

VENABLE

Election-Year Opportunities for Nonprofits

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Venable LLP, Washington, DC

Speakers

Cindy M. Lewin

Partner, Nonprofit Organizations Practice, Venable LLP

Ronald M. Jacobs

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

James E. Tyrrell, III

Counsel, Political Law Practice, Venable LLP



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Upcoming Venable Nonprofit Events

Register Now

- **June 14, 2018 — Program/Reception:**
[Avoiding the Legal Pitfalls of Charitable Fundraising](#)
- **Summer Break:** Programs will resume in the Fall



Agenda

- Political Activity to Support Candidates
 - Independent Expenditures
 - Contributions
 - Fundraisers
- 501(c)(3) Activity
- Building a PAC
- State and Local Activity



Why It Matters

- Many organizations are politically active
- Many executives want to be involved
- Risks and rewards for political activity
- Political law manages the risks





Why Be Politically Active?

- Protect your organization/members/interests
- New opportunities
- Enhance reputation
- Favorable regulatory climate





Risks of Political Activity

- Laws vary widely
 - Many traps
 - Impact on business and personal activity
 - Compliance must involve entire organization
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- Scrutiny from:
 - Regulators
 - Media
 - Competitors
 - Watchdogs



Why It Matters

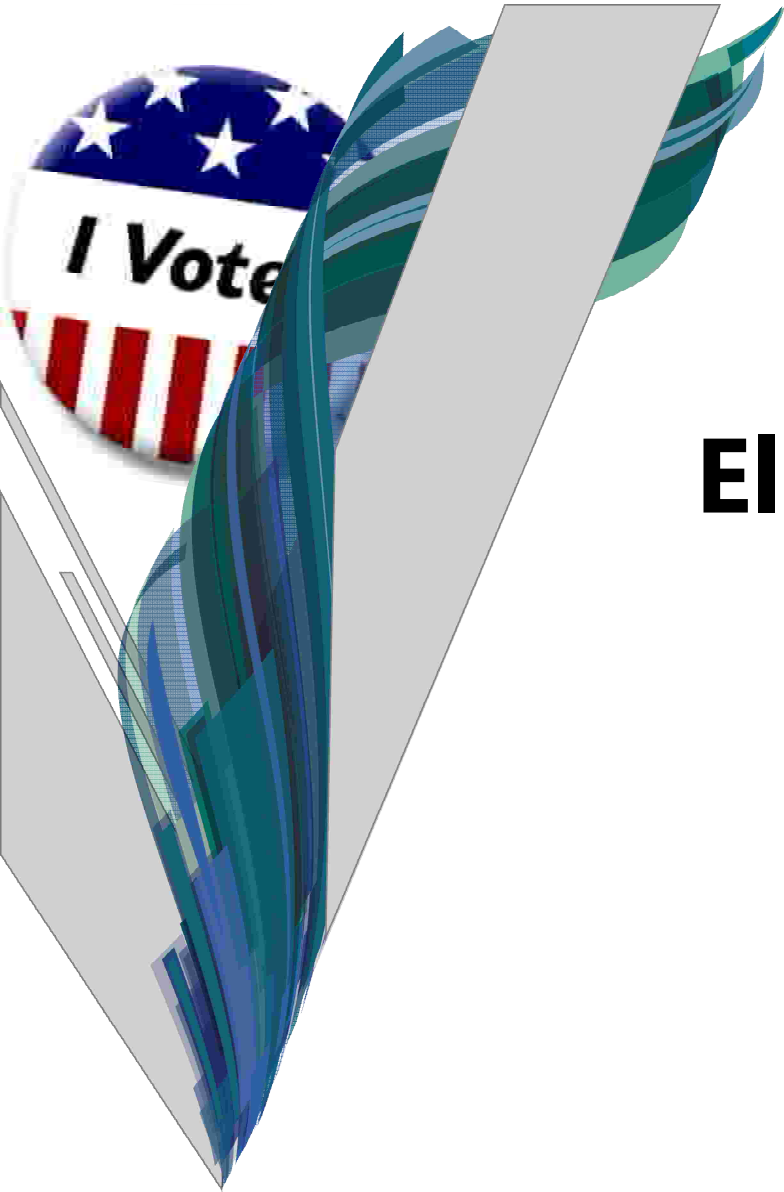
Reputation

Fines

Effectiveness

VENABLE

Election-Year Scenarios for Nonprofits





Candidate Fundraiser

We want to have a candidate come into the office and invite people to lunch with her. We'd ask them to make contributions to the campaign.



Questions

- Whose office is it?
- Where is the candidate running?
- Who will be invited to attend?
- Who will pay for the food?
- Who will send out the invitations?
- Who will manage the event?



Whose Office is It?

- Business
- Trade association
- 501(c)(4)
- 501(c)(3)
- Restaurant/offsite



Where is the Candidate Running?

- Federal (House, Senate, President)
- State
- Local



Who Will Be Invited?

- Members
- Employees of members
- Interested parties
- Others



Considerations

- Corporate contributions
 - Federal prohibits corporate contributions
 - Exceptions for member events
 - Many states allow corporate contributions
- Issue:
 - Food, space, staff time are in-kind contributions
 - Must have a permissible source





Options

Candidate Pays

- Simple
- No in-kind issues

Organization Pays

- For federal candidates, only works for member events
- Employees provide staffing

PAC Pays

- In-kind subject to limits
- Volunteer staffing

Individual Pays

- In-kind subject to limits
- Volunteer staffing



Candidate Pays

- Candidate pays for food and room costs
- Volunteers invite attendees
- No use of organization resources



Organization Pays

- Members only
- Trade associations may invite individuals with whom they normally conduct business
- Organization staff plan and organize event
- Organization pays all costs
- No in-kind issue
- Report as communications costs if exceeds \$2,000



Organization Issues

- 501(c)(3)s may not host fundraisers
- Staff necessary to the event are allowed to attend
- Limited invitations of outside attendees
- Organization must not collect contributions



Corporate Contribution States

- Organization pays
- In-kind contribution subject to limits
- Staff plans event and costs part of in-kind



PAC Pays

- PAC pays for food and room rental
- Treated as in-kind subject to limits
- Must pay for staff time or senior staff volunteer



Individual Pays

- Individual(s) pay for food and space
- In-kind contribution limit
- Volunteer efforts to staff event



Individual at Home Event

- Use of house exempt
- Exemption for \$1,000 per election for food, beverages, and invitations
- Volunteer planning
- May not ask staff to assist with event

