



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

April 29, 2014
Venable LLP
Washington, DC

Moderator:

Jeffrey S. Tenenbaum, Esq., Venable LLP

Panelists:

Ronald M. Jacobs, Esq., Venable LLP
Lawrence H. Norton, Esq., Venable LLP



Presentation





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

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Ronald M. Jacobs, Esq., Partner, Venable LLP
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Upcoming Venable Nonprofit Events

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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](#)



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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

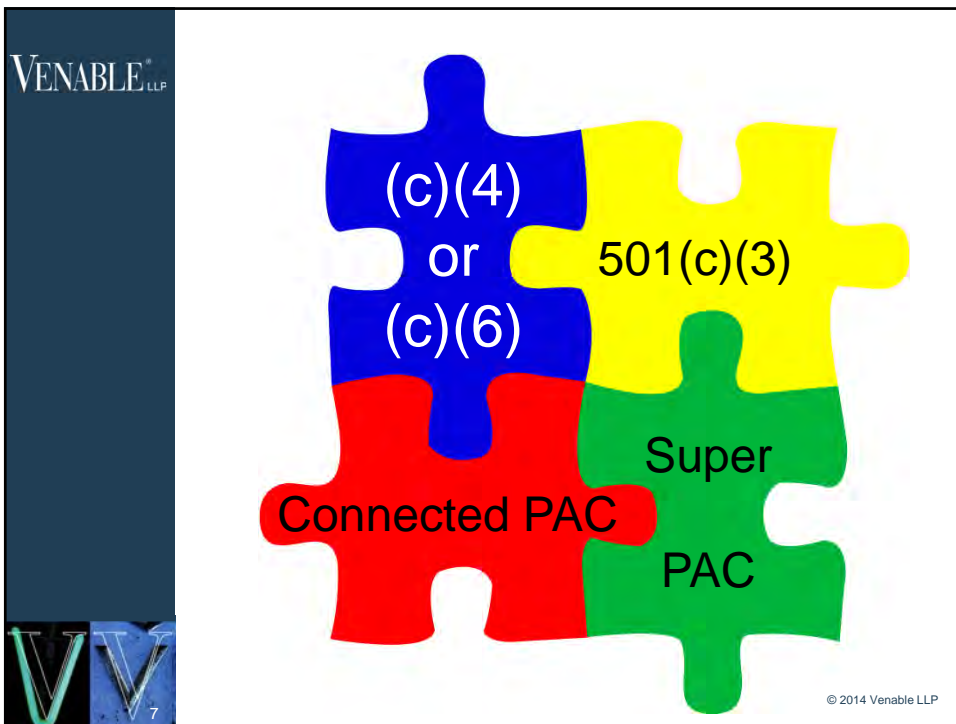


Applicable Law

FEDERAL \neq STATE



Pieces of the Puzzle



VENABLE^{LLP}

What are they?

501(c)(4) or (6)	<ul style="list-style-type: none">• Social welfare• Trade/professional association
501(c)(3)	<ul style="list-style-type: none">• Public charity• Education
Connected PAC	<ul style="list-style-type: none">• Contributions to candidates• Independent expenditures
Super PAC	<ul style="list-style-type: none">• Independent expenditures

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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

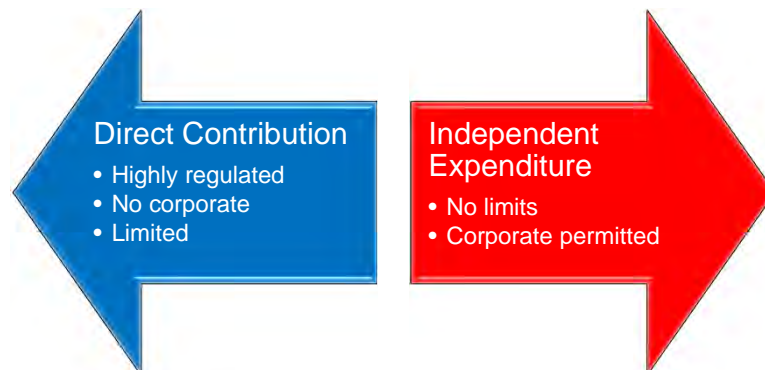
- Money given to a candidate or other political committee
- In-kind services provided to a campaign
- Expenditures that are coordinated with a candidate or agent of candidate's campaign



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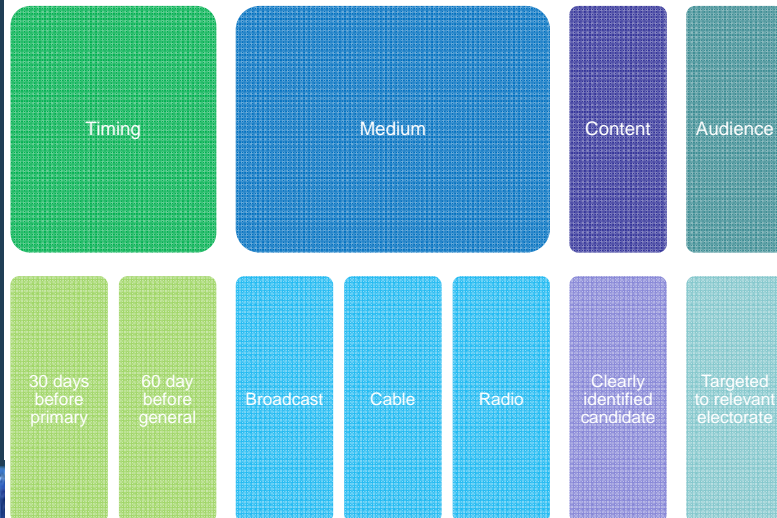
Differences



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Electioneering Communication

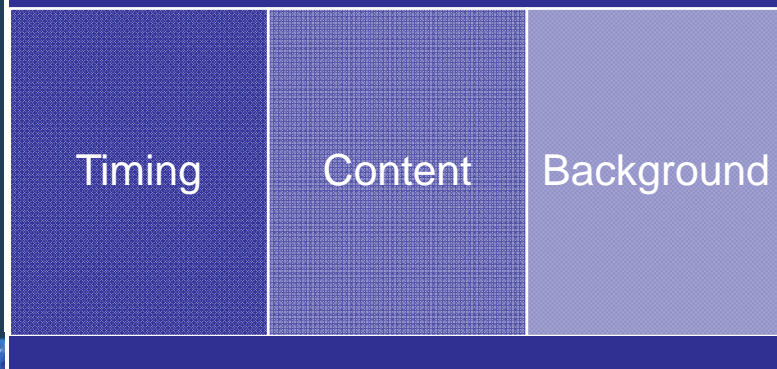


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Campaign Intervention

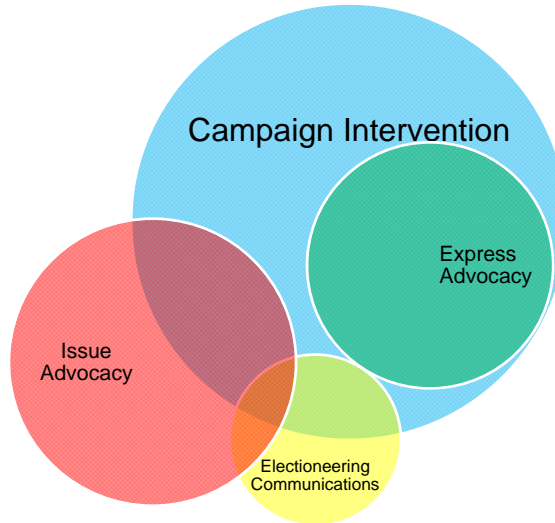
Facts & Circumstances



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Fitting It All Together

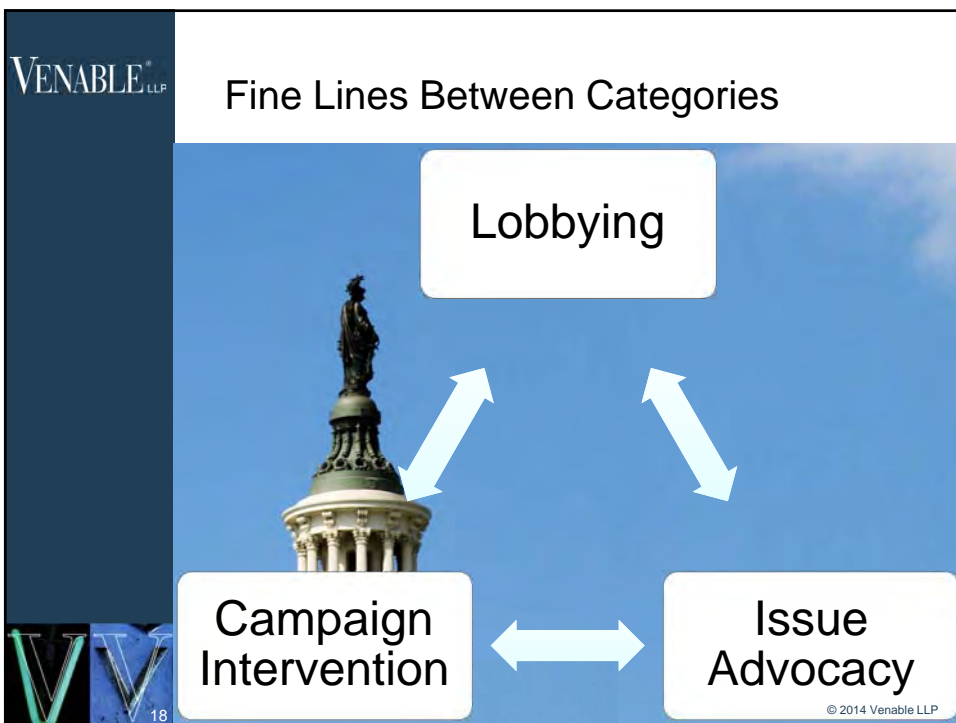


Grassroots Lobbying

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



VENABLE ^{LLP}						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				



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Tools of the Trade

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Political Action Committees

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Connected PAC

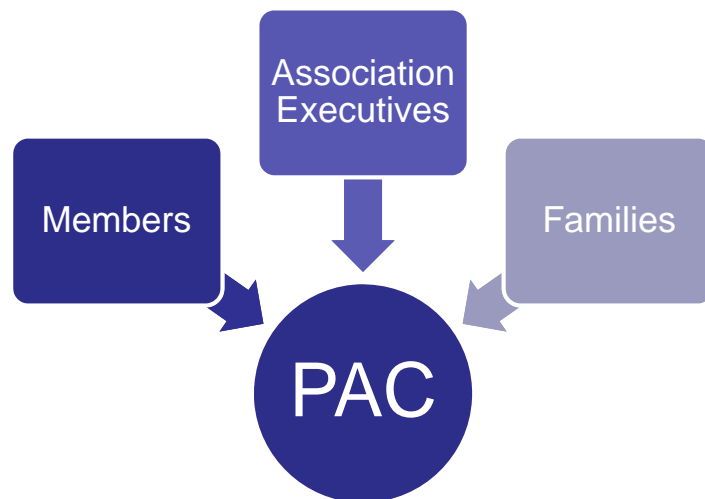
- Separate segregated fund
- Organization's name
- Organization pays administrative costs
- Voluntary contributions from individuals



