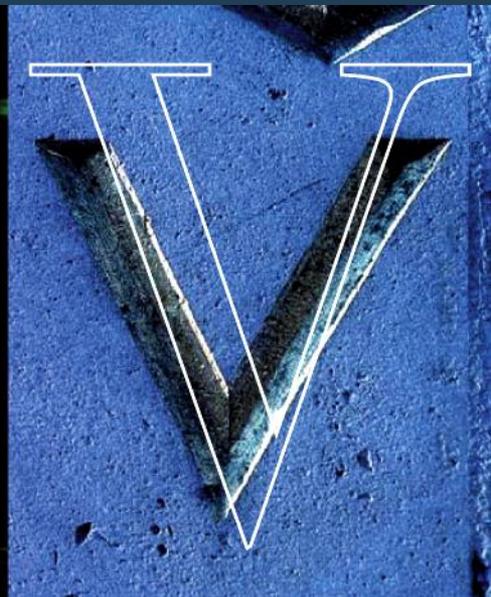
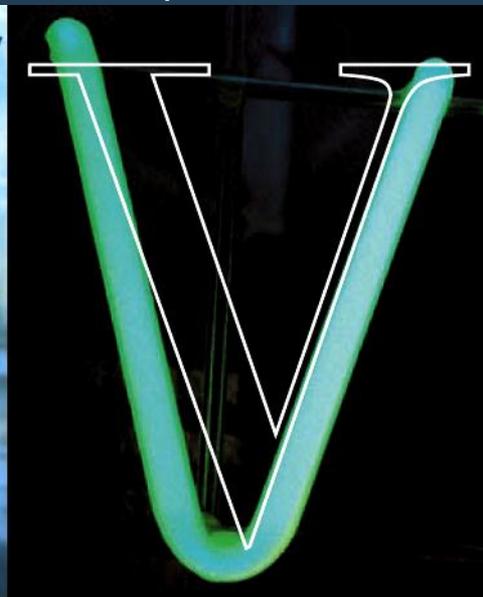
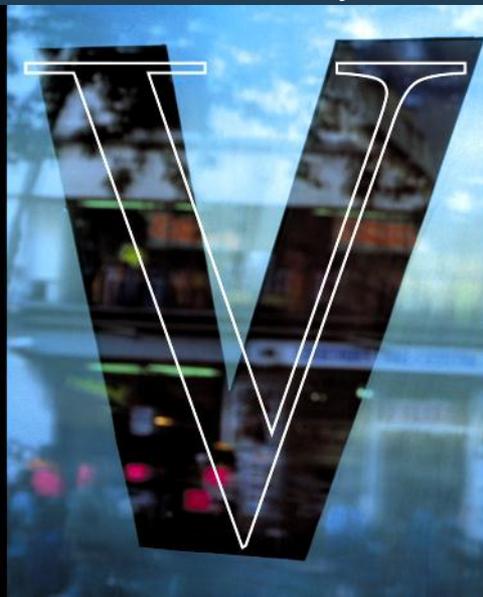
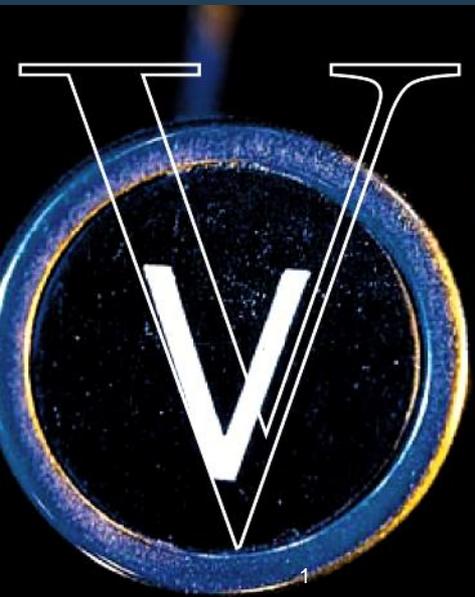


# Nonprofit Bloopers: Avoiding Political and Promotional Pitfalls

*AFP DC Chapter's Advanced Education Session  
October 12, 2012*

Moderator:  
Jeffrey S. Tenenbaum, Esq.