Contribution Limits

	Candidate	PAC	National Party	State/Local Party
Individual	\$2,700 per election	\$5,000 per year	\$33,400 per year	\$10,000 per year
Multi-Candidate PAC	\$5,000 per election	\$5,000 per year	\$15,000 per year	\$5,000 per year
PAC	\$2,700 per election	\$5,000 per year	\$33,400 per year	\$10,000 per year

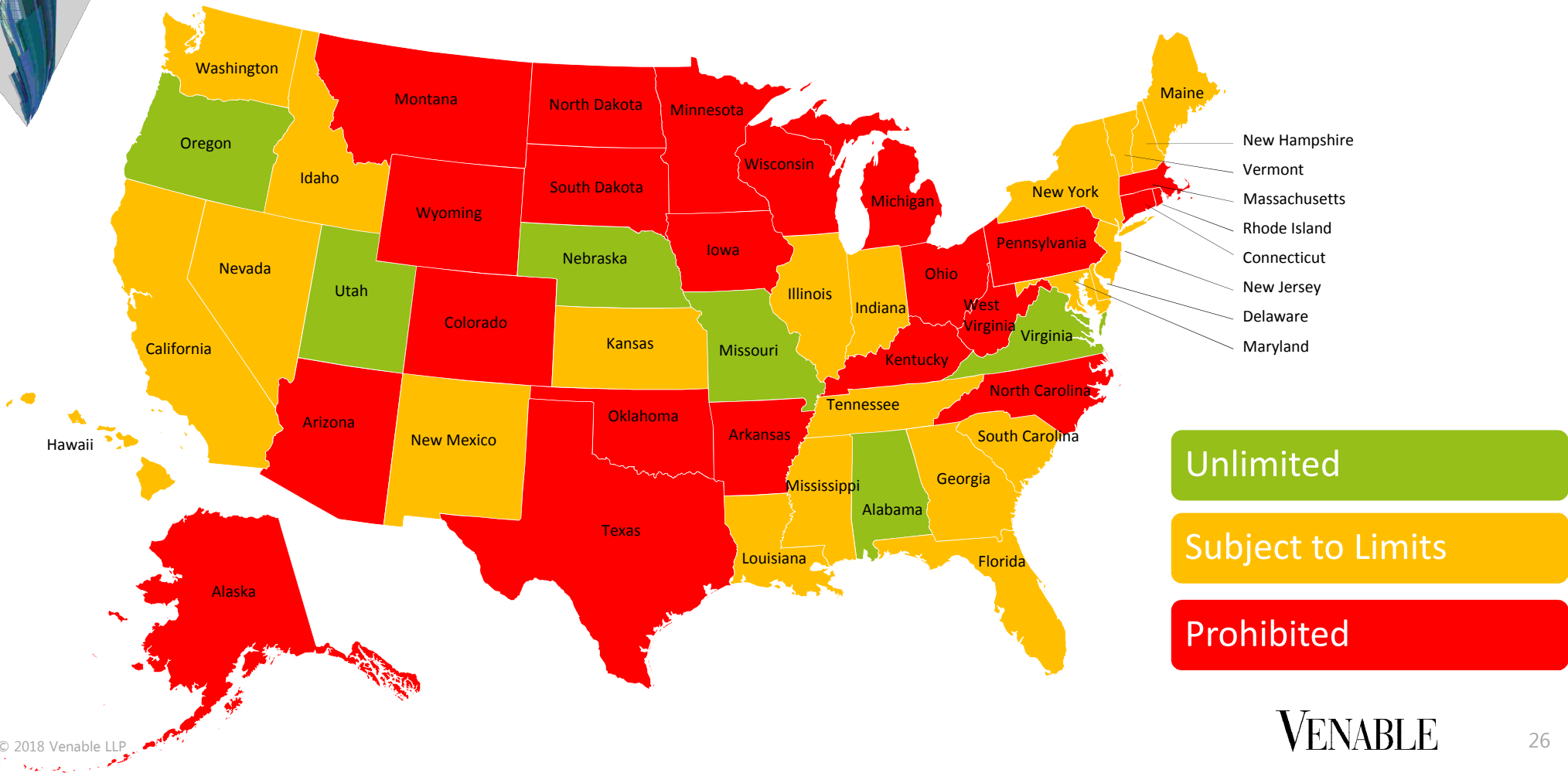


State Contributions

We would like to support state candidates.

- How big of a check may I write?
- Can the organization write a check?
- Do I have to file any reports?

State Corporate Contributions to Candidates



The background of the slide features a photograph of the Maryland State House dome, a prominent white structure with a green roof, set against a clear blue sky. To the right, there are trees with vibrant autumn foliage in shades of orange, red, and yellow. In the bottom left corner, there is a stylized graphic of a blue and white striped flag.

Maryland Contribution Limits

\$6,000 per election cycle
Corporate and individual
Limits on affiliated corporate entities

California Contribution Limits

	Senate/ Assembly	Statewide	Governor	PAC
Individual	\$4,400 per election	\$7,300 per election	\$29,200 per election	\$7,300 per year
Business Entity	\$4,400 per election	\$7,300 per election	\$29,200 per election	\$7,300 per year
PAC	\$4,400 per election	\$7,300 per election	\$29,200 per election	\$7,300 per year



Things to Consider

- Restrictions on contributing during the legislative session.
- Limits on lobbyist contributions/fundraising.
- Board authorization requirements.
- 527(f) tax.



Reporting/Disclosure

- California major donor reporting.
- Disclosure of members, donors, etc.









My Boss at the 501(c)(3) Wants to Endorse

I work at a 501(c)(3). The executive director wants to endorse candidates? We can't, but can he? If so what are the rules? Our board does not want us to cross any lines.



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



Executive Endorsements

- May endorse in personal capacity
- May not use 501(c)(3) resources
- May use title for identification purposes
- Must disclaim organization interest



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.





Suggestions

- Don't use 501(c)(3) space (or the front doorstep).
- Don't press release activity.
- Don't use 501(c)(3) social media to spread endorsement.
- Don't use 501(c)(3) email lists.



Can We Run Issue Ads from the (c)(3)?

Our 501(c)(3) cares about a particular issue. We know there are limits on how much we can lobby. We want to take out ads—digital and maybe TV if we have enough money—to thank officials who have supported our efforts and to encourage people to call their legislators. Can we do that?