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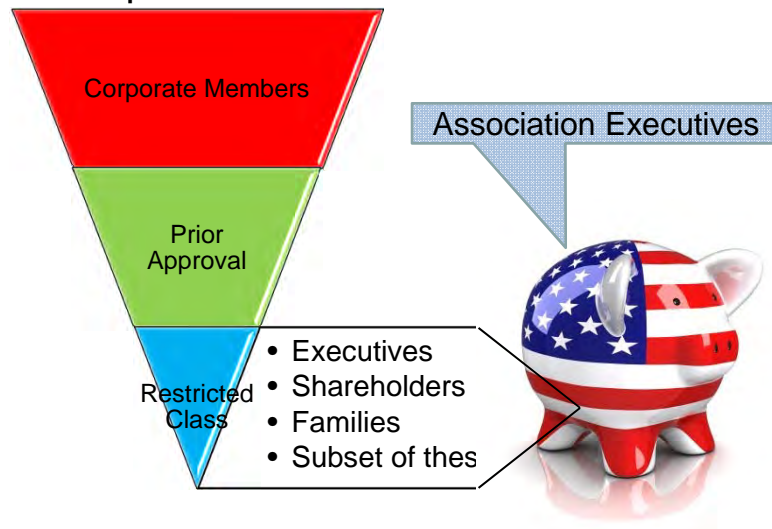
Sources of Funding: Individual Members



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Sources of Funding: Corporate Members



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Prior Approval

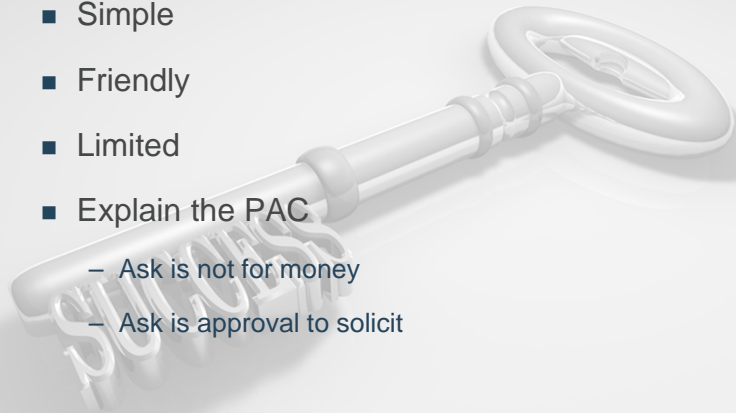
- Written
- Signed for each year
- Only one association per year



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Successful Prior Approval

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

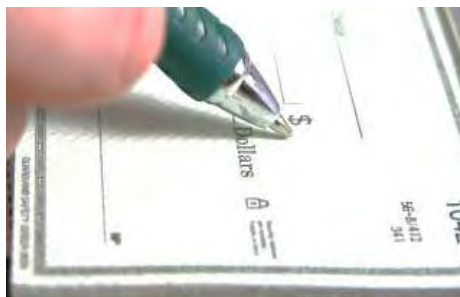


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What is a solicitation?

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



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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

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Hosting a Fundraiser: Restricted Class

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



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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

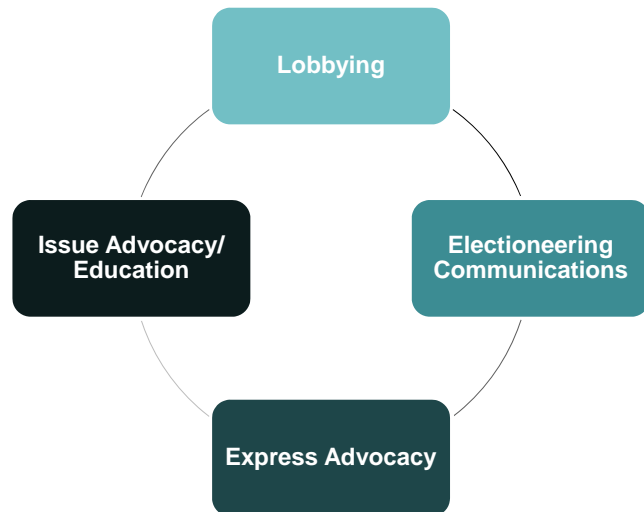
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What are public communications?



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Determine What It Is



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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

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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



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Grassroots Lobbying

GDirectots

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Voter Registration and Education

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Options: Voter Registration/Education

501(c)(3)

- Nonpartisan

501(c)(4)/(6)

- Partisan
- Nonpartisan

PAC/SuperPAC

- Partisan



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Candidate Appearances

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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



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Debates

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



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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

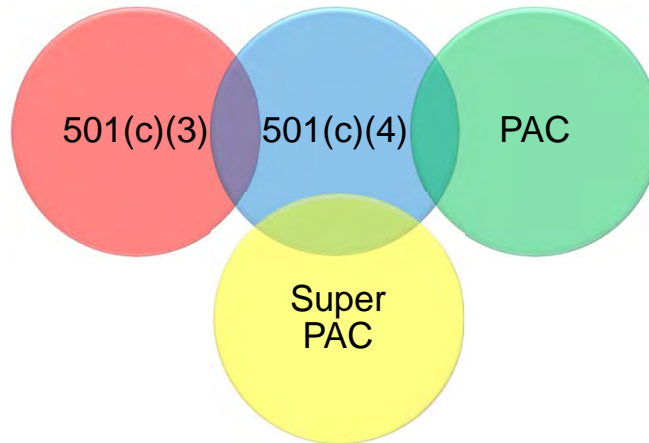


Members

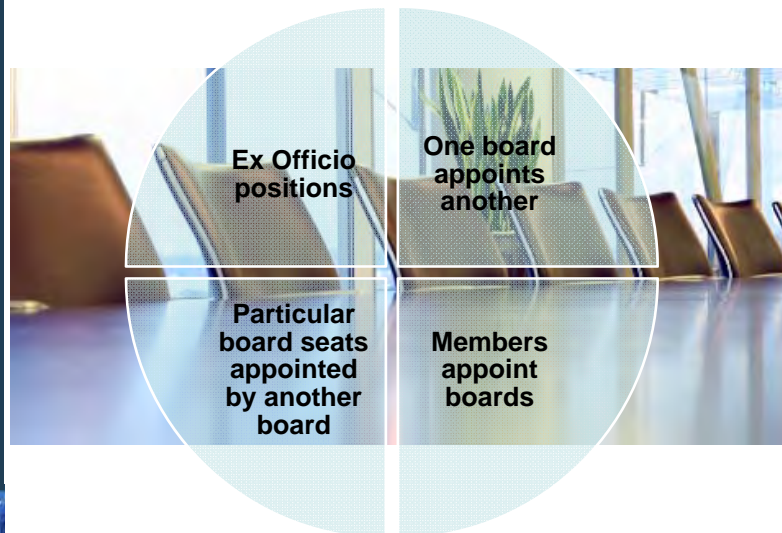
- Joint members
 - Process for joint membership
- Important for PACs
- Members of just 501(c)(4) or (6)
- 501(c)(3) membership less important



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

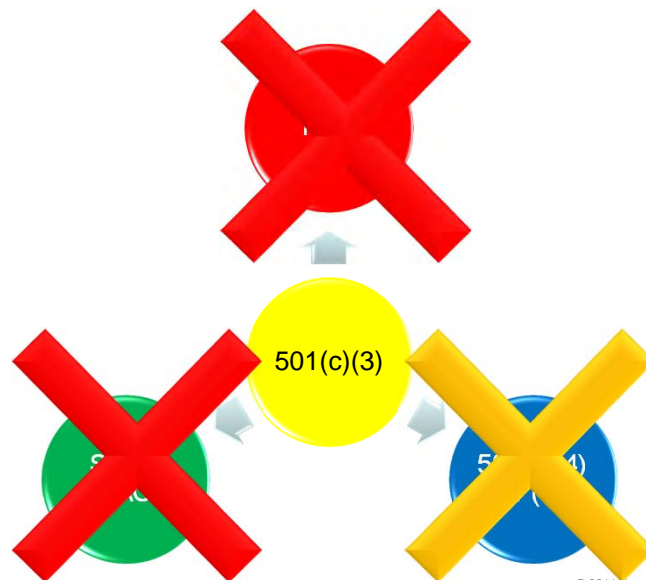
- Protect the Super PAC from:
 - Lobbying interactions
 - PAC contribution decisions
 - Coordinated activity



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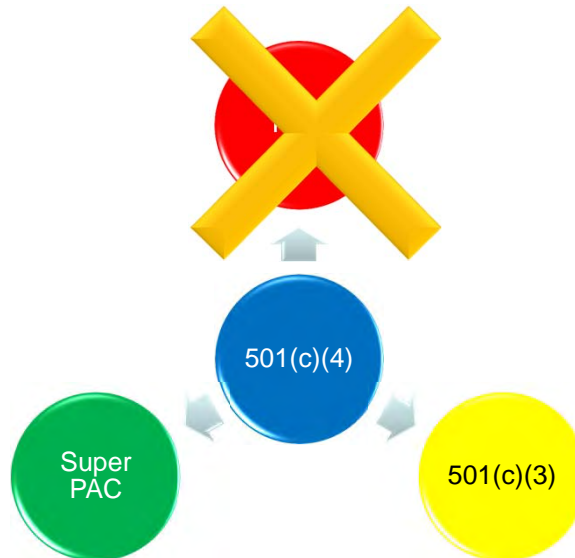
Payments and Resources



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Payments and Resources



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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



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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

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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	\$10,00 per year	\$5,00 per year
Multicandidate PAC May Give	\$5,000 per election	\$15,000 per year	\$5,000 per year	\$4,000 per year

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McCutcheon Case



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

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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



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Compelled Disclosure

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State Disclosure Lawsuits

- California
- Washington
- Idaho



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State Disclosure

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



Shareholder Disclosure

- Contributions
- IEs
- Lobbying
- Trade association payments



Questions?

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To view an index of Venable's articles and presentations or upcoming seminars 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/user/VenableNonprofits.

For updates on political law issues, visit or subscribe to our blog www.PoliticalLawBriefing.com.



Speaker Biographies





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AREAS OF PRACTICE

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Regulatory

INDUSTRIES

Nonprofit Organizations and Associations
Credit Counseling and Debt Services
Financial Services
Consumer Financial Protection Bureau Task Force

GOVERNMENT EXPERIENCE

Legislative Assistant, United States House of Representatives

BAR ADMISSIONS

District of Columbia

Jeffrey Tenenbaum chairs Venable's Nonprofit Organizations Practice Group. He is one of the nation's leading nonprofit attorneys, and also is an accomplished author, lecturer, and commentator on nonprofit legal matters. Based in the firm's Washington, DC office, Mr. Tenenbaum counsels his clients on the broad array of legal issues affecting charities, foundations, trade and professional associations, think tanks, advocacy groups, and other nonprofit organizations, and regularly represents clients before Congress, federal and state regulatory agencies, and in connection with governmental investigations, enforcement actions, litigation, and in dealing with the media. He also has served as an expert witness in several court cases on nonprofit legal issues.

