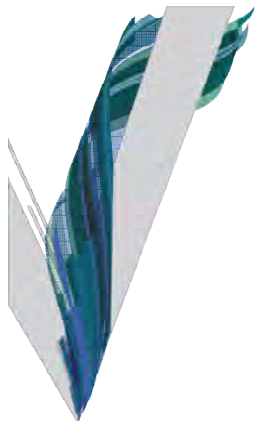
- No benefit to contributor
 - No token gifts from charity
 - No tax deduction to contributor
 - No tax deduction to organization
- Charity
 - May be limited by company to specific list
 - Including related foundations
 - May be open to any 501(c)(3) organization
 - System to verify charities
- Level
 - One-for-one approved by FEC in Advisory Opinions
 - Two-for-one dismissed in enforcement action (4-2 vote)



FEC Reports

- Regular reports filed with FEC
- Donors disclosed who give more than \$200:
 - Name
 - Address (may be company address)
 - Occupation
 - Employer
- All contributions given by the PAC
- Available online





Reporting Schedule

Election Year

- Quarterly
- Plus pre-primary reports where needed

OR

- Monthly

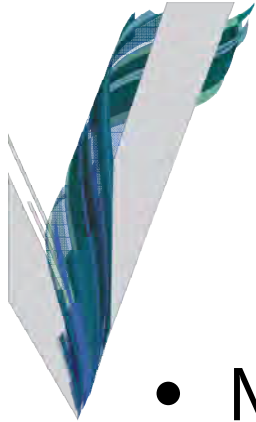
Off-Years

- Semi-annual

OR

- Monthly

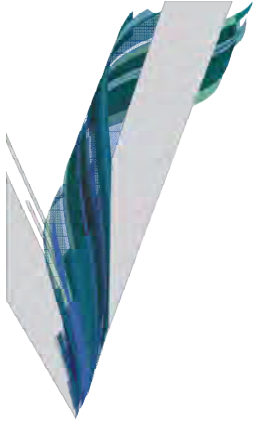




Maintaining Records

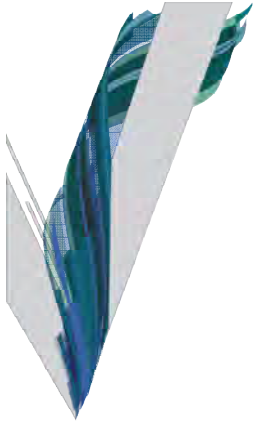
- Must retain records for three years
- Record of all receipts
- Record of all disbursements
- Signed prior approvals
- Signed payroll deduction authorization
- Contribution forms
- Bank statements





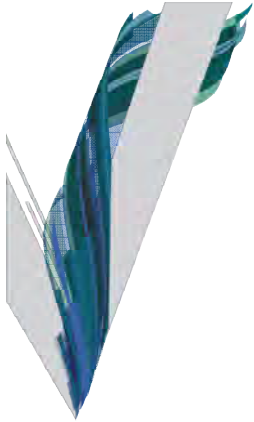
Contribution Limits

- New PAC: \$2,700 per election to candidate
- Multi-Candidate PAC: \$5,000 per election to candidate
 - In existence for six months
 - Made contributions to five candidates
 - Received contributions from 50 different contributors