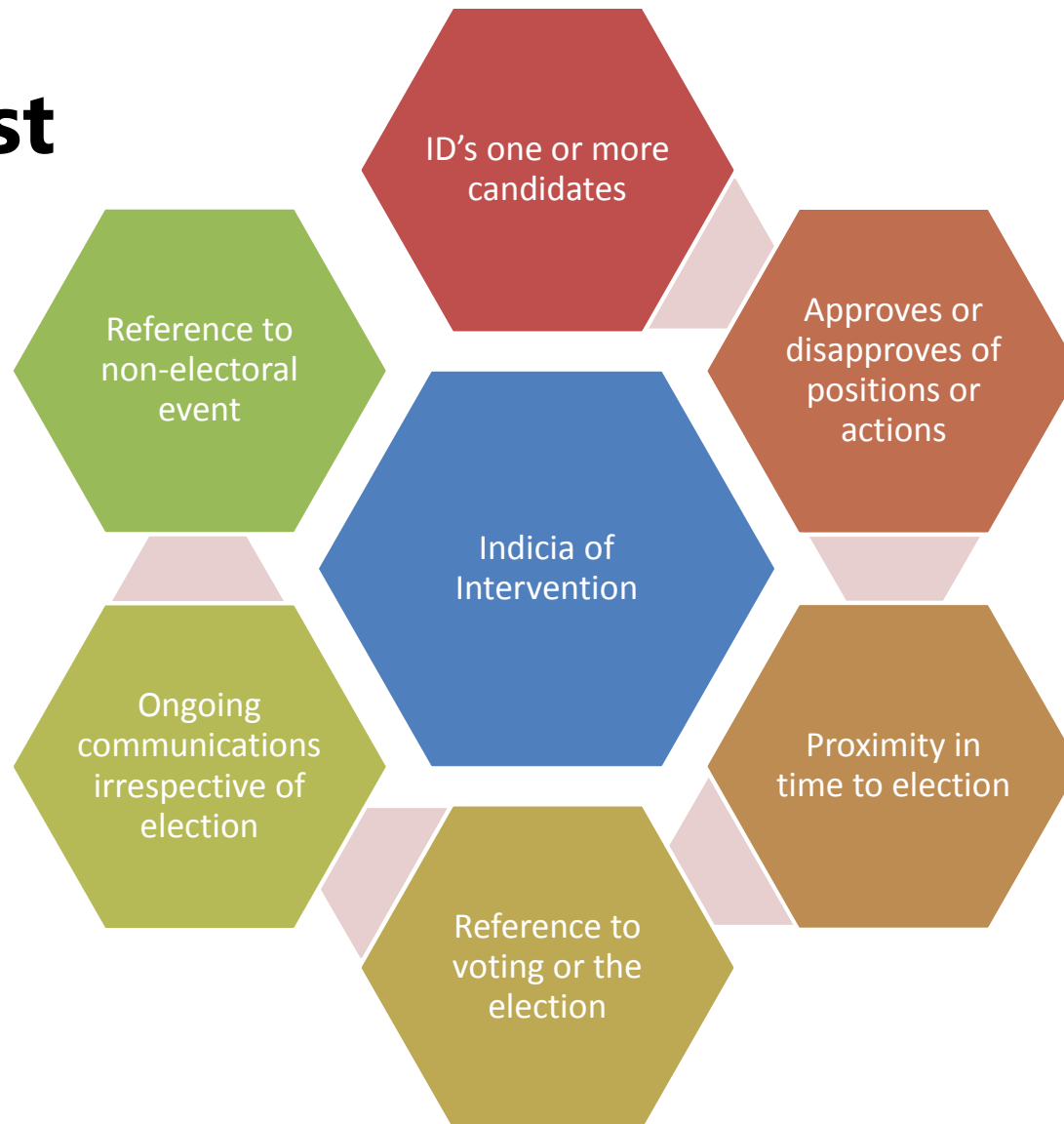


Basic Rules

- No “campaign intervention”
 - Facts and circumstances test
- Limited lobbying—not a substantial amount
 - Either facts and circumstances
 - OR
 - 501(h) election



IRS Test





Two Similar Ads

Call Senator Smith to thank her
for her vote on S. 123

- One week before election.
- S. 123 contentious issue in race.
- Not lobbying—no ask to contact and bill already passed.
- Could be campaign intervention.

Call Senator Smith and ask her to
vote “no” on S. 123

- Just prior to vote on bill.
- Grassroots lobbying under either test.
- Likely not campaign intervention.



Websites and Social Media for (c)(3)s

Our 501 (c)(3) is revamping its digital presence.
What do we need to know about lobbying and
campaign intervention when we set it up?
What about our related 501 (c)(4) website?



Websites

- Treated as any other communication
- Risk of taking information from one section and linking it to a candidate on another





Blogs/Third Party Postings

- Not clear what IRS thinks
- Include disclaimer
- Comments may be okay





Links

- Links to candidate sites
 - Context and purpose important
 - Voter education/all candidates v. advocacy
- Links to other sites
 - Purpose
 - Relation to advocacy
 - Number of clicks
- Links to related 501(c)(4) site okay
 - But, do not merge the two sites





Tours and Visits

We want to bring candidates in to our member companies to tour the facilities, meet workers, give speeches, and generally help them get to be more well known. How do we do that?



Know in Which Capacity They are Visiting

Candidate



- Campaign stop
- Limits on audience
- Concerns about in-kinds

Official



- Invited as sitting officials
- Not there for campaign at all
- Gift rule limits on food/transportation



Usually Easier to Have an Official Visit

- Work through official office
- Don't talk about the campaign
- Talk about legislative issues
- No limits on employees in the room



Rules for Federal Candidates

- May not ask for money
- Company may not urge employees to vote for candidate
- Candidate may talk about election and urge people to vote for her