Mr. Tenenbaum was the 2006 recipient of the American Bar Association's Outstanding Nonprofit Lawyer of the Year Award, and was an inaugural (2004) recipient of the *Washington Business Journal's* Top Washington Lawyers Award. He was one of only seven "Leading Lawyers" in the Not-for-Profit category in the prestigious 2012 *Legal 500* rankings, and one of only eight in the 2013 rankings. Mr. Tenenbaum was recognized in 2013 as a Top Rated Lawyer in Tax Law by *The American Lawyer* and *Corporate Counsel*. He was the 2004 recipient of The Center for Association Leadership's Chairman's Award, and the 1997 recipient of the Greater Washington Society of Association Executives' Chairman's Award. Mr. Tenenbaum was listed in the 2012-14 editions of *The Best Lawyers in America* for Non-Profit/Charities Law, and was named as one of Washington, DC's "Legal Elite" in 2011 by *SmartCEO Magazine*. He was a 2008-09 Fellow of the Bar Association of the District of Columbia and is AV Peer-Review Rated by *Martindale-Hubbell*. Mr. Tenenbaum started his career in the nonprofit community by serving as Legal Section manager at the American Society of Association Executives, following several years working on Capitol Hill as a legislative assistant.

REPRESENTATIVE CLIENTS

AARP
Air Conditioning Contractors of America
American Academy of Physician Assistants
American Alliance of Museums
American Association for the Advancement of Science
American Bar Association
American Bureau of Shipping
American Cancer Society
American College of Radiology
American Institute of Architects
American Society for Microbiology
American Society for Training and Development
American Society of Anesthesiologists
American Society of Association Executives

EDUCATION

J.D., Catholic University of America, Columbus School of Law, 1996

B.A., Political Science, University of Pennsylvania, 1990

MEMBERSHIPS

American Society of Association Executives

California Society of Association Executives

New York Society of Association Executives

America's Health Insurance Plans
Association for Healthcare Philanthropy
Association of Corporate Counsel
Association of Private Sector Colleges and Universities
Automotive Aftermarket Industry Association
Biotechnology Industry Organization
Brookings Institution
Carbon War Room
The College Board
CompTIA
Council on CyberSecurity
Council on Foundations
CropLife America
Cruise Lines International Association
Design-Build Institute of America
Foundation for the Malcolm Baldrige National Quality Award
Gerontological Society of America
Goodwill Industries International
Graduate Management Admission Council
Habitat for Humanity International
Homeownership Preservation Foundation
Human Rights Campaign
Independent Insurance Agents and Brokers of America
Institute of International Education
International Association of Fire Chiefs
International Sleep Products Association
Jazz at Lincoln Center
LeadingAge
Lincoln Center for the Performing Arts
Lions Club International
Money Management International
National Association for the Education of Young Children
National Association of Chain Drug Stores
National Association of College and University Attorneys
National Association of Music Merchants
National Athletic Trainers' Association
National Board of Medical Examiners
National Coalition for Cancer Survivorship
National Council of Architectural Registration Boards
National Defense Industrial Association
National Fallen Firefighters Foundation
National Fish and Wildlife Foundation
National Hot Rod Association
National Propane Gas Association
National Quality Forum
National Retail Federation
National Student Clearinghouse
The Nature Conservancy
NeighborWorks America
Peterson Institute for International Economics
Professional Liability Underwriting Society
Project Management Institute
Public Health Accreditation Board
Public Relations Society of America
Recording Industry Association of America
Romance Writers of America
Trust for Architectural Easements
The Tyra Banks TZONE Foundation
U.S. Chamber of Commerce
United Nations High Commissioner for Refugees
Volunteers of America

HONORS

Recognized as "Leading Lawyer" in the 2012 and 2013 editions of *Legal 500*, Not-For-

Profit

Listed in *The Best Lawyers in America* for Non-Profit/Charities Law, Washington, DC (Woodward/White, Inc.), 2012-14

Recognized as a Top Rated Lawyer in Taxation Law in *The American Lawyer* and *Corporate Counsel*, 2013

Washington DC's Legal Elite, *SmartCEO Magazine*, 2011

Fellow, Bar Association of the District of Columbia, 2008-09

Recipient, American Bar Association Outstanding Nonprofit Lawyer of the Year Award, 2006

Recipient, *Washington Business Journal* Top Washington Lawyers Award, 2004

Recipient, The Center for Association Leadership Chairman's Award, 2004

Recipient, Greater Washington Society of Association Executives Chairman's Award, 1997

Legal Section Manager / Government Affairs Issues Analyst, American Society of Association Executives, 1993-95

AV® Peer-Review Rated by *Martindale-Hubbell*

Listed in *Who's Who in American Law* and *Who's Who in America*, 2005-present editions

ACTIVITIES

Mr. Tenenbaum is an active participant in the nonprofit community who currently serves on the Editorial Advisory Board of the American Society of Association Executives' *Association Law & Policy* legal journal, the Advisory Panel of Wiley/Jossey-Bass' *Nonprofit Business Advisor* newsletter, and the ASAE Public Policy Committee. He previously served as Chairman of the *AL&P* Editorial Advisory Board and has served on the ASAE Legal Section Council, the ASAE Association Management Company Accreditation Commission, the GWSAE Foundation Board of Trustees, the GWSAE Government and Public Affairs Advisory Council, the Federal City Club Foundation Board of Directors, and the Editorial Advisory Board of Aspen's *Nonprofit Tax & Financial Strategies* newsletter.

PUBLICATIONS

Mr. Tenenbaum is the author of the book, *Association Tax Compliance Guide*, now in its second edition, published by the American Society of Association Executives. He also is a contributor to numerous ASAE books, including *Professional Practices in Association Management*, *Association Law Compendium*, *The Power of Partnership*, *Essentials of the Profession Learning System*, *Generating and Managing Nondues Revenue in Associations*, and several Information Background Kits. In addition, he is a contributor to *Exposed: A Legal Field Guide for Nonprofit Executives*, published by the Nonprofit Risk Management Center. Mr. Tenenbaum is a frequent author on nonprofit legal topics, having written or co-written more than 500 articles.

SPEAKING ENGAGEMENTS

Mr. Tenenbaum is a frequent lecturer on nonprofit legal topics, having delivered over 500 speaking presentations. He served on the faculty of the ASAE Virtual Law School, and is a regular commentator on nonprofit legal issues for *NBC News*, *The New York Times*, *The Wall Street Journal*, *The Washington Post*, *Los Angeles Times*, *The Washington Times*, *The Baltimore Sun*, *ESPN.com*, *Washington Business Journal*, *Legal Times*, *Association Trends*, *CEO Update*, *Forbes Magazine*, *The Chronicle of Philanthropy*, *The NonProfit Times* and other periodicals. He also has been interviewed on nonprofit legal topics on Fox 5 television's (Washington, DC) morning news program, Voice of America Business Radio, Nonprofit Spark Radio, and The Inner Loop Radio.



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AREAS OF PRACTICE

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Foreign Corrupt Practices Act and Anti-Corruption
Congressional Investigations
Appellate Litigation
Regulatory
Advertising and Marketing Litigation

INDUSTRIES

Nonprofit Organizations and Associations
Consumer Products and Services
Life Sciences
Consumer Financial Protection Bureau Task Force

BLOG

Political Law Briefing

GOVERNMENT EXPERIENCE

Field Representative, United States House of Representatives, Office of Representative Steve Chabot (R-OH)

Ronald Jacobs serves as co-chair of Venable's Political Law Group and as hiring partner in the firm's Washington, DC office. He advises clients on all aspects of state and federal political law, including campaign finance, lobbying disclosure, gift and ethics rules, pay-to-play laws, and tax implications of political activities. Mr. Jacobs also assists clients with crises response to government investigations and enforcement actions, Congressional investigations, class-action law suits, and other high-profile problems that involve potentially damaging legal and public-relations matters. Along with Lawrence Norton, he co-edits the firm's Political Law Briefing blog.

Mr. Jacobs understands the often-contradictory rules imposed by the different laws that apply to political activities. He offers practical advice that considers not only the legal requirements, but also the reputational risk, of political activity to a broad range of clients, including large and small companies, trade associations, ideological groups, individuals, and political vendors. He has developed political compliance programs for Fortune 500 companies and other clients that lobby and make political contributions nationwide.

In addition to counseling clients on political law matters, Mr. Jacobs has extensive experience in the administrative rulemaking process and in litigating challenges to agency decisions in federal court. He has represented clients in administrative matters before the Federal Election Commission, the Merit Systems Protection Board, the Federal Trade Commission, the United States Congress, and in federal court.

Mr. Jacobs has also counseled and defended clients in a host of other regulatory matters, including disputes involving the Foreign Corrupt Practices Act, the Foreign Agents Registration Act, and privacy and data security issues.

SIGNIFICANT MATTERS

Some of Mr. Jacobs's significant matters have included:

- Successfully defending a large, nationally-known trade association during a Congressional investigation into allegations of fraudulent grassroots lobbying activity.
- Representing a campaign finance reporting company through an FBI investigation of a former business partner accused of campaign fraud, ultimately convincing the government to return assets that had been wrongly seized from the company.
- Assisting a large social welfare organization with multiple Congressional investigations and several class action lawsuits.
- Successfully petitioning the FEC to reverse a long-standing rule to allow trade associations to use payroll deduction for their PAC activities.
- Assisting a company in fending off government investigations and rebuilding its reputation following problems with a school program to attend the 2009

BAR ADMISSIONS

District of Columbia

Virginia

COURT ADMISSIONS

U.S. Supreme Court

U.S. Court of Appeals for the D.C. Circuit

U.S. Court of Appeals for the Federal Circuit

U.S. District Court for the District of Columbia

U.S. Court of Appeals for the Seventh Circuit

U.S. District Court for the Eastern District of Virginia

U.S. Court of International Trade

EDUCATION

J.D., *high honors*, George Washington University Law School, 2001

Order of the Coif

Articles Editor, *The George Washington Law Review*

Imogene Williford Constitutional Law Award

B.A., *cum laude*, The George Washington University, 1997

Omicron Delta Kappa

MEMBERSHIPS

American Bar Association

Federalist Society, Free Speech and Election Law practice group

presidential inauguration.

- In a pro bono matter, convincing the DC Court of Appeals to establish new procedural protections for child custody cases similar to those used in many other states.
- Successfully litigating a Hatch Act case before the Merit Systems Protection Board involving a school district's ability to re-hire a teacher previously dismissed for campaigning for public office.
- Reversing a decision by Immigration and Customs Enforcement to revoke a language school's accreditation.

HONORS

Recognized in the 2013 edition of *Chambers USA*, Government: Political Law, National

Included in "Rising Stars" edition of *District of Columbia Super Lawyers*, 2013

Recognized in the 2012 edition of *Chambers USA*, Government: Political Law, National

Recognized in the 2011 edition of *Chambers USA*, Government: Political Law, National

ACTIVITIES

Mr. Jacobs is a frequent speaker and author on campaign finance and lobbying regulation issues. He serves on the board of the Human Rights Foundation, a nonprofit organization dedicated to preserving democracy and protecting human rights in the Americas.