Panelists:  
Ronald M. Jacobs, Esq.  
Kristalyn J. Loson, Esq.



# Agenda

## CAMPAIGN ACTIVITIES: WHAT CAN YOU DO?

- Host candidate appearances
- Host candidate forums and debates
- Invite candidates in other capacities
- Legislative scorecards
- Publish candidate questionnaires
- Engage in issue advocacy

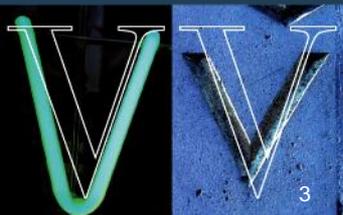
## COMMERCIAL CO-VENTURE CONSIDERATIONS

- Current state regulation
- Social media implications
- Regulatory update
- Considerations for commercial co-venture promotions



## Candidate Appearances

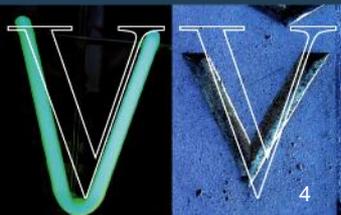
- Invite all candidates
- Equal opportunity to speak at similar events
- Explicitly state no support or opposition
- Tell people everyone was invited
- No fundraising



# Candidate Forums and Debates

## WHO GETS INVITED?

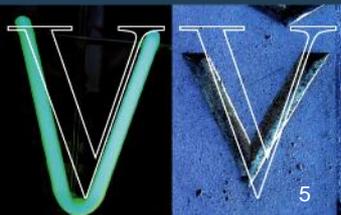
- Invite everyone (or have objective criteria to limit)
- Equal opportunities to speak at similar events if not all together
  - Note FEC rules on simultaneous participation



# Candidate Forums and Debates

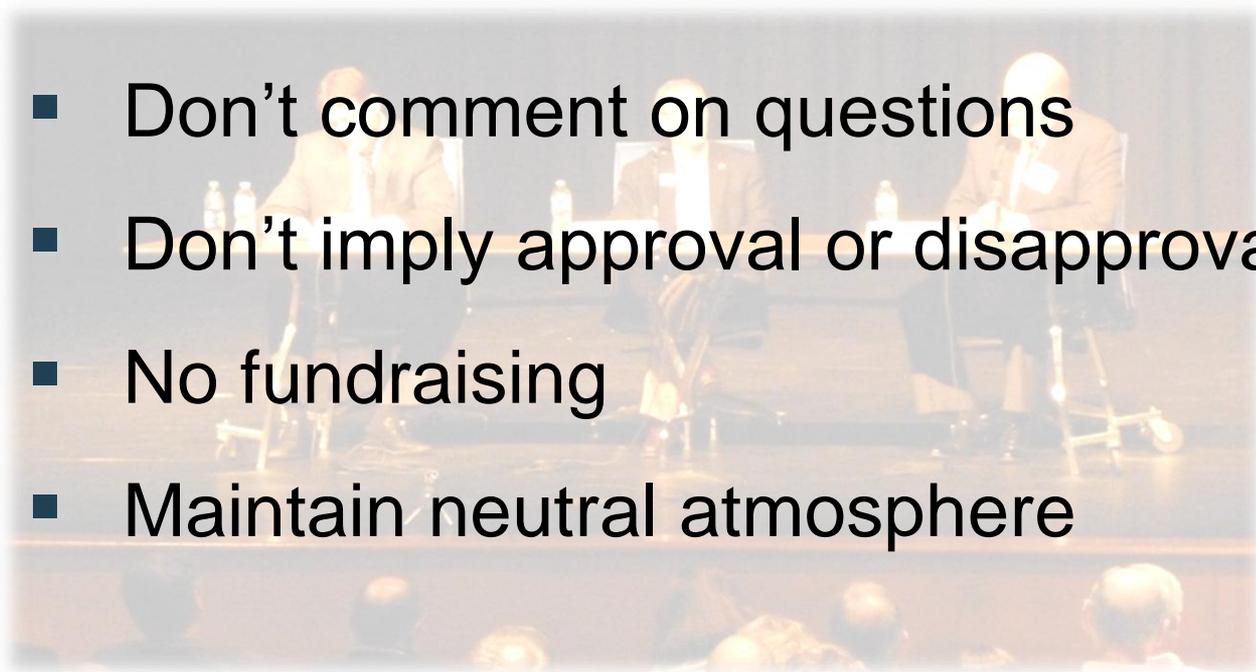
## HOW DO THE QUESTIONS WORK?