We Need to Grow the PAC

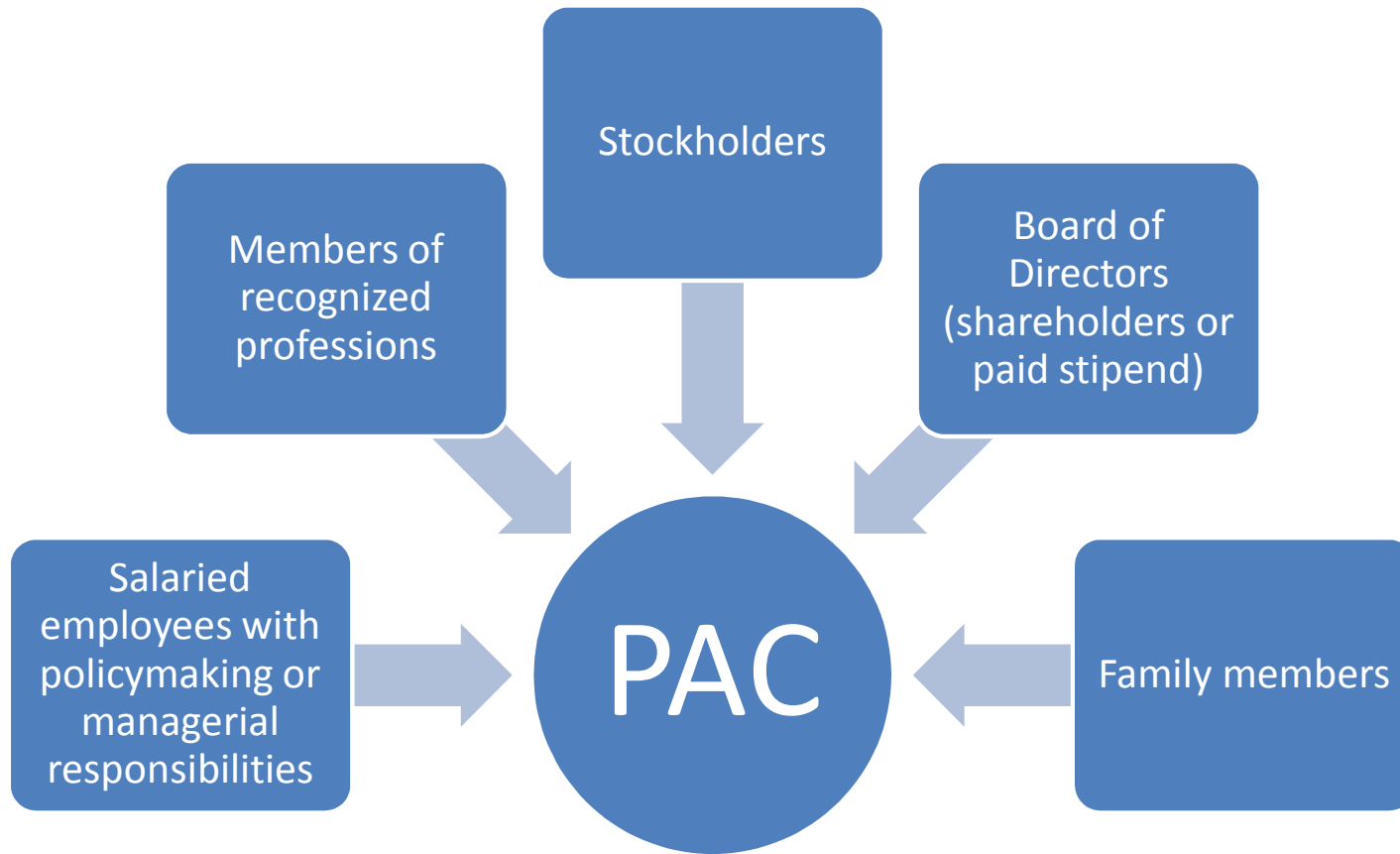
Our PAC has been shrinking. I know there are lot of rules about who can give. Do I need my members' permission to solicit their employees? How does that work? Can we have prizes? What else can we do? HELP!



Who Can Be Solicited?

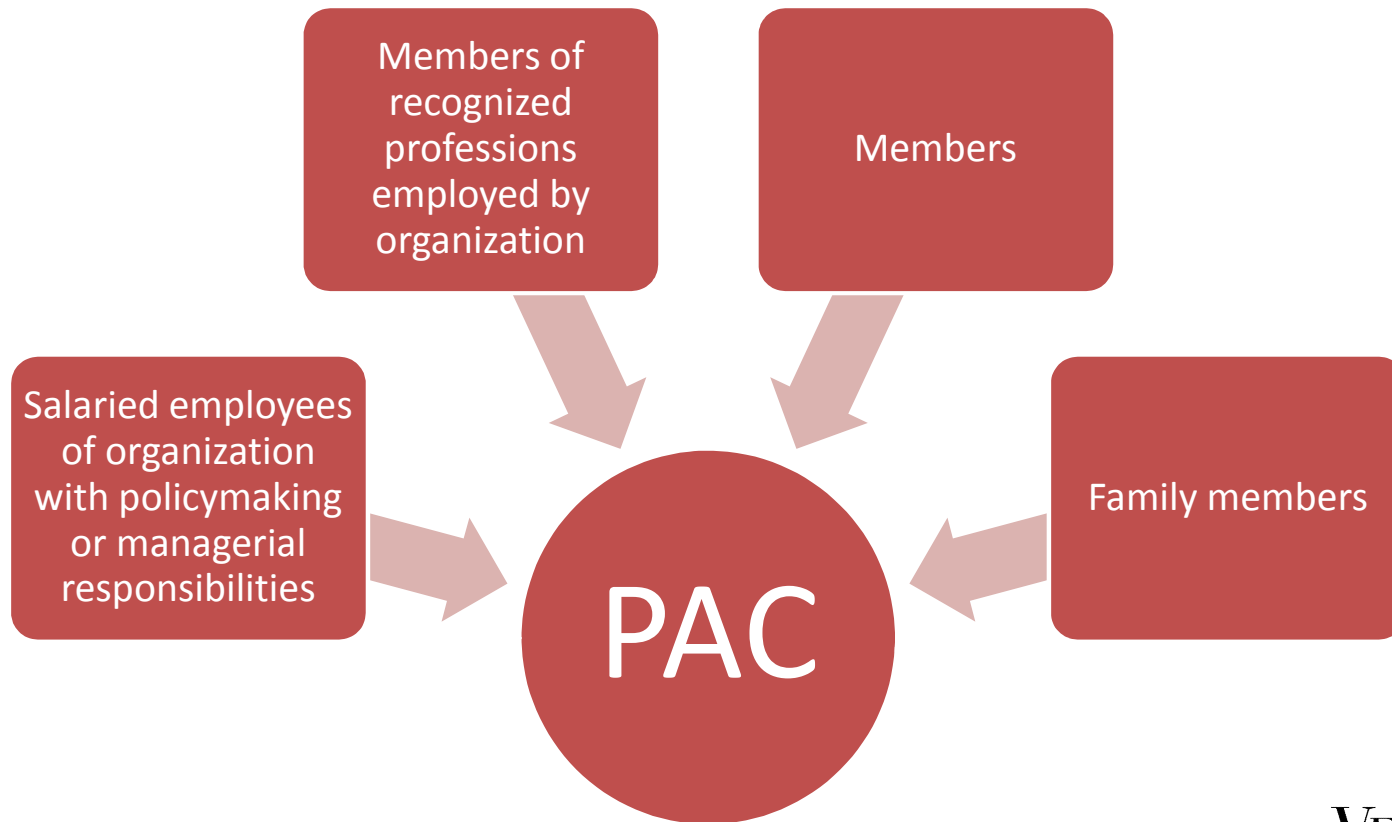
- Restricted class
 - Depends on what kind of organization involved