PUBLICATIONS

Mr. Jacobs has authored or co-authored a number of articles on campaign finance issues, the Telephone Consumer Protection Act, the Telemarketing Sales Rule (both of which govern the national do-not-call list), using the fax for marketing purposes, unsolicited email. Mr. Jacobs is also co-editor of the firm's Political Law Briefing blog.

SPEAKING ENGAGEMENTS

Mr. Jacobs has participated in a number of panel discussions and seminars on the impact of various communication and privacy regulations on trade and professional associations and other businesses. He has addressed GWSAE, ASAE, The Direct Marketing Association, and the Mortgage Bankers Association.



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GOVERNMENT EXPERIENCE

Assistant Director, Bureau of Consumer Protection, Federal Trade Commission

Assistant Attorney General, Civil Litigation Division, Office of the Maryland Attorney General

Associate Director, Division of Enforcement, Commodity Futures Trading Commission

General Counsel, Federal Election Commission

BAR ADMISSIONS

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Maryland

Larry Norton, one of the nation's leading authorities on campaign finance, lobbying and government ethics laws, serves as co-chair of Venable's Political Law group. Along with Ronald Jacobs, Mr. Norton co-edits the firm's Political Law Briefing blog. He has extensive experience advising public and private companies, nonprofits, and trade associations on such matters as –

- Compliance audits of PACs and other political activity, lobbying registration and disclosure, and policies and procedures regarding gifts to public officials
- Design and implementation of compliance programs, and training
- Risk management regarding “pay-to-play” laws, which restrict political contributions by companies doing business with the government, and by their principals
- Establishing and operating federal and state PACs, Super-PACs, 527 groups, and other advocacy organizations, and their use of traditional and social media
- Conducting internal investigations
- Responding to government audits and law enforcement investigations

From 2001-2007, Mr. Norton served as General Counsel for the Federal Election Commission. Through this position, he played a prominent role in the implementation of the Bipartisan Campaign Finance Reform Act of 2002, commonly referred to as the McCain-Feingold law. Prior to his tenure at the FEC, he served as Associate Director in the Division of Enforcement at the Commodity Futures Trading Commission and at the Federal Trade Commission as Assistant Director in the Bureau of Consumer Protection. Before joining the federal government, Mr. Norton served as a Maryland Assistant Attorney General in the Civil Litigation Division. He began his legal career at Venable as a litigation associate.

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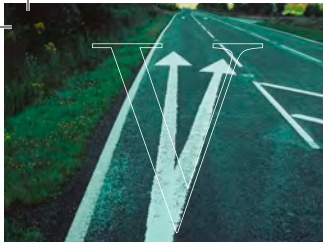
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Additional Information





2013-2014 Federal Contribution Limits

VENABLE[®] LLP

	To a Candidate	To a National Party Committee	To State and Local Parties ¹	To Other Political Committees	Aggregate Biennial Limit (for contributions made between January 1, 2013 and December 31, 2014)
Individual May Give ²	\$2,600 per election ³	\$32,400 per year	\$10,000 per year	\$5,000 per year	\$123,200 overall biennial limit of which
					 <ul style="list-style-type: none"> • \$48,600 may be given to all candidates • \$74,600 may be given to all PACs and parties, of which <ul style="list-style-type: none"> • No more than \$48,600 may be given to PACs and local parties
Multicandidate PAC May Give ⁴	\$5,000 per election	\$15,000 per year	\$5,000 per year	\$5,000 per year	No limit
Non Multicandidate PAC May Give	\$2,600 per election	\$32,400 per year	\$10,000 per year	\$5,000 per year	No limit

Limits no longer applicable because of
McCutcheon decision.

¹ These limits apply to accounts registered with the FEC; different limits apply to a state or local party's non-federal accounts. All state and local committees of a political party in a state share a contribution limit for their federal accounts.

² Spouses have separate limits. Using a joint account, spouses can contribute to a candidate using a single check, but both spouses must either sign the check or sign an accompanying letter asking that the contribution be allocated between them.

³ The primary, general, special, and runoff elections are each separate elections with separate contribution limits.

⁴ A multicandidate political committee is defined as a political committee with more than 50 contributors which has been registered for at least six months and has made contributions to five or more candidates for federal office.

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2014 Reporting Deadlines

FEDERAL CAMPAIGN FINANCE REPORTS

Quarterly Filers

Report	Filing Due Date
April Quarterly	April 15, 2014
July Quarterly	July 15, 2014
October Quarterly	October 15, 2014
Pre-General	October 23, 2014
Post-General	December 4, 2014
Year-End	January 31, 2015

Plus Pre-Primary Reports if contributing in primaries

Monthly Filers

Report	Filing Due Date
February to October	20th of each month
Pre-General	October 23, 2014
Post-General	December 4, 2014
Year-End	January 31, 2015

LOBBYING DISCLOSURE ACT

Date	Reports Due
April 21, 2014	First Quarter
July 21, 2014	Second Quarter
October 20, 2014	Third Quarter
January 20, 2015	Fourth Quarter
July 30, 2014	LD-203 Mid-Year
January 30, 2015	LD-203 Year-End



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December 2012

New York Attorney General Proposes New Rules Requiring Nonprofits Funding Political Communications to Disclose Donors

On December 11, 2012, the New York Attorney General's Office proposed rules that would require nonprofit organizations doing business in New York to disclose their spending on a wide range of activities, including those unrelated to New York elections or candidates. The rules also would require groups that spend more than \$10,000 to identify donors giving \$100 or more.

Under the proposed rules, nonprofit, tax-exempt organizations registered—or required to be registered—under New York's charitable registration law must include in their annual financial report the amount and percentage of total expenses spent on all "election related expenditures" during the reporting period. The term "election related expenditures" is defined so broadly that it would require organizations to track and report on spending *nationwide*, and could sweep up grassroots lobbying and other issue advocacy. In addition, a group making public communications in New York during the six months prior to a state or local election may have to publicly disclose all of its individual donors.

The rules would apply only to non-501(c)(3) organizations (such as 501(c)(4) and 501(c)(6) entities). 501(c)(3) organizations are expressly exempt, as they are prohibited under the Internal Revenue Code from intervention in political campaigns.

Communications Subject to Proposed Rules: Defining "Election Related Expenditures"

"Election related expenditures" include two categories of communications: express election advocacy and election targeted issue advocacy. The term "communication" covers paid broadcast advertisements, placement of content on the Internet, print advertisements, telephone contacts, mailings, and other print materials.

As is explained below, it is important to understand that election related expenditures cover not only state and local election activities in New York (governor, state assembly, state senate, etc.) but *any* election, including *federal*, *state*, and *local* races in other jurisdictions across the country. As a result, the proposed rules, as currently drafted, would require many nonprofit groups to track and report entirely new categories of information.

Express Election Advocacy: The first type of communication subject to disclosure, called express election advocacy, includes any communication:

- Calling for the nomination, election, or defeat of a clearly identified candidate or political party in any election; or
- Calling for the passage or defeat of a proposition, constitutional amendment, referenda, or other question submitted to voters in any election ("proposition").

Under the proposed regulations, there are two types of express election advocacy. The communication either must:

- Contain express words, such as "vote," "oppose," "support," "elect," "defeat," or "reject;" or
- Otherwise refer to or depict a clearly identified candidate, political party, or proposition "in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election or defeat of such candidates, political parties or [proposition]."

This standard closely tracks the federal definitions of "independent expenditure" and "expressly advocating."

Election Targeted Issue Advocacy: The second type of communication covered by the proposed rule,

called election targeted issue advocacy, includes communications made within *180 days of any election* that:

- . Refer to a clearly identified candidate in that election;
- . Depict the image, name, or likeness of a candidate in that election; or
- . Refer to any political party or proposition in that election.

While this rule is modeled on the federal rule for electioneering communications, the federal rule applies much smaller windows (30 days before a primary, 60 days before a general election).

Disclosure Requirements

The proposal would impose two disclosure requirements on organizations covered by the rule.

Donor Disclosure: Of particular concern to nonprofits, especially 501(c)(4) groups, is the prospect of having to publicly disclose individual donors. Under the proposed rules, a group that has made over \$10,000 in New York election related expenditures (i.e., election related expenditures *made in connection with New York state or local elections only*) must disclose the following information about each "covered donation" received within the reporting period:

- . The name and address of each donor who made donations of \$100 or more (in the aggregate);
- . The donor's employer; and
- . The date and amount of each donation.

A "covered donation" is any contribution or thing of value made to a nonprofit group covered by the rule *that is available* to be used for a New York election related expenditure (i.e., election related expenditures *made in connection with New York state or local elections only*). In other words, the donation does not actually have to be used or intended for election related expenditures, just be available to be used, in order to be subject to disclosure.

Expenditure Disclosure: A covered nonprofit also would have to report the amount and percentage of total expenses spent on election related expenditures during the reporting period. This reporting requirement is not limited to expenditures made in connection with New York state or local elections, but includes all election related expenditures (recall that the definition covers *any* election, including *federal, state, and local* races in other jurisdictions across the country).

Moreover, if an organization spends more than \$10,000 in election related expenditures in connection with *New York state or local elections*, the organization must itemize these expenses, and provide the following information for each:

- . The amount of the expenditure;
- . The date such funds were provided;
- . The name and address of the recipients of the expenditure; and
- . A description of the expenditure and its purpose.

Exemptions and Waivers

The proposed rules provide several exemptions. First, an organization that earmarks donations for purposes other than election related expenditures may keep those donors confidential by depositing such funds in a separate account.

In addition, information already disclosed to another government agency that makes such information available to the public would not have to be disclosed on the annual financial report. For instance, information relating to independent expenditures disclosed to Federal Election Commission would not have to be reported again to New York.

The proposal also includes a process by which a group can seek a waiver from having to disclose its expenditures and donors *if* it can show, by clear and convincing evidence, that public disclosure of a contribution or donor's identity could cause undue harm, threats, harassment, or reprisals.

Implications and Next Steps

The proposed rules would impose new and burdensome tracking and reporting requirements on nonprofit

groups subject to the disclosure requirements. This is because the definition of election related expenditures broadly reaches communications that are not otherwise subject to disclosure to other government entities (including the Federal Election Commission) and that may be intended to influence issues or legislation.

For instance, an advertisement run in Maine that says, "Contact Congressman Smith and tell him to vote for Bill 1," would constitute "election targeted issue advocacy" if Congressman Smith was up for reelection within the next six months. Although the ad only would have to be reported under the federal rules if run in Congressman Smith's district within 60 days of his next election, a covered organization would have to account for the cost of the ad in its annual New York filing. If a 501(c)(4) entity ran an ad in New York seeking disaster relief donations, that ad would trigger donor disclosure if it included even a fleeting image of a New York state officeholder who was up for reelection in the next six months.