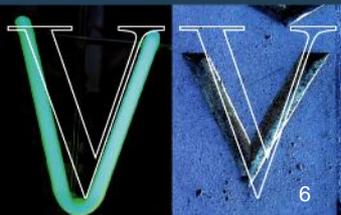
- Questions prepared and presented by independent nonpartisan panel
- Topics cover broad range of issues
- Provide equal opportunity to respond/present views
- Don't use agree/disagree questions



# Candidate Forums and Debates

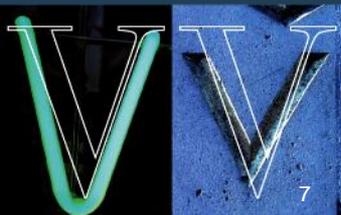
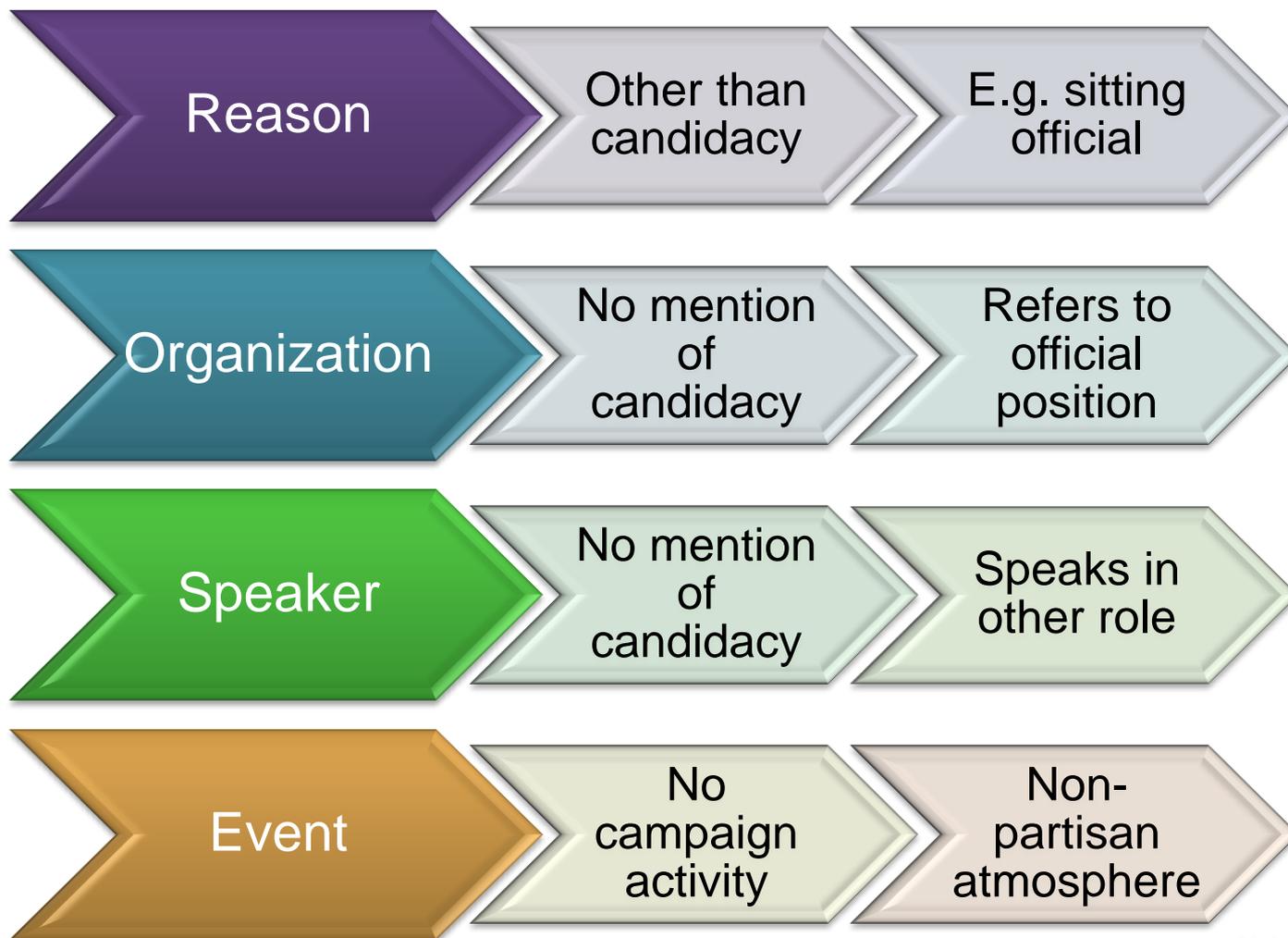
## WHAT DOES THE ORGANIZATION DO?