Corporation Restricted Class



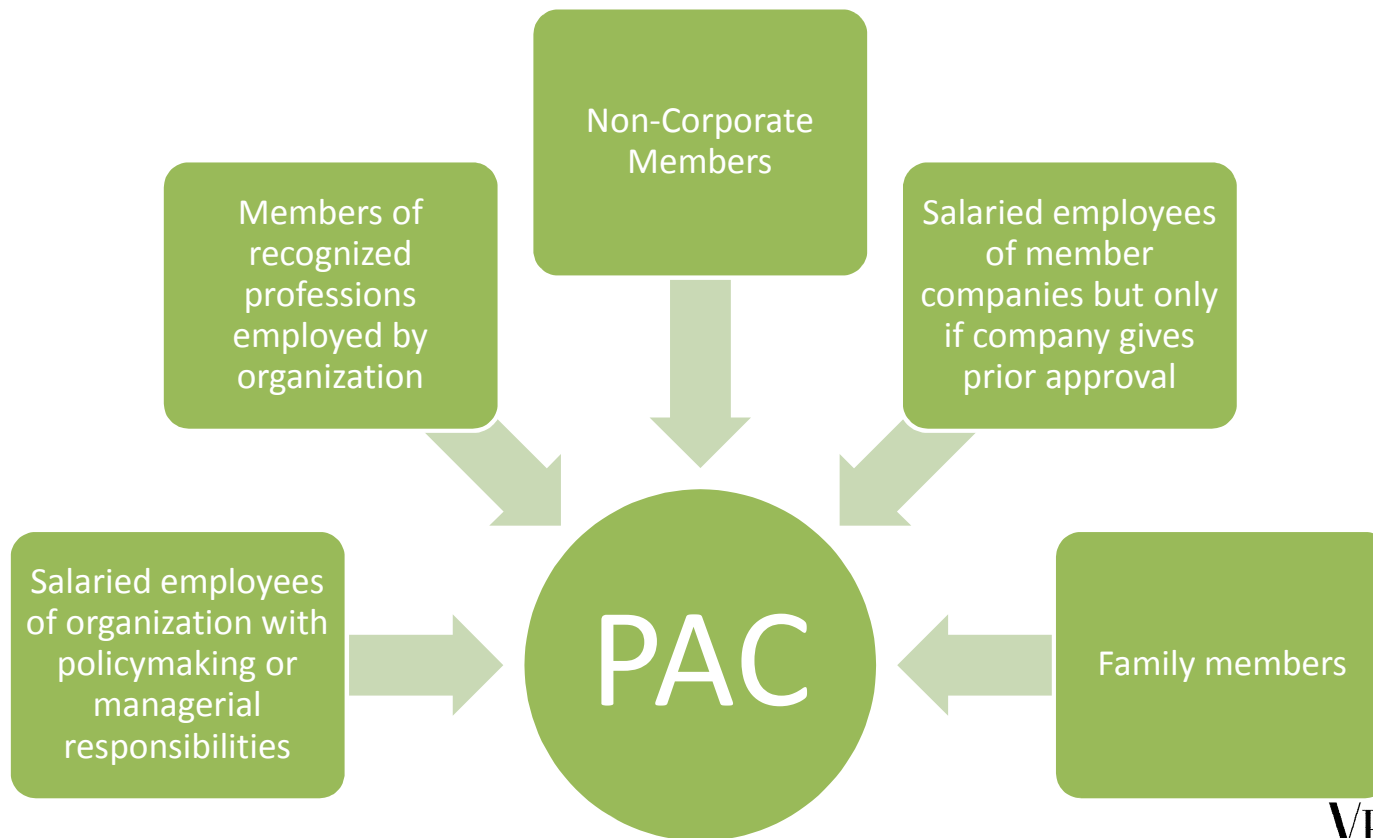


Individual Membership Organization Restricted Class





Corporate Membership Organization Restricted Class





Trade Association Solicitation

- May only solicit executives of member companies 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