Under federal law, so long as a 501(c)(4) organization does not solicit contributions to fund specific political communications, it will not have to disclose its donors. Since Citizens United, however, state legislatures and regulators increasingly are seeking ways to compel advocacy groups to disclose the identities of their donors. For instance, last spring, California began requiring organizations to disclose individual donors when they spend money to influence California elections, including ballot initiatives. When an Arizona-based nonprofit refused to disclose its donors, the state's campaign finance watchdog filed a lawsuit to force the organization to comply with the rule. Led by California and now New York, other states may follow suit.

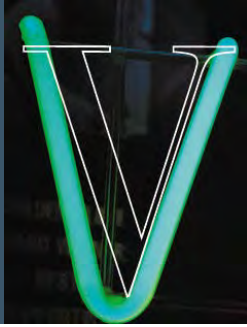
Written comments on the proposed rules may be submitted until March 6, 2013, with final rules expected to be in place in time for the 2013 local elections.

* * * * *

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This article is not intended to provide legal advice or opinion and should not be relied on as such. Legal advice can only be provided in response to a specific fact situation.



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Electioneering Communications

VENABLE LLP ON POLITICAL LAW

2 U.S.C. § 434(f)(3)(A) defines an electioneering communication (“EC”) as any broadcast, cable or satellite communication that fulfills each of the following conditions:

- The communication refers to a clearly identified candidate for federal office (this condition is met if a communication contains the candidate’s nickname, name, image or makes any unambiguous reference to the person or their status as a candidate).
- The communication is publicly distributed shortly before an election for the office that candidate is seeking (the EC rules apply only 60 days before a general election or 30 days before a primary). For example, electioneering communications rules apply now regarding either candidate for president because we are 60 days before the general election.
- The communication is targeted to the relevant electorate (U.S. House and Senate candidates only). This means the communication can be received by 50,000 or more people in the district (House candidates) or state (Senate candidates).

When Disclosure is Required

Disclosure of ECs is required when a person or organization makes electioneering communications that aggregate more than \$10,000 in a calendar year. All EC reports are 24-hour reports, meaning it must file FEC Form 9 by 11:59 p.m. on the day following the disclosure date. The disclosure date is the date that the communication is first publicly distributed. Note that for each separate time costs aggregate to more than \$10,000, an additional report is due within 24 hours of the disclosure date.

For example, say an organization makes an electioneering communication (TV ad) that costs \$50,000 of air time and \$10,000 in production costs, and it will be aired for one week. You would disclose this one time within 24 hours of the TV ad first airing, with \$60,000 as the cost.

The organization then wants to run the same ad two weeks later. The organization pays \$50,000 for the air time (no new production costs). You would file another disclosure report for this within 24

hours of the ad being publicly distributed again.

Contents of Disclosure Report

The 24-hour reports must include:

- The name and principal place of business of the person or organization making the disbursement
- The name, address, employer and occupation of any persons sharing or exercising control over the organization (e.g., officers/directors)
- The name, address and occupation of the custodian of records for the entity making the expenditure
- The title of the communication (title of the TV ad, etc.)
- The name and office of a clearly-identified federal candidate in the communication, and the election/year to which the communication pertains
- The date of public distribution
- The name and address of all vendors to whom disbursements over \$200 were made; also the amount and date
- A purpose description of the disbursement—this must include the title of the communication (e.g., “Production Costs – Insert Title of Communication Here”)
- The name and address of each donor who has given more than \$1,000 since the previous calendar year (January 1, 2011).

Disclosure of Donors

The disclosure of donors to electioneering communications has undergone a recent shift. The FEC regulation on this used to require disclosure of only those donors who intended for their donations to be used for electioneering communications. A recent court decision struck down that regulation, and the FEC is now complying with the court’s order that *all* donors be disclosed if they meet the \$1,000 threshold (going back to January 1, 2011), regardless of intent. This does not, however, include membership fees or dues because they are not considered donations. It may be wise for organizations to consider opening a separate “government affairs” type of account into which donations other than membership fees or organization dues would go so that it’s easy to know which donors will be disclosed on these reports.



Please contact any of the attorneys in our [Political Law Practice Group](#) if you have questions regarding this alert.

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HOSTING A FEDERAL CAMPAIGN FUNDRAISER ON ASSOCIATION PROPERTY

Federal campaign finance law restricts incorporated associations' expenditure of association funds or resources to host a federal campaign-related event such as a fundraiser. This White Paper discusses four permissible means of hosting a fundraiser on association property.

PERMISSIBLE CAMPAIGN-RELATED EVENTS

1. Association-Paid "Restricted Class" Event

Federal campaign finance law permits an incorporated association to host a candidate (or campaign or political party representative) "appearance" at its event, subject to the following restrictions:

- *Permissible Attendees*
 - The association may invite its "restricted class."¹
 - A small number of other employees may also attend if their participation is necessary to administer the event (e.g., non-restricted class catering staff or meeting planners) but they should not be solicited.
 - Other guests of the corporation who are

¹ This includes an incorporated association's decision-making employees, certain individual members (e.g., those who pay dues on an annual basis) and their families. "Decision-making" employees are salaried, with "policymaking, managerial, professional or supervisory responsibilities." This specifically includes the "individuals who run the corporation's business such as officers, other executives, and plant, division, and section managers;" members of the association's board of directors if they receive regular compensation; and "individuals following the recognized professions, such as lawyers and engineers." The restricted class does not include non-employee consultants, vendors, "[p]rofessional [employees] who are represented by a labor organization" and "[s]alaried foremen and other salaried lower level supervisors having direct supervision over hourly employees."

speaking or being honored at the event and representatives of the news media² also may attend.

- *Candidate Selection*
 - The association may invite any federal candidate or representative of a federal campaign or political party.
 - It may refuse campaign or parties' requests and need not invite opposing candidates or parties to the same or a later event.
- *Solicitations and Handling Contributions*
 - Campaigns and parties may solicit and receive contributions before, during, or after the event.
 - Association representatives may suggest contributing but may not in any way accept or handle contributions before, during, or after the event.

Federal Election Commission ("FEC") rules also permit candidate appearances at association events that involve employees who are not within the restricted class. Such events involve additional restrictions. For example, the association may not suggest that attendees make contributions, the candidate may not collect contributions at the event (although leaving behind contribution materials is permitted) and the association must honor requests by opposing candidates for similar appearances at association-paid events.

2. Campaign-Paid Event

Some campaigns prefer to pay fundraiser costs directly as operating expenses. Asking the campaign's preference should be one of the first questions when planning the event.

- Some campaigns will not accept direct or in-kind contributions from PACs or individuals/entities registered under the Lobbying Disclosure Act ("LDA").
- As a rule of thumb, most campaigns are comfortable paying five percent of the amount they expect to raise at the event.

If the campaign agrees to pay the event's costs, the association should invoice the campaign and receive

² Certain equal-access requirements apply if the association invites a news media representative, but campaign fundraisers seldom are open to the media.

advance payment in full for (a) employees' compensation, benefits and overhead if the association asks subordinates to assist with planning, organizing, or carrying out of the fundraiser; (b) use of the association's lists of customers, clients, or vendors in connection with sending invitations or soliciting contributions; and (c) catering or food services. If a campaign or individual other than an employee of the association uses the association's office space and equipment in connection with a federal campaign, the association must be reimbursed within a commercially reasonable time.

3. PAC- or Individual Contributor-Paid Event

Any payment by a PAC or individual³ to organize a fundraiser is an in-kind contribution that counts toward the applicable per-election contribution limit for that candidate.

- The association must invoice the PAC or individual contributor *before* the event for reimbursement of any cost the association incurs (meeting space, employee compensation, etc.).
- Only the PAC or individual volunteers, not the association, should be identified as the event hosts.
- Invitations must not use the association's letterhead; PAC letterhead is permissible.
- Invitations may list the individual hosts' employers and job titles for identification purposes but should not indicate any involvement by the employer in the event.
- Employees who organize and attend fundraisers should do so as campaign volunteers. Employees' time spent volunteering incurs no compensation cost to the association and therefore requires no reimbursement or disclosure.
 - Only decision-making employees who have the flexibility to control their own work schedules or unpaid board members may volunteer. The FEC presumes that hourly or support staff who are involved in campaign-related events act as employees, not bona fide volunteers.
 - A decision-making employee may perform campaign-related activity at the office, using the association's office equipment, as a campaign volunteer if: (a) this time is limited

³ To make a contribution, an individual must be a U.S. citizen or green card holder and may not be a federal government contractor. PACs and campaigns may not solicit foreign nationals or accept contributions from them.

to one hour per week or four hours per month; (b) it does not prevent his/her completion of normal association duties; (c) the activity does not increase the association's overhead or operating costs (such as local or toll-free telephone calls); and (d) the association does not condition Internet or computer availability on political activity or support for, or opposition to, any particular candidate or political party.

- A related exemption permits any employee to perform voluntary Internet campaign-related activity (email, blogging, maintaining a website, etc.) for an unlimited amount of time at the office, using the association's computer equipment, if this activity: (a) does not prevent the completion of work the association expects him or her to perform, (b) does not increase the association's overhead or operating costs and (c) is not performed under coercion.
- If support staff services are required—such as catering or welcoming guests—the corporation must invoice the campaign or an eligible donor and receive full payment of the services' fair market value *before* the event.
- Campaigns' fundraising staff or consultants often will arrange catering, manage RSVPs and follow-up with donors. This is preferable to assigning such tasks to association employees who are ineligible to serve as volunteers.

CALCULATING CAMPAIGN-RELATED EVENT COSTS

When calculating event costs, the test is what the goods or services usually cost in the market from which they ordinarily would have been purchased at the time of the event. Organizing a 10-25 attendee fundraiser generally costs between \$300 and \$700 for meeting space, catering and support staff time. The following guidelines apply to these costs regardless of who pays:

- *Employee Compensation* – Charge the individual's hourly rate plus 75 percent to cover benefits and overhead. For example, a fundraiser with 10-25 attendees may involve three support staff employees (reception, clean-up and tear-down) at \$20 per hour for one hour each, which totals \$105 with the 75 percent gross-up included. The association should not allocate any cost to employees' volunteer efforts (see the "PAC- or Individual Contributor-Paid Event" section above).
- *Office Space* – If the association routinely offers use of a meeting room to community or other

outside groups, no value is associated with using it for the fundraiser. If the association regularly charges members or others a fixed fee for use of the space, this fee is the market rate for the fundraiser's use. An association that does not provide meeting space to other entities consistently for free or at a usual and normal rate may value the space by determining the ordinary cost of a similarly-sized meeting room in a nearby hotel or conference facility. Prices in downtown Washington, DC for a 90-minute fundraiser generally range from \$100 for a 5-10 seat conference room to \$250 for a 30-seat board room.

- *Office Equipment, Supplies and Other Association Assets* – When calculating the value of association assets used in a campaign-related event, the best method is to use the cost the association charges to any other entity, such as a member. The association may not discount this cost when providing assets for use in a campaign-related event. If, however, the association does not ordinarily charge for photocopies, list rentals, etc., it should apply the ordinary prices charged by sellers of equivalent goods or services in the local market. For example, if FedEx Office charges \$0.10 per copy or a direct mail vendor charges \$2 per name and address, the association should apply the same cost. Certain individual employees' use of office computers and local or toll-free telephone calls involves no reportable cost to the association (see the "PAC- or Individual Contributor-Paid Event" section above).
- *Catering* – We recommend arranging to have the campaign pay the caterer directly when possible. This eliminates the association's need to calculate and disclose the value. If a PAC or individual pays, the catering contract and receipt will constitute sufficient evidence of market value.