- 
- Don't comment on questions
  - Don't imply approval or disapproval
  - No fundraising
  - Maintain neutral atmosphere



# Non-Candidate “Candidate” Appearances

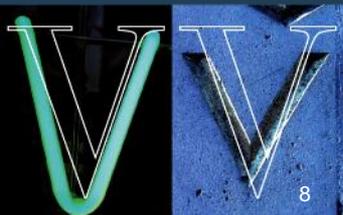
## OFFICIAL CAPACITY/EXPERT



# Legislative Scorecards

## WHEN ARE THEY PERMISSIBLE?

- List all votes by a legislative body
- May include reference to issues
- May not include candidates
- Is it a regular activity
- Is it timed with an election



# 501(c)(3)s and Political Activities

## THE FUNDAMENTAL TAX RULES

- Political campaign intervention is ***prohibited***
  - Ban applies to political campaigns at all levels of government – federal, state, and local
  - Consequences:
    - Loss of tax-exempt status
    - Excise taxes
- Lobbying permitted provided it is not a substantial part of the organization's activities



# 501(c)(3)s and Political Activities

## OTHER IMPORTANT RULES

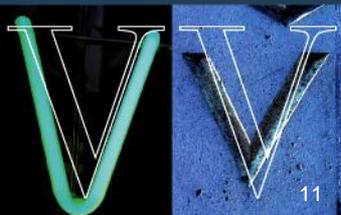
- Campaign finance laws
  - Federal law prohibits corporate political contributions
  - Same rule applies in many, but not all, states
- Lobbying disclosure laws (federal, state, local)
  - Registration
  - Reporting



# Political Campaign Intervention

## WHAT IS IT?

- Any and all activities that ***favor*** or ***oppose*** one or more candidates for public office:
  - Candidate endorsements
  - Campaign contributions
    - \$\$
    - Use of facilities or resources
  - Public statements of support or opposition



# Permissible Election-Related Activities

## WHAT IS ALLOWED?

- Voter registration and GOTV drives
- Candidate appearances
- Voter guides/candidate questionnaires
- Issue advocacy
- Activities by individual organization leaders or employees in their personal capacity (not on behalf of the organization)



# Voter Guides/Questionnaires

## WHAT THE IRS SAYS

### Structure

All Candidates for office sent questionnaire

Unbiased structure

No endorsement

### Questions

Clear and unbiased

Subjects cover major areas of interest

Clear issue descriptions

Don't ask to accept a pledge

### Answers

Reasonable time to respond

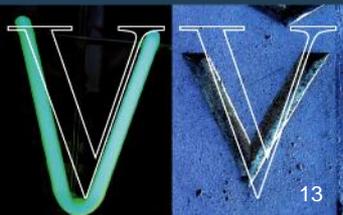
If limited answers allowed (support/oppose), opportunity to explain position

### Guides

Questions the same in the guide as provided to candidates

Answers the same as provided or edited for space only

Answers presented close to the question



# Issue Advocacy

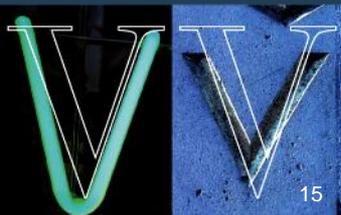
## OVERVIEW

- IRS is wary of issue advocacy during elections
- Communications that refer to:
  - Candidate's name
  - Candidate's picture
  - Political party affiliation
  - Distinctive features of biography
  - Candidate's platform
- Communications that reference voting