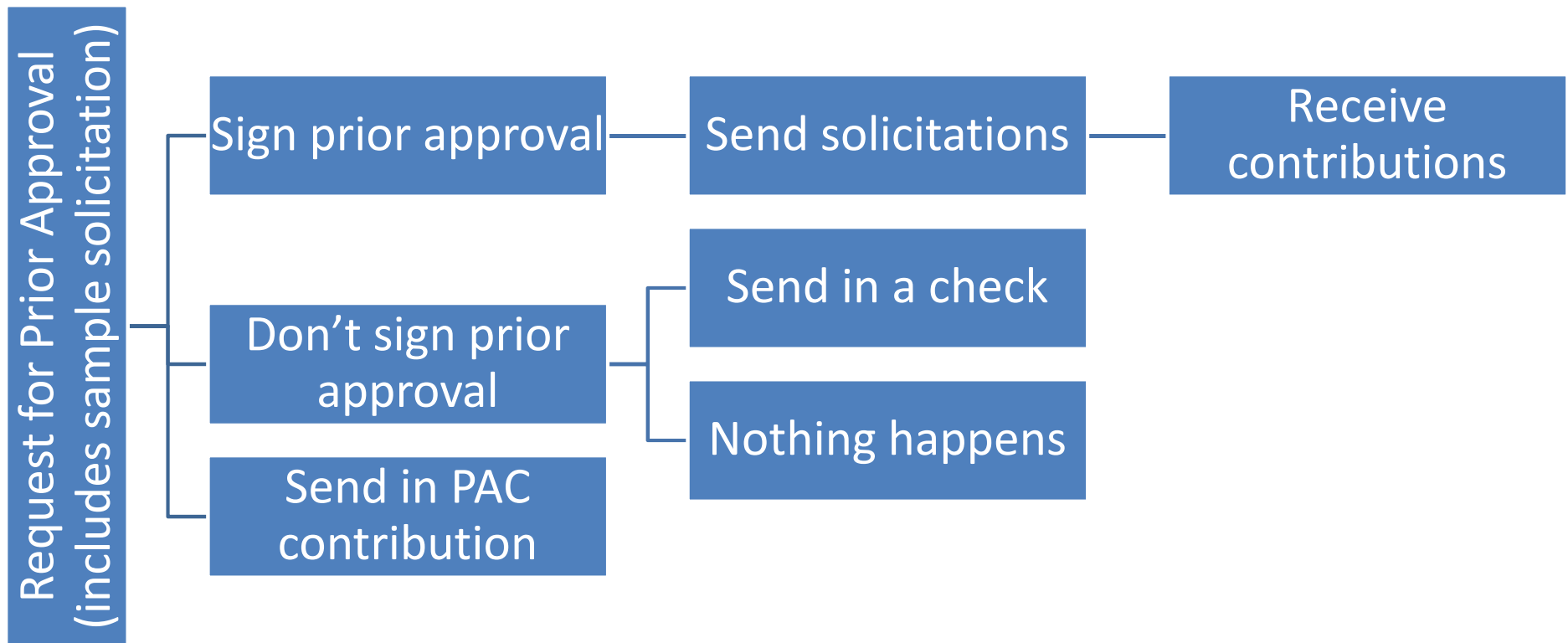


Prior Approval in Practice

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



Prior Approval





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 existence of PAC
- Explain legal rules governing PAC
- Information about receipts
- Information about disbursements
- Request for prior approval



How Can I Incentivize People to Give?

- Prizes
- Charitable Match
- No reimbursement



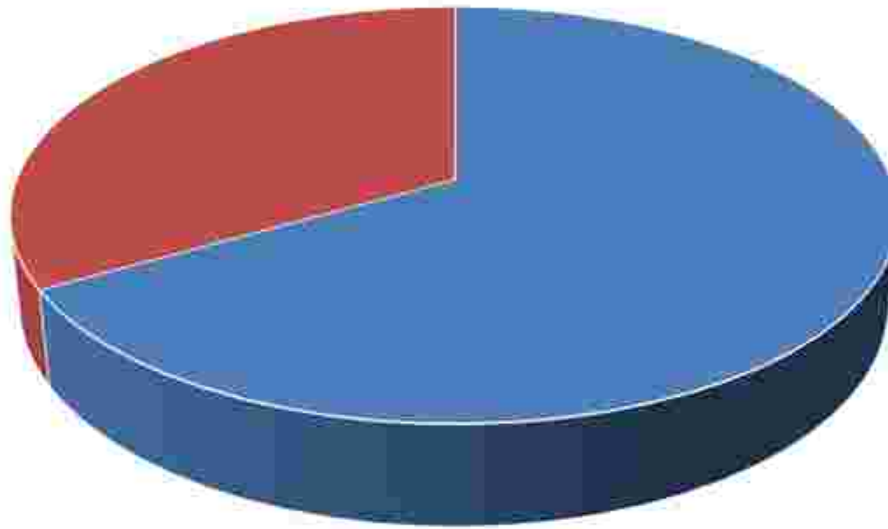
Prizes and Awards

- 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



One-Third Rule

- Value of prize < $\frac{1}{3}$ 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 pen
 - Contribution must be more than \$30



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)
 - System to verify charities
- Level
 - One-for-one approved by FEC in Advisory Opinions
 - Two-for-one dismissed in enforcement action (4-2 vote)



What Else Can We Do to Support Candidates?

We want to do more than just write a check to help a candidate that we like. Should we set up a Super PAC? What do they do anyway?



Independent Expenditures

- Supporting or opposing candidates
- TV, radio, print, digital ads
- Email, social media
- Data operations
- Field programs

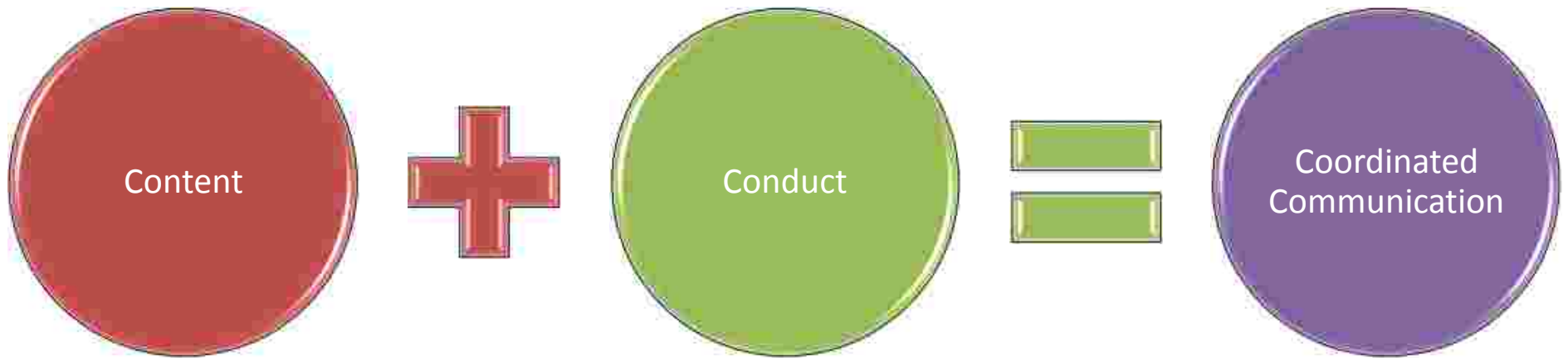


Must Be Independent





Coordinated Communications





Content

Electioneering Communications

- Broadcast/radio/cable
- Targeted to relevant electorate
- Contains reference to candidate
- 30 days before primary
- 60 days before general

Express Advocacy in Public Communication

- Broadcast/cable/satellite
- Newspaper
- Magazine
- Outdoor advertising
- Mass mailing (500 pieces)
- Telephone bank (500 calls)
- Other form of general public political advertising

References to Candidates in Public Communications

- References a House or Senate candidate in the relevant jurisdiction 90 days or less before primary or general
- References a presidential candidate from 120 days before the primary up through the election

Republication in a Public Communication

- Disseminates
- Republishes
- Distributes



What's Not a "Public Communication"?