DISCLOSURE

1. Federal Election Commission

- An association has nothing to disclose to the FEC when the campaign, a PAC, or an individual contributor pays for the event directly or reimburses the association's costs in advance.
 - If the PAC pays the fundraiser's costs, it must report them as in-kind contributions, which are subject to its \$5,000 per-election contribution

limit,⁴ to the candidate in FEC Form 3X reports.

- Individuals need not report their in-kind contributions to the FEC but should provide documentation (e.g., catering contracts, invoices and check copies) to the campaign on a timely basis to help the campaign comply with its disclosure obligations.
- Campaigns, leadership PACs and political party committees must disclose contributions raised by registered federal lobbyists (and their employers) or their PACs under certain conditions. We recommend involving Venable Political Law counsel when structuring a fundraiser to avoid unnecessary disclosure and compliance problems.

2. Lobbying Disclosure Act

- *Semiannual LD-203 Contribution Reports* – An association registered under the LDA must disclose in its organizational LD-203 report payments made by its PAC for candidate fundraisers if such payments exceed \$200 in the reporting period and are not reimbursed by the campaign or an individual contributor.
 - Such payments are considered in-kind contributions and count towards the PAC's contribution limits.
 - Employee time is not reportable for LDA purposes if the employees serve in a volunteer capacity.
 - Individual federal lobbyists must make this disclosure on their personal LD-203 reports if they pay the event's costs from personal funds.
 - When completing the LD-203 form to disclose an in-kind "FECA" contribution, we recommend identifying the campaign as the "payee" instead of the association, caterer, or other recipient of the donor's funds and the candidate as the "honoree."
 - The costs of association-paid restricted class events (meeting space, catering, employee time to facilitate the event, etc.) should not be disclosed on Form LD-203 contribution reports because the FEC excludes permissible

⁴ The contribution limit for a multicandidate PAC to a federal candidate is \$5,000 per election. Less established PACs, like individual donors, are limited to \$2,500 per election.

corporate/association campaign event activity from the definition of “contribution.”

- *Quarterly LD-2 Lobbying Reports* – Fundraisers are not “lobby-free zones.” The cost of employees’ time spent engaging in LDA-defined “lobbying activities” at the fundraiser on behalf of the association must be included in the association’s expenditure estimate on Line 13. Individual lobbyists’ lobbying issues and contacts likewise are reportable on Lines 16 and 17.

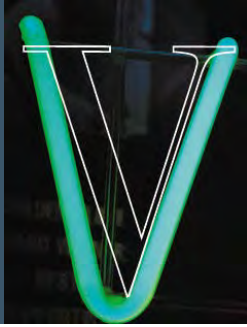
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Forming an Association Political Action Committee

VENABLE LLP ON POLITICAL LAW

Tax-exempt trade and professional organizations (such as associations) often establish political action committees (“PAC”) to support the election of officials who are aligned with their organization’s policy goals. PACs are necessary because the Federal Election Campaign Act (“FECA”) prohibits nonprofit associations and other corporations from using treasury funds to support federal candidates or political parties. Additionally, the FECA places strict limits on how nonprofit associations may use facilities and resources in connection with political activities.¹

A PAC is somewhat different from other entities associated with a corporation. It is a separate entity, but still managed by, and part of, the corporation.

Associations and their PACs may solicit voluntary contributions of up to \$5,000 per year from the association’s “restricted class.” This includes the association’s salaried employees with decision-making authority and their families. If the association’s members are individuals, it may also solicit its members and their families. If the members are corporations, the rules are a bit different. With a corporate member’s written permission, a trade association or its PAC may solicit the corporate member’s restricted class, too (which includes its salaried employees with decision-making authority, shareholders and both groups’ families).

The PAC can make contributions to candidates for federal office of up to \$5,000 per election with the funds it raises.

This white paper provides an overview of PACs and summarizes the process by which an association can establish an affiliated PAC.

¹ 2 U.S.C. § 441b.

I. CREATING THE PAC

A. Defining the PAC

To establish a PAC, an association must first determine the PAC's name, select a treasurer, establish the PAC's governance, and decide how to administer the PAC. The formal corporate name of an association must be included in the PAC's name for use in reports to the Federal Election Commission ("FEC") and disclaimer notices, however, the FECA allows a PAC to use a "pacronym" on PAC letterhead and checks. The PAC's name need not include the words "political action committee," although most do. Other, more elaborate names include "good government fund" or "employee action fund."

B. Treasurer, Assistant and Custodian of Records

The FECA requires every PAC to have a treasurer. It does not require any other officers. The treasurer of the PAC is responsible for complying with the FECA and is subject to civil penalties for violations, such as failure to file reports in a timely manner or more serious violations, like accepting corporate contributions. The treasurer should therefore be a "hands-on" person who will actively participate in the PAC's administration.

In addition to a treasurer, the FECA recognizes an assistant treasurer and a custodian of records. It is advisable to have an assistant treasurer for two reasons. First, a PAC cannot accept or make contributions without a treasurer and the FEC allows an assistant treasurer to fill this role in the absence of a treasurer. In addition, the assistant treasurer provides backup to the treasurer in the event he or she is unable to file a report on time. The custodian of records (who may also be the treasurer or assistant treasurer) is the individual responsible for maintaining all of the documents mandated by the FECA, such as payroll deduction authorization forms, copies of checks and other similar items.

Some PACs also have a "PAC Administrator" who assists the treasurer with preparing FEC disclosure reports and other routine tasks. For example, if a PAC has an oversight body, the administrator will often be responsible for planning and scheduling meetings and keeping minutes of those meetings. Often, the PAC Administrator serves as the assistant treasurer and/or custodian of records.

In addition to a treasurer, some PACs decide to have a Chairman or Director to oversee fundraising. This may be a high-profile person who will be a successful fundraiser, but who does not have the time to serve as the treasurer, who is not an employee of the association or who does not have a compliance background.

C. Governing Body

Generally, associations create oversight bodies comprised of representatives from different stakeholders among the association's management and membership to involve a wider audience in their PAC's efforts. Others elect to provide the chief executive officer of the PAC with broad authority to make PAC

contributions with little input from management, subject only to supervision of his or her overall job performance.

A PAC oversight body may be vested with varying levels of authority. Some associations require the PAC oversight body to approve an annual giving plan, which may be quite broad, permitting the treasurer to contribute to recipients who are on the annual plan's preapproved list without further consideration. This permits the treasurer or government affairs staff to react quickly to new opportunities while still acting within limits set by the oversight body. Others require approval by the committee for every contribution before it is made. The level of discretion you confer to a PAC oversight body is a matter of internal organizational dynamics, not campaign finance law. In many instances, the PAC oversight body has general supervision responsibility, an active role in setting contribution goals, and authorizes contributions to candidates.

D. Bylaws

Although not required by law, most associations elect to adopt bylaws for their PACs' operations. The bylaws serve two basic purposes. First, the bylaws set forth the governance structure as discussed above. Second, the bylaws help to maintain consistency in the PAC's operations over time.

Establishing bylaws presents multiple governance options to consider. The FEC regulates how an association manages PAC operations in only a few limited areas, so prudential decisions based on the organization's policies and procedures, general good governance practices, and the association's culture and structure generally dictate PAC governance.

E. Establishing the PAC

Once an association has finalized the details of its structure, it is ready to establish the PAC. This involves several simple tasks. First, an association's Board should approve the creation of the PAC (this is both a corporate "formality" and also often a banking requirement). As part of this step, the association should select PAC officers and adopt bylaws for the PAC's administration. Second, an association must open a checking account for the PAC. Third, an association must file FEC Form 1 with the Federal Election Commission within 10 days of formally creating the PAC. At that point, the PAC may begin its fundraising efforts.

F. Depository Account

The account into which an association deposits PAC contributions may not contain any corporate funds. Therefore, an association must open a separate account. The account must be opened with a check from a contributor (not with a check from the association's account). We recommend choosing a non-interest bearing account to eliminate the need to file tax returns, which cost more to prepare than all but the largest PACs earn in interest. Opening the PAC account at the same bank that serves the association generally is advisable.

G. FEC Form 1

To register the PAC with the Federal Election Commission, the PAC must file FEC Form 1. This form must be submitted within 10 days of when an association's Board approves formation of the PAC.

II. OPERATING THE PAC

A. PAC Administrative Costs

Under the FECA, an association is known as the “connected organization.” As the PAC's connected organization, an association may pay all administrative and solicitation costs for the PAC. For example, an association may pay all legal fees for the PAC, postage for mailings, staff time to compose solicitations, credit card processing fees, and virtually any other cost associated with the PAC. We recommend instructing the PAC's bank to deduct all fees from an account of the association—instead of debiting the PAC account—to preserve PAC funds and to streamline FEC reporting.

Additionally, association staff may provide services to the PAC as part of their normal duties, such as determining fundraising goals and deciding which campaigns to support. This enables the PAC to dedicate all contributions to the PAC's election efforts without deducting administrative costs.

B. Compliance and Reporting

The PAC will be required to deposit checks in a timely manner and file reports with the FEC on a regular basis. Depending on the size of the PAC, the reports must be filed electronically, which generally is easier to do regardless of the PAC's size.

There are several options for operating the PAC. First, an association may use its staff to deposit checks, keep the books and file FEC reports. Staff should be well trained on how to prepare and submit reports and have access to counsel for questions that arise with reporting. Alternatively, a number of PAC administration companies provide PACs with the opportunity to outsource compliance duties.

C. PAC Solicitations

The PAC must be funded with voluntary contributions of up to \$5,000 per year.² Although any U.S. citizen (or permanent resident alien) is permitted to contribute to the PAC, the PAC may solicit only its “restricted class” for contributions. The restricted class is comprised of (1) management-level employees of an association and their families;³ (2) certain individual association members;⁴

² Contributions may be made by check, credit card, payroll deduction, or direct debit. If an association uses payroll deduction or direct-debit, it may be a one-time deduction or it may be periodic. The association must obtain signed consent from each donor who chooses to contribute by payroll deduction. The association must also retain copies of all contribution checks made out to the PAC.

³ Management-level employees include salaried employees with “policymaking, managerial, professional or supervisory responsibilities.” 11 C.F.R. § 114.1(c). This specifically includes the “individuals who run the corporation's business such as officers, other executives, and plant, division, and section managers” and also “individuals following the recognized professions, such as lawyers and engineers.” *Id.* § 114.1(c)(1). The FECA specifically excludes “[p]rofessionals who are represented by a labor organization” and “[s]alaried foremen and other salaried lower level supervisors having direct supervision over hourly employees” from the restricted class of executives that may be solicited. It also excludes consultants who are not association employees. *Id.* § 114.1(c)(2).

and (3) management-level employees and shareholders of member companies that have authorized a trade association to solicit these individuals.