# Issue Advocacy

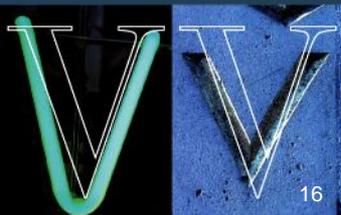
## IRS RULES



# Issue Advocacy

## DISCLOSURE

- Electioneering communications
  - Defined
    - Broadcast
    - 30 or 60 days before election
    - Refer to a candidate
  - Disclosure of expenditures
  - Disclosure of funding
  - State rules may differ
- Grassroots lobbying



# Charitable Solicitation

## CURRENT STATE REGULATION

- A. Charity/Nonprofit Organization
- B. Professional Solicitor
  - Professional fundraiser
  - Professional fundraising counsel/consultant
- C. Commercial Co-venturer



# Charitable Solicitation

## COMMERCIAL CO-VENTURE REGULATION

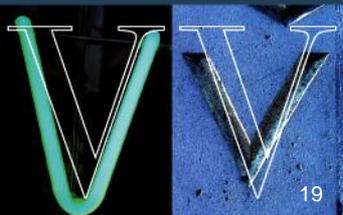
- **Commercial Co-Venture (“CCV”)** – An arrangement between a charity and a commercial entity, engaged in trade or business other than charitable solicitations, under which the commercial entity advertises in a sales or marketing campaign that the purchase or use of its goods or services will benefit a charity or charitable purpose
  - (1) Other than charitable solicitation
  - (2) Tied to purchase of goods/services (\*MA)
  - (3) Benefit charity or charitable purpose



# Charitable Solicitation

## COMMERCIAL CO-VENTURE REGULATION

- About 25 states have laws that specifically regulate CCVs
  - Registration/Bonding
  - Written Contract
  - Advertising Disclosures
  - Accounting and Recordkeeping
- Disclosure Requirements
  - Time frame
  - Charity
  - Amount per good or service
  - Minimum or maximum donation



# Charitable Solicitation

## SOCIAL MEDIA IMPLICATIONS

### Social Media Implications

- Same five charitable solicitation registration “buckets”
  - Charitable Organization
  - Professional Fundraiser
  - Professional Fundraiser Consultant
  - Commercial Co-venturer
  - Unregulated
- When move to social media – some view as “one big gray area”
- *But*, look toward same basic principles for analysis



# Charitable Solicitation

## SOCIAL MEDIA IMPLICATIONS

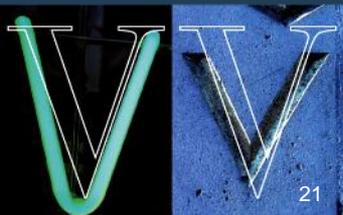
### (1) Is There a Solicitation?

#### ■ Facebook posts

- Status – “Instead of going to see 'The Grey', donate that \$10 to the [Grand Canyon Wolf Recovery Project!](https://www.facebook.com/#!/HSUSArizona/posts/313603705349384)”  
(HSUS – Arizona -  
<https://www.facebook.com/#!/HSUSArizona/posts/313603705349384>)
- Others' status

#### ■ Twitter Feeds

- “Right NOW every donation to the ASPCA is DOUBLED—help twice as many animals!  
<http://ow.ly/aoDOd> [#DoubleYourImpact](#)”

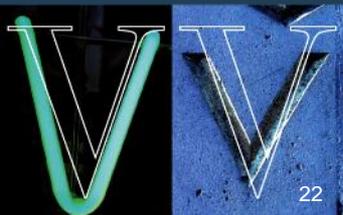


# Charitable Solicitation

## SOCIAL MEDIA IMPLICATIONS

### (2) Is Another Party Receiving Consideration for Solicitation?

- Facebook status loans
- Re-tweets
- Charitable Platforms (crowdrise.org, donorschoose.org)
  - Is there compensation provided to site for posting or ranking?
  - Who provides the content?
  - Where does “donation” button go?





At ChangingThePresent you can help make the world a better place, one gift at a time! It's easy to give these gifts to your friends and also use them for your own charitable giving.