- Anything on the Internet that is not paid for on a third-party site
 - Email
 - Blogs
 - Social media
- What is included:
 - Banner ads
 - Targeted advertising
 - Paid social media



NOTE: Any expenditure for republication of candidate materials is an in-kind contribution



Conduct

Request/Suggestion

- Candidate asks
- Candidate assents to suggestion

Material Involvement

- Non-public information shared
- Content
- Audience
- Means or mode
- Outlets
- Timing/frequency
- Size, prominence, duration

Substantial Discussion

- Non-public material information
- Plans
- Projects
- Activities
- Needs

Common Vendor

- Same vendor within 120 days uses material nonpublic information
 - Media strategy
 - Audience selection
 - Polling
 - Fundraising
 - Content development
 - Production
 - Voter list development
 - Consulting or media advice
- May establish a firewall

Former Employee

- Employee or vendor worked for both entities within 120 days
- Uses material, non-public information

Republication

- Republish or broadcast candidate's materials
- May use small sections to create ads



Disclosure of Independent Expenditures

Periodic Reports End of next reporting period

- Required of all entities that make more than \$250 in IEs for any election in a calendar year
- Disclose all payments for the IEs (name and mailing address, amount, date, purpose, whether supporting or opposing a candidate)
- Disclose contributions >\$200 received for the “purpose of furthering the reported independent expenditure”

48-Hour Reports 20 days or more before election

- Required if spend more than \$10,000 for a given election
- Additional reports required for each additional \$10,00 spent
- Same information as periodic reports

24-Hour Reports Between 24 hours and 19 days before election

- Required if spend more than \$1,000 between 19 days and 24 hours before election
- Additional reports required for each additional \$1,000 spent
- Same information as periodic reports



Who Can Make IEs?

- 501(c)(4)s and (c)(6)s
 - Subject to primary purpose test
- PACs
- Super PACs
- Individuals
- Companies
- **Not 501(c)(3)s**



What about State Candidates?

What are the rules when we want to support state or local candidates?



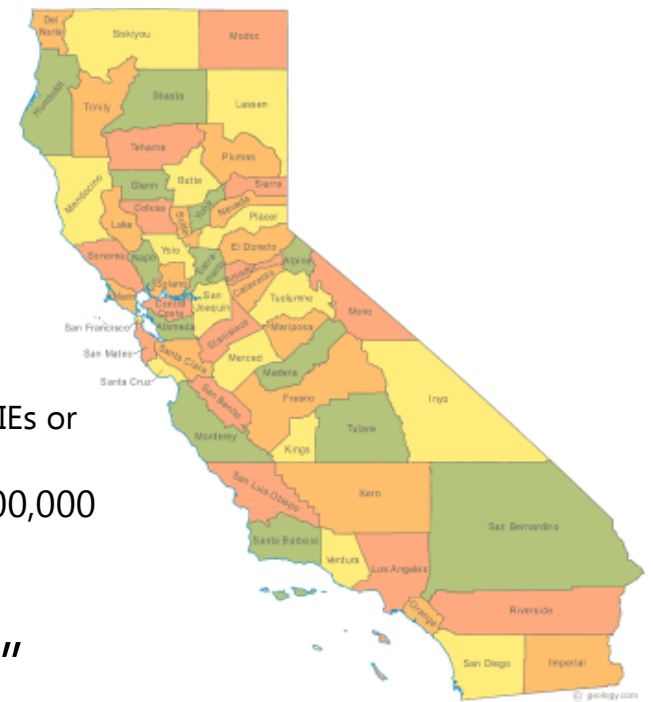
All States Allow IEs (They Have to)

- State disclosure laws differ
- Structure of IE committees (Super PACs) differ
- Coordination rules differ



State Disclosure: California

- Multipurpose Committees:
 - Entity that receives donations or payments for purposes other than making political expenditures
 - One of the following:
 - Raise funds of \$1,000 or more for political activity
 - Solicited for purposes of making IEs or contributions
 - Accepted based on agreement or understanding \$ used for IEs or contributions
 - Reach subsequent agreement or understanding \$ will be used for IEs or contributions
 - Make IEs or contributions of \$50,000 in 12-month period or \$100,000 in four consecutive years
 - Are a federal or out-of-state political committee
- Must register as a “recipient committee”



State Disclosure: California (part 2)

- Multipurpose Committee Disclosure
 - Disclose donors of \$100 or more in a calendar year if:
 - Donor made payments for political purposes
 - Donor knew all or some would be used for political purposes
 - Donor reached subsequent understanding
 - If expenditure not fully funded:
 - Last-in-first-out disclosure of any donor of \$1,000 or more
 - Unless donor prohibits contribution from being used for political purposes
 - Unless funded with non-dues revenue or interest income