PAC Events for Candidates

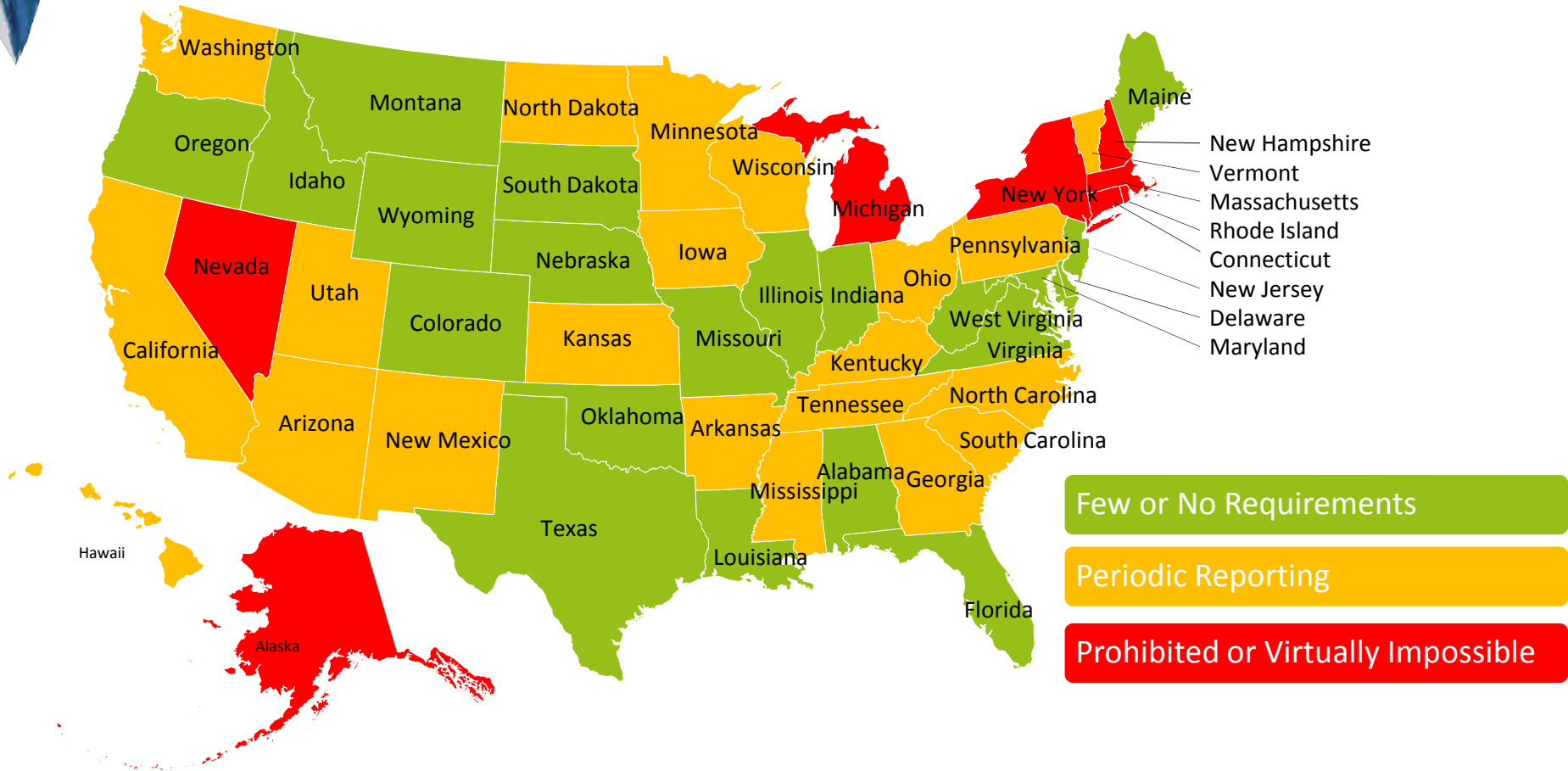
- PAC pays for food and beverage
- PAC pays for room rental
- PAC invites attendees
 - Restricted class
 - Others not with company
- PAC pays for corporate staff time
- All is treated as in-kind contribution to candidate, subject to \$5,000 limit per election

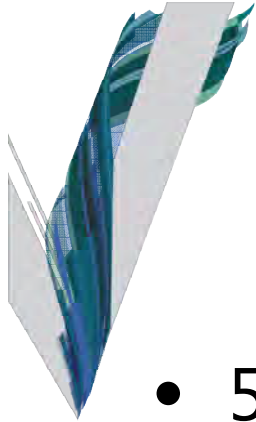


Restricted Class Event

- Limited to restricted class
 - Those employees outside of the restricted class necessary for event
- Special guests (e.g., speakers)
- May urge attendees to vote for candidate
- May solicit contributions for candidate
- May not collect contributions—must be given directly to candidate
- May provide food and beverage
- No charge for room
- May limit to one candidate and not include opponent

Federal PAC Contributions to State Candidates

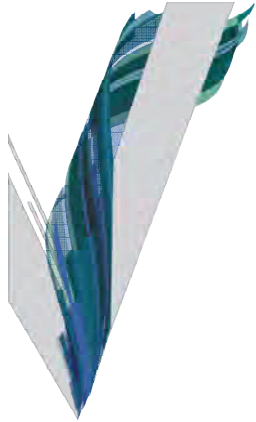




Tax on Political Activity

- 527(f) Tax
- Lesser of net investment income or political expenditures
- 35% tax
- Unless paid for from segregated fund
 - Fund must be registered with state, FEC, or IRS
 - Donors must be disclosed





Questions?

Jeffrey S. Tenenbaum, Esq.
Partner and Chair of the Nonprofit Organizations Practice,
Venable LLP
jstenenbaum@Venable.com
t 202.344.8138

Ronald M. Jacobs, Esq.
Partner and Co-Chair of Venable's Political Law Group,
Venable LLP
rmjacobs@Venable.com
t 202.344.8215

Lawrence H. Norton, Esq.
Partner and Co-Chair of Venable's Political Law Group,
Venable LLP
lnorton@Venable.com
t 202.344.4541

To follow updates on political law topics, visit Venable's political law blog, www.PoliticalLawBriefing.com.

To view an index of Venable's articles or upcoming programs on political law topics, see

<https://www.venable.com/political-law-practices/>

To view an index of Venable's articles and presentations or upcoming programs on nonprofit legal topics, see www.Venable.com/nonprofits/publications or www.Venable.com/nonprofits/events.

To view recordings of Venable's nonprofit programs on our YouTube channel, see www.YouTube.com/VenableNonprofits or www.Venable.com/nonprofits/recordings.

Follow [@NonprofitLaw](https://twitter.com/NonprofitLaw) on Twitter for timely posts with nonprofit legal articles, alerts, upcoming and recorded speaking presentations, and relevant nonprofit news and commentary.