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- [Hunger](#)
- [Millennium Goals](#)
- [Water](#)

#### Community

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- [Arts & Culture](#)
- [Children & Youth](#)
- [Civil Society](#)
- [Peace](#)
- [Public Broadcast](#)
- [Refugees](#)
- [Veterans](#)
- [Women](#)

#### Environment

- [Agriculture](#)
- [Animal Welfare](#)
- [Environment](#)
- [Global Warming](#)

#### Health and Safety

- [Blindness & Vision](#)

### Charitable Gifts from ChangingThePresent



#### Stop Toxic Dumping

One reporting trip

\$45



#### Fund for Global Human Rights >

Your gift will fund one trip by an activist to help document and report ongoing abusive practices against these communities. Because of the work of Fund grantee Green Advocates, these local communities are starting to organize, resist, and generate media attention. [more >](#)



#### Fight Corruption

One hour of work

\$75



#### Transparency International USA >

Your gift will provide one hour of tool development, helping TI-USA develop and promote anti-bribery codes and implementation programs and benchmarking tools for the private sector. [more >](#)



#### Connect Generations

One art performance

\$75



#### Generations United >

Your gift will allow one performer to attend and participate in an intergenerational performance. [more >](#)

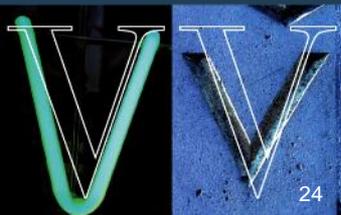


# Charitable Solicitation

## SOCIAL MEDIA IMPLICATIONS

### (3) Are Goods or Services Being Offered under Premise It Will Benefit a Charity?

The screenshot shows a Facebook post from 'The Pink Ribbon' on Monday. The post includes a link to 'www.shop2give.us/NorthernLightShow' and an image of a pink watch with a diamond-encrusted bezel. The watch face features a pink ribbon logo. The post text reads: '~♥~ LIKE if amazing women light up your life! ~♥~ Northern Lights Pink Ribbon Silicone Watch - Changes Color! Shop Here ►► www.shop2give.us/NorthernLightShow All orders help fund free mammograms for women in need. Get \$10 off \$50 orders -Enter the code PICNIC in your cart.' An arrow points to the watch image. The post has 1,038 likes and 75 comments.



Confirm your email address to access all of Twitter's features. A confirmation message was sent to [Kristalynloson@gmail.com](mailto:Kristalynloson@gmail.com).  
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#IADMIT  
#askholly  
Deion Sanders  
New Christina Aguilera Single SOON  
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Do You Approve  
New Gmail Comes  
MY RELATIONSHIP with MY BELIEBERS  
Play Hard

twitter  
© 2012 Twitter About Help Terms Privacy  
Blog Status Apps Resources Jobs  
Advertisers Businesses Media Developers

**AmnestyInternational** @amnesty 1h  
It's back! Mark your calendars for the return of the @secretpoliceman's Ball on April 27th on @EpixHD owl.li/asgLY

**CAREUSA (care.org)** @CARE 1h  
Have you ever wondered not why, but how, we fight global #poverty? Visit our updated "What We Do" page to learn more: [bit.ly/15tlCL](http://bit.ly/15tlCL)

**Heifer International** @Heifer  
Buy a t-shirt from @Sevenly, save the world with Heifer: [hefr.in/1a6khl](http://hefr.in/1a6khl)

4 RETWEETS 1 FAVORITE

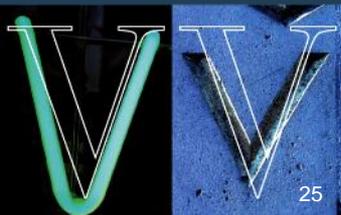
5:01 PM - 23 Apr 12 via HootSuite · Details  
[Reply](#) [Retweet](#) [Favorite](#)

**Yoko Ono** @yokoono 1h  
Yoko Ono's 13 Days Do-It-Yourself Dance Festival : 9th day. [pinterest.com/pin/8866468638...](http://pinterest.com/pin/8866468638...)