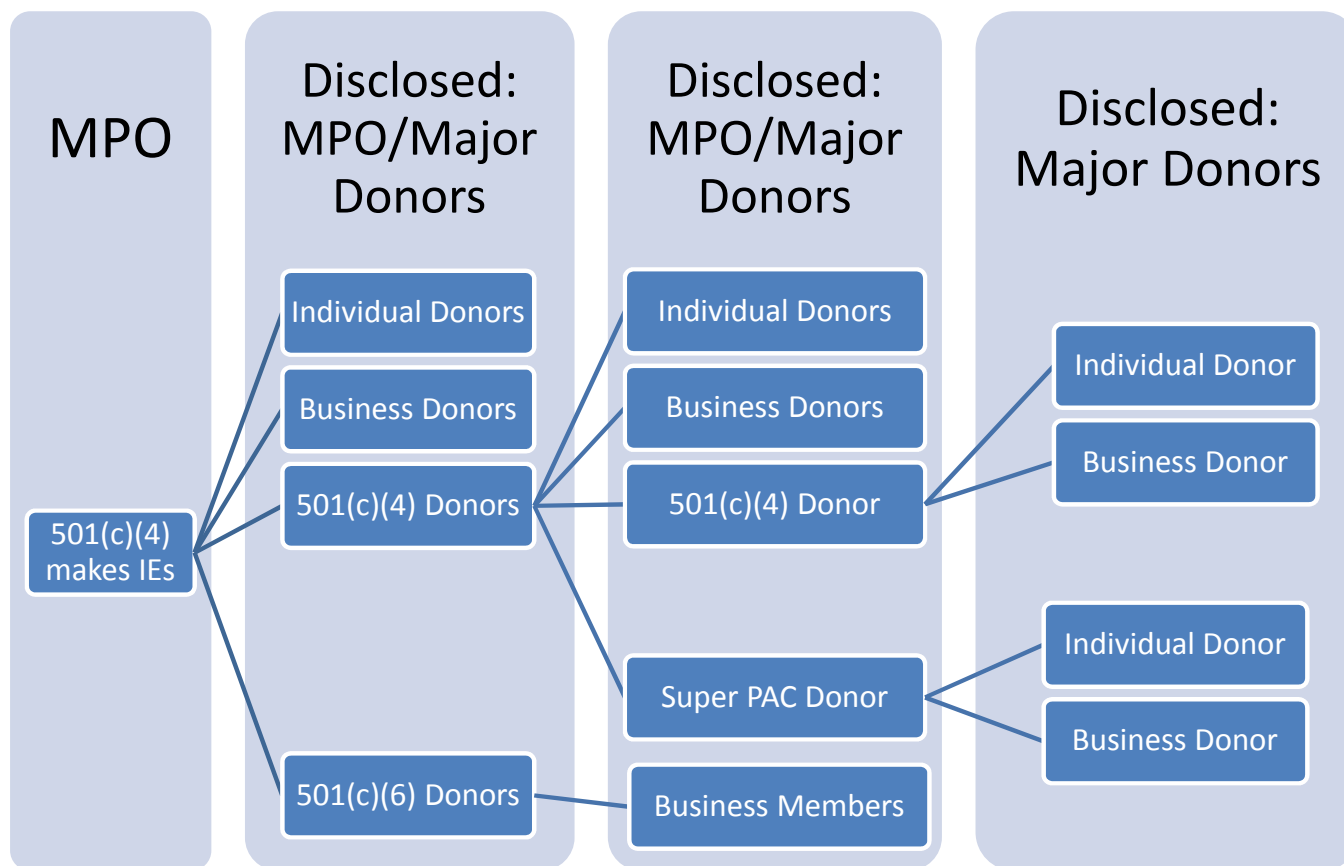




State Disclosure: California (part 3)

- Upstream Disclosure
 - Multipurpose Organizations must notify:
 - Nonprofit donors of \$50,000 or more that they may be multipurpose organizations subject to the rules
 - Donors of \$5,000 or more of potential Major Donor (\$10,000 or more) status and further disclosure
 - Donors to multipurpose organizations will be one of the following:
 - Major Donors (contribute \$10,000 or more statewide in calendar year; no further donor disclosure required; businesses and individuals)
 - Recipient Committees (raise more than \$1,000 for political purposes; must register and report donors)
 - Multipurpose Organizations (must register and report as described above)
 - Other/Nothing (businesses or individuals who contribute less than \$10,000; no disclosure)

What It Means





California Coordination Rules

Presumption of Coordination

Communication made based on information about needs/plans provided by campaign

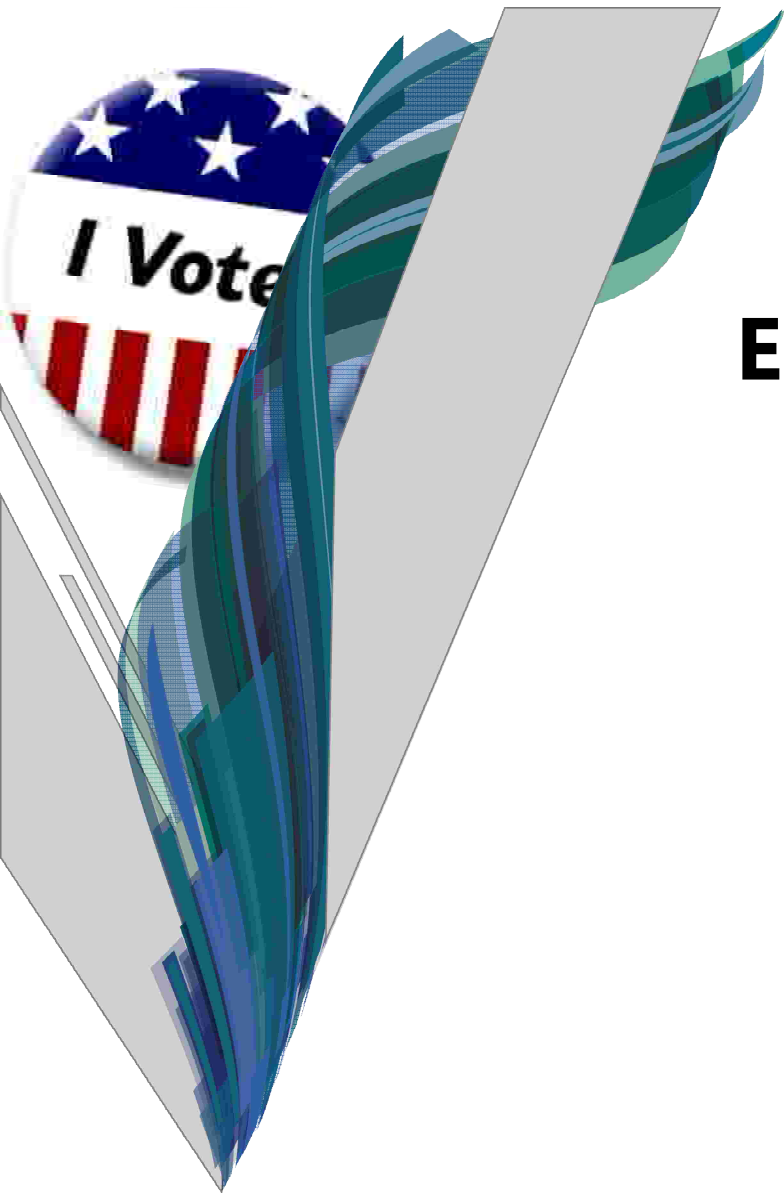
Communication made by or through an agent of campaign

Person making communication retains services of someone providing services to campaign within 12 months

Communication reproduces campaign materials

Candidate participates in fundraising or appears as speaker at fundraiser

Entity making communication is established, run, or staffed in leadership role by person who worked for campaign within 12 months



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Questions?

For more information:

www.PoliticalLawBriefing.com

www.Venable.com/nonprofits/publications