An association must obtain prior written approval from its member companies before soliciting its members' restricted classes.⁵ A corporation may provide this permission to only one trade association per year. The authorization must identify the year for which it is effective, although a single solicitation may contain a number of years (e.g., by including a separate signature line for each year).⁶ Only the corporation that is a member of an association may be solicited – subsidiary and parent companies may be solicited only if they also are members of the association and have provided their own written consent.

D. PAC Expenditures

Initially, the PAC will be allowed to make contributions of up to \$2,500 per election to federal candidates (e.g., \$2,500 to each of a candidate's primary, runoff, general and special elections per election cycle). Once it has been in existence for six months, received contributions from 51 people, and given to five candidates, it may make contributions to candidates of up to \$5,000 per election.⁷ Thus, the PAC could give up to \$10,000 to a single candidate in the typical election cycle: \$5,000 for the primary and \$5,000 for the general.

The PAC may also make contributions to political parties and other PACs. For example, it is allowed to give \$5,000 a year to any other PAC. However, an association may not solicit other PACs for contributions. Failing to observe this restriction is a common problem for associations' PACs regarding member PACs' contributions. Because corporate and association PACs cannot solicit one another, a PAC that wishes to contribute to another must make the contribution without prompting.

The PAC may also make contributions to state candidates, but will be subject to state contribution limits and reporting requirements if it does so. Before an association decides to give to state candidates, it should carefully investigate the requirements that will apply.

Although the FECA imposes a number of restrictions on PACs, careful planning can minimize their hurdles and risks. Venable can assist with each step in the process and help to navigate all FEC regulations.

* * *

⁴ Certain criteria determine whether an association qualifies as a "membership organization," and whether its members qualify as "members" for purposes of solicitation and contributions. 11 C.F.R. §§ 100.134(e) and (f).

⁵ 11 C.F.R. § 114.8(c).

⁶ *Id.* § 114.8(d)(4).

⁷ Once the PAC meets the threshold of six months, 51 contributors and five contributions, it is known as a "qualified multi-candidate committee" and must file an FEC Form 1M with the FEC within 10 days of meeting the last of these three criteria to notify the FEC that it is qualified. A multi-candidate PAC must also identify this status on its check stock.

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October 17, 2011

Lobbying: What Does It Mean for 501(c)(3) Organizations?

OVERVIEW

501(c)(3) organizations that engage in federal lobbying are subject to at least two separate—and very different—definitions of lobbying in order to comply with applicable federal tax and lobbying disclosure laws. This article will review the definitions and reporting requirements for 501(c)(3) public charities under the Internal Revenue Code (the “Code”) and under the Lobbying Disclosure Act (“LDA”) and provide a guide for compliance efforts under each legal framework.

FEDERAL TAX LAW

Nonprofit organizations that qualify for federal income tax exemption as public charities¹ under **Section 501(c)(3)** of the Code are subject to heightened restrictions on lobbying and political activities. Carrying on propaganda or otherwise attempting to influence legislation may not constitute a “substantial part” of the activities of an organization exempt under Section 501(c)(3); exceeding the “substantial part” limit places an organization at risk of losing its exempt status. Further, the Code prohibits such organizations from engaging in any political activities. Whether an organization’s attempts to influence legislation are substantial will be determined by a vague facts and circumstances “substantial part” test, unless an organization elects to have such determination made pursuant to an expenditure test, by filing a 501(h) election with the Internal Revenue Service (“IRS”).

The No Substantial Part Test

Under the substantial part test, codified in part in **Section 1.501(c)(3)-1(c)(3)(ii)** of the Treasury Regulations, an organization’s tax-exempt status will not be at risk because of lobbying, provided such organization is not classified as an “action” organization, or an organization, “a substantial part of its activities is attempting to influence legislation by propaganda or otherwise.” The definition of lobbying under the substantial part test includes the following:

- Attempts to influence legislation by propaganda or otherwise;
- Presentation of testimony at public hearings held by legislative committees;
- Correspondence and conferences with legislators and their staffs;
- Communications by electronic means; and
- Publication of documents advocating specific legislative action.

Legislation is defined to include action by Congress, a state legislature, a local council or similar governing body, and the general public in a referendum, initiative, constitutional amendment, or similar procedure.

The determination of whether an organization’s lobbying activities are substantial is generally based on a facts and circumstances analysis. In some cases, the IRS has taken into consideration the percentage of the organization’s expenditures devoted to influencing legislation on an annual basis. See **Haswell v. United States**, 500 F.2d 1133 (Ct. Cl. 1974), *cert. denied*, 419 U.S. 1107 (1975). In others, it has determined substantiality based on the percentage of the organization’s activities that constitute influencing legislation. See **Seasongood v. Commissioner of Internal Revenue**, 227 F.2d 907 (6th Cir. 1955). To date, the IRS has not offered clear guidance on the point at which it will deem an organization’s lobbying activities substantial or set any type of threshold that an organization must not exceed. Consequentially, organizations following the “substantial part” test alone operate with some level of uncertainty.

Further, if an exempt organization exceeds an “insubstantial” amount of lobbying activity, a five percent excise tax may be imposed on the organization, for each year that lobbying expenditures was incurred. In some circumstances, an additional five percent tax may be levied on an organization’s managers.

The 501(h) Election

Limits on Lobbying

Instead of relying on the vague “substantial part” test, organizations exempt under Section 501(c)(3) may choose to make the so-called “lobbying election” under **Section 501(h)** of the Code. Electing organizations are governed by the “**expenditure test**,” a mathematical formula that limits the amount a 501(c)(3) entity may spend on lobbying activities to precise amounts and provides specific definitions of “lobbying.” **Section 4911(c)(2)** of the Code sets forth the manner of calculating the lobbying ceiling, or nontaxable amount, which is the lesser of \$1,000,000 or amounts determined on a sliding scale based on the organization's exempt purpose expenditures as follows:

If the exempt purposes expenditures are:	The lobbying nontaxable amount is:
Not over \$500,000	20 percent of the exempt purpose expenditures
Over \$500,000 but not over \$1,000,000	\$100,000, plus 15 percent of the excess of the exempt expenditures over \$500,000
Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10 percent of the excess of the exempt purpose expenditures over \$1,000,000
Over \$1,500,000	\$225,000 plus 5 percent of the excess of the exempt purpose expenditures over \$1,500,000

In addition, the amount of grassroots lobbying expenditures may not exceed 25 percent of the permitted overall lobbying expenditures. If an organization exceeds its lobbying expenditure limit in a given year, it must pay an excise tax equal to 25 percent of the excess. An organization may make the 501(h) election at any time by filing the one-page **Form 5768** with the IRS.

Lobbying Defined

For the purposes of calculating lobbying expenditures under the 501(h) election, there are two types of “lobbying”:

- **“Direct lobbying”** is any attempt to influence legislation through communication with a member or employee of a legislative body, or with any other government official or employee who may participate in the formulation of legislation. “Direct lobbying” also includes communications by an organization to its members, encouraging those members to engage in direct lobbying.
- **“Grassroots lobbying”** is any attempt to influence legislation through an attempt to affect the opinions of the general public or any segment thereof.

For both direct and grassroots lobbying, the costs of researching and preparing materials, as well as the allocable portion of administrative, overhead, and other general expenses attributable to “lobbying” count as lobbying expenditures as well.

Several activities are expressly exempt from this definition of lobbying, including:

- Certain technical assistance or advice to a governmental body or committee in response to an unsolicited, written request;
- So-called “self-defense activities”—i.e., communications concerning decisions that may affect an organization’s existence, powers, duties, 501(c)(3) status, or deductibility of contributions; and
- Nonpartisan analysis, study, or research that may advocate a particular view, provided that (a) presentation of the relevant facts is sufficient to enable readers to reach an independent conclusion, and (b) distribution of the results is not limited to or directed toward persons solely interested in one side of a particular issue.

LOBBYING DISCLOSURE ACT

In addition to complying with the tracking requirements and restrictions of lobbying activities under federal tax law, nonprofit organizations that lobby also may be **required to register** under the LDA if one or more of their employees spends more than 20 percent of his or her time on lobbying activities. The LDA also requires organizations to submit quarterly reports to Congress regarding their lobbying activities, including the amount spent on lobbying. The LDA definition of “lobbying” differs significantly from the definition used for the 501(h) election.

Under the LDA, “**lobbying activities**” include “lobbying contacts” as well as efforts in support of such

contacts, including preparation and planning activities, research, and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

Under the LDA, “lobbying contacts” are the actual communications with “covered officials.” Lobbying contacts may be oral, written, or electronic. A contact is not a lobbying contact unless it involves:

- . The formulation, modification, or adoption of federal legislation;
- . The formulation, modification, or adoption of a federal rule, regulation, Executive Order, or other program, policy, or position of the United States government;
- . The administration or execution of a federal program or policy (including the negotiation, award, or administration of a federal contract, grant, loan, permit, or license); or
- . The nomination or confirmation of a person for a position subject to confirmation by the Senate.

There are a number of **exceptions** to these four categories. The following exceptions do not constitute “lobbying contacts” (and therefore preparation for such contacts does not constitute “lobbying activity”) and are particularly relevant to nonprofit organizations:

- . Administrative requests, such as requests for a meeting or about the status of a matter;
- . Testimony given before a committee or sub-committee of Congress;
- . Speeches, articles, or publications made available to the public or distributed through mass communication;
- . Information provided in writing in response to a request by a covered official;
- . Information required by subpoena, a civil investigative demand, or otherwise compelled by the federal government;
- . Communications in response to a notice in the Federal Register and directed toward the official listed in the notice;
- . Written comments filed in the course of a public meeting;
- . Any communication that is made on the record in a public proceeding; and
- . Petitions for agency action made in writing and made part of the public record.

The term “**covered legislative branch official**” includes all elected Members of Congress and the Senate, as well as all employees and officers of Congress. The definition of “**covered executive branch officials**” is more specific. It includes:

- . The President;
- . The Vice President;
- . Admirals and generals;
- . Any officer or employee, or any other individual functioning in the capacity of such an officer or employee, in the Executive Office of the President;
- . Any officer or employee in a position listed in levels I through V of the Executive Schedule; and,
- . Schedule C political appointees.

The “**Executive Schedule**” delineates the most senior positions in the administration. **Schedule C** posts are typically non-career policymaking or “political” appointees, and confidential secretaries and administrative assistants of key appointees within an agency.

Reporting Expenses under the LDA

Although many organizations will be subject to both the Code and LDA reporting requirements for lobbying, a provision of the LDA permits organizations to track and disclose lobbying expenditures using the Code’s Section 4911 definition rather than the LDA definition. For many organizations, the LDA definition is far narrower than the Code’s definition of “lobbying.” If the organization elects to use the Internal Revenue Code definitions, they must, however, use the LDA’s definition with respect to the legislative branch, and the Internal Revenue Code definition with respect to the executive branch, to determine which individuals are considered to be lobbyists and which agencies have been lobbied.