**UberSocial** @UberSoc 1h  
RT @ubereditors Upcoming Dark Knight Rises has more than an hour of IMAX footage. Will you see it in IMAX? [cot.ag/HWTeki](http://cot.ag/HWTeki)

**Literacy Bridge** @LiteracyBridge 1h  
Check out our all new Talking Book interface [ow.ly/d/AR5](http://ow.ly/d/AR5)

IIED @IIED 20 Apr



Lace Up Collection

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## LACE UP FOR THE CURE COLLECTION

Honor loved ones who have been affected by breast cancer. Celebrate survivors. Show your support for the cause.



As part of our efforts to promote good health for everyone, New Balance will contribute 5% of the suggested retail price of sales from the Lace Up for the Cure® Collection with a guaranteed minimum donation of \$500,000 to Susan G. Komen for the Cure®.

### Lace Up Shoes

Your favorite New Balance running, walking and toning shoes in pink Lace Up designs.



[View All Lace Up Shoes](#)

### Lace Up Apparel

The performance apparel you expect from New Balance featuring empowering messages.



[View All Lace Up Apparel](#)

### Lace Up Accessories

Show your support from head to toe in hats, socks, bags and more that sport the Lace Up logo.



[View All Lace Up Accessories](#)

### Personalize the Fight

Celebrate a survivor in your life with a personalized pair of 993 running shoes.

[Create a pair now](#)



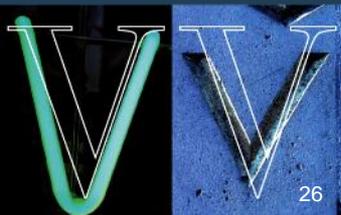
### The 860 Walking Shoe

Official shoe of the Susan G. Komen 3-Day for the Cure™.

[Shop the 860 Walking Shoe](#)  
Also available in Running



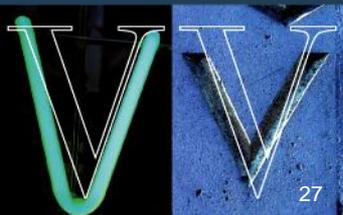
### What's Popular In our Lace Up for the Cure Collection



# Charitable Solicitation

## REGULATORY UPDATE

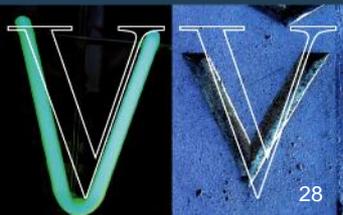
- Much focus on CCVs by regulators and watchdog groups
- NY AG Breast Cancer Investigation
  - October 2011 – questionnaires sent to over 40 charities/130 for-profit companies involved in commercial co-venturer activities
  - Questions track statutory requirements – Contract? Accounting? Minimum or Maximum Contribution?
  - Also request, “television, print media, email, Twitter, Facebook, or in-store advertising”
- BBB Wise Giving Alliance Initiative on Solicitations



# Charitable Solicitation

## CONSIDERATIONS FOR COMMERCIAL CO-VENTURE PROMOTIONS

- (1) Pick the right product or service
  - Komen Buckets for the Cure (2010)
- (2) Make appropriate disclosures (particularly of minimum or maximums)
  - McNeil Consumer Products Company/Arthritis Foundation (1999)
  - Yoplait Breast Cancer Research Foundation Campaign (1996)
- (3) Think about tax implications for charity's activities



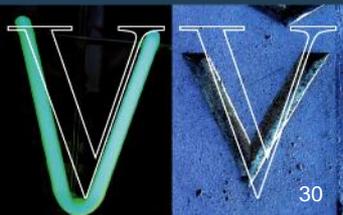
# Charitable Solicitation

## CONSIDERATIONS FOR COMMERCIAL CO-VENTURE PROMOTIONS

- (3) Consider timing for regulatory requirements
- (4) Keep alternatives in mind
  - Flat Corporate Donation
  - Free Action Program



# ■ QUESTIONS?



# Contact Information

## YOUR VENABLE TEAM

Ronald M. Jacobs  
rmjacobs@Venable.com  
t 202.344.8215

Kristalyn J. Loson  
kjloson@Venable.com  
t 202.344.4522

Jeffrey S. Tenenbaum  
jstenenbaum@Venable.com  
t 202.344.8138



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