Nonprofit organizations that are sensitive to having high dollar amounts reported on their LDA reports may consider opting to track lobbying activities separately under both the Code and the LDA. This approach will increase recordkeeping obligations, but will likely allow an organization to report a lower,

more accurate estimate of federal lobbying expenditures to the Clerk of the House and the Secretary of the Senate as the LDA does not require organizations to report state lobbying and grassroots lobbying expenses.

CONCLUSION

This article provided an overview of the federal tax law and LDA definitions and requirements applicable to 501(c)(3) organizations. In-house counsel with an understanding of these requirements will be able to effectively engage in lobbying while maintaining compliance with applicable federal law.

ADDITIONAL RESOURCES

ACC Resources

- ACC Article (2010): Supreme Court Decision Opens New Doors for Associations
[<http://author.acc.com/legalresources/resource.cfm?show=796949>]
- ACC Top Ten (2010): Mythbusting the Top Ten Fallacies of 501(c)(3) Lobbying
[<http://acc.com/legalresources/publications/topten/mythbusting.cfm>]
- ACC Form & Policy (2009): Model Lobbying Tax Compliance Guide for Association Employees
[<http://acc.com/legalresources/resource.cfm?show=128117>]
- ACC Leading Practices Profile (2008): Corporate Political Compliance: Best Practices for Legal Departments in Lobbying, Campaigning, and Gifts and Entertainment
[<http://acc.com/legalresources/resource.cfm?show=172707>]
- ACC Top Ten (2008): Top Ten Trends Nonprofit Counsel Need to Know
[<http://acc.com/legalresources/publications/topten/trends.cfm>]

Web Resources

- **Grassroots Lobbying: A Legal Primer** (Summer 2011)
- **Federal Ethics and Lobbying Rules** (May 2011)
- **Effective 501(c)(3) Lobbying: 501(h) Election, No Substantial Part, Creating Related Lobbying Organizations** (August 2010)
- **Myths about Lobbying, Political Activity, and Tax Exempt Status** (June 2010)
- **The New Form 990: Defusing Governance, Political Activities, Compensation, and Other Issues** (December 2009)
- **The Mechanics of Lobbying Disclosure Completing LD-1, 2, & 203** (June 2008)
- **Tax Information for Charities & Other Non-Profits, Internal Revenue Service**
- IRS Summary of "**501(c)(3) Lobbying**"
- IRS Summary of "**Measuring Lobbying - Substantial Part Test**"
- **Lobbying Disclosure Act Guidance**, Office of the Clerk, U.S. House of Representatives

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¹Note that this brief article does not discuss the application of 501(c)(3) lobbying restrictions to private foundations.

For more information, please contact authors **Jeffrey S. Tenenbaum**, **Ronald M. Jacobs**, **Audra J. Heagney**, or **Kristalyn J. Loson**.

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For more information about Venable's nonprofit organizations and associations practice, see www.venable.com/nonprofits.

This article is not intended to provide legal advice or opinion and should not be relied on as such. Legal advice can only be provided in response to specific fact situations.

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October 17, 2011

Lobbying: What Does It Mean for Nonprofits?

OVERVIEW

Nonprofit organizations that conduct federal lobbying must be cognizant of at least two different definitions of lobbying in order to comply with applicable federal tax law and federal lobbying disclosure laws. Section 162(e) of the Internal Revenue Code (the "Code") defines "lobbying" and requires most tax-exempt organizations either to pay a proxy tax on lobbying expenditures or inform their members that a portion of their membership dues are non-deductible as a result of such expenditures. The federal Lobbying Disclosure Act (the "LDA") provides a second definition of "lobbying" and requires organizations to track and disclose the amount spent on such activities.

This article will review the definitions and reporting requirements for non-501(c)(3) tax-exempt organizations under federal tax law and under the LDA.

FEDERAL TAX LAW

Section 162(e)

Section 162(e) of the Code denies a deduction for the amount an organization spends on lobbying. Most trade and professional organizations exempt under 501(c)(6) and labor unions and farm bureaus exempt under 501(c)(5) are subject to the requirements of Section 162(e) (as are most taxable business entities). Membership organizations that are subject to Section 162(e) and that conduct lobbying may either:

- Disclose to their members what percentage of their dues are nondeductible because they are used for lobbying; or
- Pay a 35-percent proxy tax on lobbying expenditures.

Regardless of the method chosen, they must disclose the amount spent on lobbying on their Form 990 informational returns. Most membership organizations choose to report the nondeductible amount to their members.

"**Lobbying**" under Section 162(e) includes five broad categories of activity:

- Influencing legislation. Any attempt to **influence legislation** through communication with (i) any member or employee of Congress; (ii) any member or employee of a state legislature; or (iii) any federal or state government official or employee who may participate in the formulation of legislation.
- Grassroots lobbying. Any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters, or referenda. This includes urging association members to engage in grassroots lobbying.
- Communications to covered federal executive branch officials. Any direct communication with a covered federal executive branch official in an attempt to influence the official actions or positions of such official. Covered federal executive branch officials include the President, the Vice President, employees of the Executive Office of the President, and any individual serving in Executive Schedule level I or designated by the President as having Cabinet level status, and any immediate deputy of any of the foregoing.
- Political activities. Any activity which constitutes participation or intervention in any political campaign at the federal, state, or local level, the expenditures for which are not already subject to tax under Code Section 527(f).
- Supporting activities. All research, preparation, planning, and coordination (including deciding whether to make a lobbying communication) engaged in for a purpose of making or supporting a lobbying communication or political activity (as defined above) are treated as carried out in connection with

such communication or activity. In other words, lobbying includes the time spent on any background activity engaged in for a purpose of supporting a future planned lobbying communication.

The **regulations implementing Section 162(e)** state that a covered organization may use any reasonable method to calculate the amount spent on lobbying. An accurate calculation typically includes tracking employees' time spent lobbying, allocating overhead costs to lobbying activity, and factoring actual lobbying expenses (e.g., travel, payments to outside consultants, publications, etc.) into the total. The regulations also permit an organization to make reasonable allocations for activities that are conducted for both lobbying and non-lobbying purposes.

LOBBYING DISCLOSURE ACT

In addition to complying with the tracking of lobbying activities under federal tax law, nonprofit organizations that lobby also may be **required to register** under the LDA if one or more of their employees spends more than twenty percent of his or her time on lobbying activities. The LDA also requires organizations to submit quarterly reports to Congress regarding their lobbying activities, including the amount spent on lobbying. The LDA definition of "lobbying" differs significantly from the definition used under Section 162(e).

Under the LDA, "**lobbying activities**" include "lobbying contacts" as well as efforts in support of such contacts, including preparation and planning activities, research, and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

Under the LDA, "**lobbying contacts**" are communications with "covered officials." Lobbying contacts may be oral, written, or electronic. A contact is not a lobbying contact unless it involves:

- . The formulation, modification, or adoption of federal legislation;
- . The formulation, modification, or adoption of a federal rule, regulation, Executive Order, or other program, policy, or position of the United States government;
- . The administration or execution of a federal program or policy (including the negotiation, award, or administration of a federal contract, grant, loan, permit, or license); or
- . The nomination or confirmation of a person for a position subject to confirmation by the Senate.

There are a number of **exceptions** to these four categories. The following exceptions do not constitute "lobbying contacts" (and therefore preparation for such contacts does not constitute "lobbying activity") and are particularly relevant to nonprofit organizations:

- . Administrative requests, such as requests for a meeting or about the status of a matter;
- . Testimony given before a committee or sub-committee of Congress;
- . Speeches, articles, or publications made available to the public or distributed through radio, television, or other methods of mass communication;
- . Information provided in writing in response to a request by a covered official;
- . Information required by subpoena, a civil investigative demand, or otherwise compelled by the federal government (including information compelled by a contract, grant, loan, permit, or license);
- . Communications in response to a notice in the Federal Register and directed toward the official listed in the notice;
- . Written comments filed in the course of a public meeting;
- . Any communication that is made on the record in a public proceeding; and
- . Petitions for agency action made in writing and made part of the public record.

The term "**covered legislative branch official**" includes all elected Members of Congress and the Senate, as well as all employees and officers of Congress. The definition of "**covered executive branch officials**" is more specific. It includes:

- . The President;
- . The Vice President;
- . Admirals and generals;
- . Any officer or employee, or any other individual functioning in the capacity of such an officer or employee, in the Executive Office of the President;

- . Any officer or employee in a position listed in levels I through V of the Executive Schedule; and,
- . Schedule C political appointees.

The “**Executive Schedule**” delineates the most senior positions in the administration. **Schedule C** posts are typically non-career policymaking or “political” appointees, and confidential secretaries and administrative assistants of key appointees within an agency.

Even if an organization directs a communication to a covered official—e.g., a Schedule C appointee at a government agency—it is not a lobbying contact if the communication is part of the public record before the agency (e.g., through a formal docketing process).

Reporting Expenses under the LDA

Although many organizations will be subject to both Code and LDA reporting requirements for lobbying, a provision of the LDA permits organizations to track and disclose lobbying expenditures using section 162(e) rather than the LDA definition. For many organizations, the LDA definition is far narrower than the Code’s definition of “lobbying.” If the organization elects to use the Internal Revenue Code definitions, they must, however, use the LDA’s definition with respect to the legislative branch, and the Code definition with respect to the executive branch, to determine which individuals are considered to be lobbyists and which agencies have been lobbied.

Nonprofit organizations that are sensitive to having high dollar amounts reported on their LDA reports may consider opting to track lobbying activities separately under both the Code and the LDA. This approach will increase recordkeeping obligations, but will likely allow an organization to report a lower, more accurate estimate of federal lobbying expenditures to the Clerk of the House and the Secretary of the Senate, as the LDA does not require organizations to report state lobbying and grassroots lobbying expenses.

CONCLUSION

Federal tax law and the Lobbying Disclosure Act contain different restrictions, disclosure requirements, and thresholds for nonprofit in-house counsel to consider. This article provided an overview of the federal tax law and LDA requirements applicable to nonprofit organizations. In-house counsel with an understanding of such requirements will be able to effectively engage in lobbying activities while maintaining compliance with federal law.

ADDITIONAL RESOURCES

Web Resources

- **Playing Politics: A Menu of Options for Associations to Consider** (September 2011)
- **Grassroots Lobbying: A Legal Primer** (Summer 2011)
- **Federal Ethics and Lobbying Rules** (May 2011)
- **Myths about Lobbying, Political Activity, and Tax Exempt Status** (June 2010)
- **Supreme Court Decision Opens New Doors for Associations** (February 2010)
- **The New Form 990: Defusing Governance, Political Activities, Compensation, and Other Issues** (December 2009)
- **The Mechanics of Lobbying Disclosure Completing LD-1, 2, & 203** (June 2008)
- **Tax Information for Charities & Other Non-Profits, Internal Revenue Service**
- IRS Summary of “**Nondeductible Lobbying and Political Expenditures**”
- **Lobbying Disclosure Act Guidance**, Office of the Clerk, U.S. House of Representatives

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¹Note that 501(c)(3) tax-exempt organizations are subject to a different definition of “lobbying” under the Code. For more information, see the article, **Lobbying: What Does It Mean for 501(c)(3) Organizations?**

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